



ADDITIONAL INFORMATION ON THE REPAIRING STANDARD AND PRIVATE RENTED HOUSING PANEL

- 1.** Private landlords already have legal obligations to repair the properties they rent out, but these are difficult for tenants to enforce. The new Repairing Standard under the Housing (Scotland) Act 2006 modifies and extends these obligations and the establishment of the Private Rented Housing Panel (PRHP) makes it easier for a tenant to enforce them. Most private landlords keep their properties in good repair and ensure that they meet their legal obligations. Enforcement action through the PRHP will only be necessary for the small minority of landlords who fail to do so. The Scottish Government wants to ensure that everyone has access to decent, affordable housing and the new Repairing Standard will contribute to this.
- 2.** Sections 13(5) and 20(2) of the Housing (Scotland) Act 2006 give the Scottish Ministers powers to issue guidance in relation to the Repairing Standard. Statutory guidance issued under those sections is included in this pack. This guidance has effect from 3 September 2007, when the provisions of the 2006 Act relating to the Repairing Standard come into force.
- 3.** More details of the Repairing Standard and the Private Rented Housing Panel can be found in the 2006 Act and the Explanatory Notes on the Act, which can be found at <http://www.opsi.gov.uk/legislation/scotland/s-acts2006a.htm>.

The Repairing Standard

- 4.** Chapter 4 of Part 1 of the Housing (Scotland) Act 2006 establishes the Repairing Standard. The Repairing Standard applies to any tenancy of a house let for human habitation that is not
 - a Scottish secure tenancy or a short Scottish secure tenancy (they are covered by schedule 4 of the Housing (Scotland) Act 2001);
 - a tenancy of a house retained or purchased by a local authority under section 121 of the Housing (Scotland) Act 1987 for use as housing accommodation;
 - a tenancy of a house included in an agricultural lease of a specified type and occupied by the tenant of that lease;
 - a tenancy of a house on a croft; or
 - a tenancy of a house on a holding situated outwith the crofting counties to which any provision of the Small Landholders (Scotland) Acts 1886 to 1931 applies.
- 5.** Basically, the Repairing Standard will apply to the great majority of private sector tenancies and those relatively few public sector tenancies which are not Scottish secure tenancies or short Scottish secure tenancies. The Repairing Standard will also apply to a tied house, ie a house occupied by a person under that person's terms of employment. Occupancy arrangements which are not leases (eg when people are living in hostels or other short-term accommodation) are not covered.



6. The new Repairing Standard is more extensive than the previous statutory duty to repair and maintain in Schedule 10 of the 1987 Act, and takes in some of the standards for the social rented sector introduced by the Housing (Scotland) Act 2001, as well as some obligations that would previously have been contractual. A landlord will have to ensure that:

- **the house is wind and water tight and reasonably fit for human habitation** (taking account of the extent to which the house falls short of any building regulations, because of disrepair or sanitary defects);
- **the structure and exterior of the house** (including drains, gutters and external pipes) **are in reasonable repair and proper working order** (having regard to the house's age, character and prospective life and the locality). Where the house forms part of premises (eg, a flat), this criterion includes any part of the premises that the owner is responsible for maintaining, solely or communally, but the Repairing Standard only applies if any part of, or anything in, the premises that the tenant is entitled to use is adversely affected;
- **the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in reasonable repair and proper working order** (including installations outside the house but serving it, and which the owner is responsible for maintaining, solely or communally);
- **any fixtures, fittings and appliances provided under the tenancy are in reasonable repair and proper working order;**
- **any furnishings provided under the tenancy are capable of being used safely for the purpose for which they are designed;** and
- **there is satisfactory provision for detecting and giving warning of fires.**

7. It is a landlord's duty to ensure that a house meets the Repairing Standard at the start of the tenancy and at all times during it. The landlord (or someone authorised by the landlord) must inspect the house before the tenancy starts, in order to identify work necessary to meet the Repairing Standard, and must notify the tenant of any such work. It would be prudent for the landlord to carry out the pre-tenancy inspection in time to deal with any necessary repairs before the tenancy begins. Once the tenancy has begun, the duty only applies where the landlord is aware that work is required, for example because the tenant has notified the landlord. In order to comply with the duty, the landlord must carry out any necessary work within a reasonable time. (The meaning of "a reasonable time" will obviously depend upon the nature and urgency of the work.) It would be helpful if the landlord could indicate to the tenant how long work is likely to take; apart from keeping the tenant informed, this could prevent the tenant from making an unnecessary application to the Private Rented Housing Panel. The 2006 Act gives a landlord (or someone authorised by the landlord) a right of entry to check whether the house meets the Repairing Standard and to carry out any work necessary to meet it or to comply with a repairing standard enforcement order.

8. The Act specifies exceptions to the landlord's duty to repair, for example, when the tenant is required to carry out work by the terms of a tenancy lasting for at least three years, or when the landlord lacks rights necessary to carry out work (eg, rights of access), despite



having taken reasonable steps to acquire them. Contracting out from the landlord's duty to repair is prohibited, unless an application is made to the sheriff to contract out wholly or partly, both the landlord and the tenant consent, and the sheriff is satisfied that such action is reasonable.

The Private Rented Housing Panel

9. At the moment a tenant has to take court action to enforce the landlord's repairing obligations. The 2006 Act creates a new mechanism for enforcing the landlord's repairing duty: the Private Rented Housing Panel (PRHP), which will be an expanded version of the existing Rent Assessment Panel (RAP). A tenant who believes that the landlord has failed to comply with the duty to meet the Repairing Standard will be able to apply to the PRHP. The tenant must have notified the landlord that the work requires to be done and will have to provide the PRHP with details of how this notification has been made. An application cannot be made if the landlord is a local authority landlord (as defined in section 11(3) of the Housing (Scotland) Act 2001), a registered social landlord, Scottish Homes or Scottish Water, even though the Repairing Standard may apply to some of their houses. Tenants in these cases have access to a formal complaints system, backed up by the Scottish Public Services Ombudsman.

10. The PRHP will consider whether cases can be resolved by the tenant and landlord, including the possibility of mediation. Cases accepted by the PRHP will be heard by Private Rented Housing Committees, which have powers to require landlords to carry out repairs by issuing a repairing standard enforcement order. If a landlord fails to comply with an enforcement order, the PRHC may issue a rent relief order, which will reduce rent paid under the tenancy by up to 90%. If a landlord will not or can not do the work, the local authority may carry it out and recover its costs.

11. It will be a criminal offence if a landlord fails to comply with a repairing standard enforcement order without reasonable excuse. It will also be a criminal offence for a landlord to enter into a tenancy or occupancy arrangement relating to a house subject to a repairing standard enforcement order without the consent of the Private Rented Housing Committee.

12. Information about the PRHP is available at www.prhpscotland.gov.uk or from

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Statutory Guidance

13. Regard must be had to guidance issued under section 13(5) (and any building regulations) in deciding whether a house to which the Repairing Standard applies has satisfactory provision for detecting and giving warning of fires. Landlords must have regard to guidance issued under section 20(2) when carrying out their legal obligation to provide a tenant with written information about the effect of the Chapter 4 provisions (ie, the Repairing Standard and PRHP) on the tenancy. (Please note that the information requirement applies only to tenancies starting from 3 September onwards.) Guidance under both sections has been issued and is set out below.

14. Any enquiries about the guidance should be directed to Colin Affleck at Housing Markets and Supply Division, Scottish Executive, Victoria Quay, Edinburgh EH6 6QQ (email: colin.affleck@scotland.gsi.gov.uk).