

THE REPAIRING STANDARD: AN ADVICE PACK FOR PRIVATE LANDLORDS

From 3 September 2007 there are important changes in the laws covering the responsibilities of private landlords to carry out repairs. This pack provides guidance on the new system. A standard letter for tenants is included at the end of the pack. A short summary of your duties as a landlord is given below.

- The new Repairing Standard applies to the great majority of tenancies of houses in the private sector. It covers various aspects of the house, including the structure and exterior, various installations and fixtures, the safety of furniture, and smoke alarms. Full details are given later. Landlords already have to meet most of these standards, but they are now brought together in one place.
- The landlord will have to ensure that the house meets the Repairing Standard at the start of the tenancy. This means that you (or someone authorised by you) will have to inspect the house before the tenancy starts and tell the tenant if any work has to be done, as well as carrying out the work. It would be sensible to carry out the inspection in time to deal with any necessary repairs before the tenancy begins.
- The landlord also has to ensure that the house meets the Repairing Standard throughout the tenancy. This applies to existing tenancies as well as those that begin on and after 3 September. This duty only applies if your tenant tells you that work needs to be done or you become aware of this in some other way.
- Most landlords keep their properties in good condition, but if a tenant believes that the landlord has not complied with the Repairing Standard, he or she can apply to the new Private Rented Housing Panel. The Panel can reject the application, refer it to a Private Rented Housing Committee, or delay a decision if there is a good chance that the landlord and tenant can settle the dispute, possibly by mediation. If a Committee decides that the Repairing Standard has not been met, it can require the landlord to do the necessary work.
- At the start of the tenancy or earlier you have to tell the tenant about the effect of the Repairing Standard and Private Rented Housing Panel arrangements on the tenancy. In the great majority of cases the landlord will be able to do this by completing and handing over the standard letter at the end of this pack, which can also be downloaded from the Private Rented Housing Panel website at www.prhpscotland.gov.uk.

The rest of this pack contains more detailed information on the new system. Then comes statutory guidance on providing information to tenants and on the provision of smoke alarms in rented houses. Landlords must have regard to this guidance.

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

Private Rented Housing Panel
3rd Floor
140 West Campbell Street
Glasgow
G2 4TZ

Tel: 0141 572 1170

Fax: 0141 572 1171

admin@prhpscotland.gov.uk

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).

HOUSING (SCOTLAND) ACT 2006: STATUTORY GUIDANCE ON THE REPAIRING STANDARD

1. 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. Guidance issued under those sections is set out below. This guidance has effect from 3 September 2007.

Satisfactory provision for detecting and warning of fires: statutory guidance

2. Section 13(1) of the Act sets out the criteria that must be met if a house is to comply with the Repairing Standard. At the moment, most of these criteria are either required under the Housing (Scotland) Act 1987 or are likely to be required by contract. However, the requirement that “the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire” is new. As stated in section 13(5), in deciding whether this standard is met, regard must be had to any building regulations and any guidance on the subject issued by the Scottish Ministers.

3. This criterion should be regarded as met if there is one or more than one functioning smoke alarm installed in the house, the number and position of alarms to be determined by the size and layout of the house. There should normally be at least one smoke alarm on each floor. If there are multiple alarms, they should be interlinked. Although it is best practice to install mains powered smoke alarms, an existing smoke alarm may be mains powered or battery powered. However, a smoke alarm installed from 3 September 2007 onwards must be mains powered. This includes replacement alarms. If there is a requirement for the house to meet a more stringent standard of provision for detecting and giving warning of fire (for example, in a house in multiple occupation [HMO] requiring to be licensed, or under building regulations), then the Repairing Standard criterion is only to be regarded as met if that requirement is met. An alarm should be installed in accordance with the recommendations contained in the British Standard on the design of fire detection installations for dwellings (BS5839 Part 6). The fitting of a hard-wired smoke alarm system may require a building warrant and landlords should consult the Building Standards department of the local authority.

4. Landlords should ensure that smoke alarms are regularly maintained in accordance with the manufacturer’s recommendations.

Tenant’s right to information about landlord’s duty: statutory guidance

5. Section 20(1) of the Act states that, at the beginning of the tenancy or earlier, the landlord is required to provide the tenant with written information on the effect of the Repairing Standard provisions (including the means of enforcing the standard) in relation to the tenancy. This requirement relates to tenancies starting from 3 September 2007 onwards. The requirement to provide information also applies to local authorities and other social landlords where they are parties to tenancies to which the Repairing Standard applies. The Scottish Ministers may, under section 20(2), issue guidance to such persons as they think fit on the form and content of such information and the manner of its provision. A landlord to whom such guidance is issued must have regard to it. The Scottish Ministers may vary or revoke any such guidance issued.

6. The Scottish Ministers advise that the options that a landlord may choose in order to comply with the requirement to provide written information to the tenant are as set out below.

7. Where all of the provisions relating to the Repairing Standard and the means of enforcing it apply to the tenancy (which will be the case in the great majority of lettings in the private rented sector), the landlord will comply with the requirement if he or she provides the tenant with the standard information letter which has been issued by the Scottish Ministers. The letter is attached to this guidance and is also available from the Private Rented Housing Panel (PRHP) and Scottish Executive websites. It is also open to a landlord in this situation to provide a letter that he or she has drawn up, as long as it includes all the information in the standard letter.

8. Where all of the provisions relating to the Repairing Standard and the means of enforcing it **do not** apply to the tenancy, the landlord should provide to the tenant a letter including the provisions that do apply and explaining any variations or exclusions, for example arising from exclusion or modification of the application of the Repairing Standard to the tenancy under section 18 of the 2006 Act. (Section 18 allows a sheriff to approve the contracting out from or variation of the Repairing Standard provisions if the landlord and tenant agree.) In the case of those landlords referred to in section 22 of the Act (local authorities, registered social landlords, Scottish Homes and Scottish Water), the letter should explain that tenants do not have recourse to the PRHP. The landlord may want to seek legal advice on the drafting of the letter.

9. In addition, a landlord may wish to provide the tenant with the leaflet on the Repairing Standard and PRHP published by the Scottish Ministers, *New Rights for Private Sector Tenants: The Repairing Standard and Private Rented Housing Panel*.

Housing and Regeneration Directorate
Scottish Executive
Victoria Quay
25 July 2007

Notes

(These notes do not form part of the statutory guidance.)

1. The Technical Handbooks provide practical guidance with respect to the requirements of Building (Scotland) Regulations 2004. The section on giving warning of fire in domestic buildings is Functional Standard 2.11, which gives specific information on system types and locations.

See http://www.sbsa.gov.uk/tech_handbooks/th_pdf_2007/Section_2_Domestic_2007.pdf

2. It is recommended as good practice that landlords advise tenants to test alarms on a weekly basis and change the batteries once a year in battery powered systems. Where a lease is for less than a year, the landlord should change the batteries before the start of the next tenancy. It is also recommended that landlords should advise tenants not to tamper with alarms and leases should contain a clause about not tampering with batteries.

3. The standard letter referred to above is on the following pages.

STANDARD LETTER FOR TENANTS

EFFECT OF CHAPTER 4 OF PART 1 OF THE HOUSING (SCOTLAND) ACT 2006 ON YOUR TENANCY: INFORMATION PROVIDED BY LANDLORD IN ACCORDANCE WITH SECTION 20(1) OF THE HOUSING (SCOTLAND) ACT 2006

From:

Insert name and address of landlord

To:

Insert name and address of tenant

Concerning your tenancy of the following house:

Insert address of house

This is to inform you, as the tenant of the house described above, that Chapter 4 of Part 1 of the Housing (Scotland) Act 2006 applies in its entirety to your tenancy. This letter summarises the main effects of Chapter 4 on your tenancy.

I/we, as the landlord (or an authorised person), must carry out a pre-tenancy inspection of the house to identify work required to meet the Repairing Standard and must notify you of any such work.

I/we must ensure that the house meets the Repairing Standard at the start of, and at all times during, the tenancy. This duty applies only when you, as the tenant, inform me/us of work needed to meet the Repairing Standard (or I/we become aware of it in some other way). You should therefore notify me/us of any work required. I/we must complete that work within a reasonable time of becoming aware of it.

A house meets the Repairing Standard if the following conditions are met:

- **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 requirement 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 of smoke alarms.**

The Repairing Standard does not cover work for which you, as the tenant, are responsible due to your duty to use the house in a proper manner; nor does it cover the repair or maintenance of anything that you are entitled to remove from the house.

If you believe that I/we have failed to ensure that the house meets the Repairing Standard at all times during the tenancy, you have the right to apply to the Private Rented Housing Panel (PRHP). The PRHP may reject the application; consider whether the case can be resolved by us (the tenant and landlord) ourselves (for example, by agreeing to mediation); or refer your application to a Private Rented Housing Committee (PRHC) for consideration. The PRHC has power to require a landlord to carry out work necessary to meet the Repairing Standard. Full details of how to apply to the PRHP may be obtained at www.prhpscotland.gov.uk or from

Private Rented Housing Panel
3rd Floor
140 West Campbell Street
Glasgow
G2 4TZ

Tel: 0141 572 1170
Fax: 0141 572 1171
admin@prhpscotland.gov.uk

Signed:.....
Insert landlord's signature

Date:.....
Insert date

I certify that I have received a copy of this letter.

Signed:.....
Insert tenant's signature

Date:.....
Insert date