

**To: Chief Executives of Local Authorities  
Convention of Scottish Local Authorities  
Association of Local Authority Chief Housing Officers**

## **SEDD CIRCULAR: IMPLEMENTING THE HOUSING (SCOTLAND) ACT 2006**

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## SEDD CIRCULAR: IMPLEMENTING THE HOUSING (SCOTLAND) ACT 2006

### Purpose of circular

1. This circular outlines the Scottish Executive's approach to the implementation of the Housing (Scotland) Act 2006 and explains the new roles for local authorities, including duties and powers, arising from the provisions of the Act. It is being issued to help local authorities to plan for their part in implementation. It does not give full details of the Act's provisions; further information can be obtained from the text of the Act and the Explanatory Notes on it, which can be found online at respectively:

[www.opsi.gov.uk/legislation/scotland/acts2006/asp\\_20060001\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060001_en.pdf) and  
[www.opsi.gov.uk/legislation/scotland/en2006/aspn\\_20060001\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/en2006/aspn_20060001_en.pdf).

2. It must be stressed that timetable details given in this circular are provisional and subject to change in the light of project planning and consultation. Also, the key steps in the Executive's implementation actions, as listed below, are not exhaustive, particularly given that some workstreams are at a more advanced stage of planning than others.

### The Act

#### *Background*

3. The main purpose of the Act is to address, through encouragement and, where necessary, enforcement, problems of condition and quality in private sector housing, both owner-occupied and private rented (although some provisions also relate to the social rented sector). The underlying principles are that

- owners have primary responsibility for maintaining their houses, with assistance available where necessary
- landlords should provide houses that are suitable and in good condition
- in order to improve the condition of private housing
  - it is important for local authorities to deal with the issue
  - they should have flexibility to allow local solutions
  - they should adopt a strategic approach.

4. The approach taken is based on the work of the Housing Improvement Task Force, which was set up by Scottish Ministers in December 2000. Its remit was to consider issues relating to housing quality in the private sector and the house buying and selling process. The Task Force's first report, *Issues in Improving Quality in Private Housing* (2002), confirmed that, although most private sector housing is in good condition, a significant proportion is in poor repair. The Task Force published its final report and recommendations, *Stewardship and Responsibility: A Policy Framework for Private Sector Housing in Scotland*, in March 2003. Legislative proposals based on these recommendations were consulted on in the paper *Maintaining Houses – Preserving Homes* in 2004 and were widely welcomed by local authorities and other stakeholders. The Act builds on all of this work.

5. Action continues to take forward other recommendations of the Task Force that do not require legislative action, such as schemes for the voluntary accreditation of landlords.

6. Other legislation will continue to be relevant to house condition and private sector housing, particularly

- the Antisocial Behaviour etc (Scotland) Act 2004, which introduced landlord registration. The 2006 Act builds on this;
- the Tenements (Scotland) Act 2004. It sets out a default structure for management of common parts of tenements and clarifies owners' responsibilities; the new Act will help to ensure that owners meet their responsibilities to maintain their properties;
- the Title Conditions (Scotland) Act 2003, which clarifies the law of real burdens;
- the Building (Scotland) Act 2003, which set out a revised framework for the building standards system;
- the Civic Government (Scotland) Act 1982;
- local legislation; and
- those pertinent sections of the Housing (Scotland) Act 1987 that are not repealed by the 2006 Act.

### *Overview of the Act*

#### 7. The Act is in ten Parts:

- Part 1 deals with various aspects of housing standards, as explained below. Chapter 8 deals with appeals and other matters of particular interest to local authorities, including the power to carry out work or demolition by agreement with the owner; obstruction; recovery of expenses; provisions on listed buildings; certification of the completion of work; and the service of documents. Chapter 9 defines some of the terms used in Part 1 and explains that this Part is applicable to non-residential premises forming part of a building containing a house.
- Part 2 sets out the details of the scheme of assistance for housing purposes.
- Part 3 gives the Scottish Ministers powers to require sellers of houses or their agents to provide specified information to potential buyers. These powers will be used to establish mandatory schemes, under which the Purchaser's Information Pack and single survey will have to be supplied when a house is placed on the market. Ministers also have powers to require additional information to be provided to tenants of local authorities and registered social landlords who request a valuation in connection with the right to buy.
- Part 4 gives the Scottish Ministers powers to establish conditions for, and to approve, a scheme or schemes for the protection of tenancy deposits in the private rented sector.
- In Part 5 the system of licensing of houses in multiple occupation, which is presently founded in secondary legislation under the Civic Government (Scotland) Act 1982, is re-enacted in primary legislation, with some changes to its details.
- Part 6 amends legislation relating to occupiers of mobile homes who let stances, in order to increase the protection given to them.
- Part 7 gives a local authority power to use repayment charges to recover amounts due to it for certain activities carried out in relation to living accommodation.
- Part 8 contains provisions relating to private landlords, registered social landlords and home energy efficiency.
- Part 9 deals with rights of local authorities and others to enter land and premises for specified purposes, such as identifying potential Housing Renewal Areas, deciding whether to serve a work notice or demolition notice, deciding whether to make a maintenance order, or carrying out work.

- Part 10 deals with various technical matters, including equal opportunities requirements for Ministers and local authorities and powers for local authorities to obtain information in relation to land and premises.

## **The Scottish Executive role in implementation**

### *Timescales*

8. We are currently planning a detailed implementation timetable in the light of available resources and other issues, such as the inter-relationships among parts of the Act. Implementation will broadly take place over the period 2007 to 2008. Relevant sections of the Act will be brought into force at the appropriate times. Further details on timescales are given below.

### *Consultation and information dissemination*

9. In developing the detail of implementation action, including subordinate legislation, the Executive will seek to work with stakeholders, including local authorities, although the ultimate power to make decisions rests with Ministers. For example, the Executive intends to seek the views of stakeholders on the development of guidance and statutory directions in relation to the new powers for local authorities contained in Parts 1 and 7 of the Act. The Executive will have to take decisions on the allocation and distribution of the funding available for the implementation of the Act. In doing so it will take account of stakeholders' views. The Executive has allocated £10 million per annum up to 2007-08 to support the implementation of the Housing Improvement Task Force recommendations, and it is expected that a proportion of this will be used to assist local authorities with costs arising from the implementation of the Bill, such as start-up staffing and training.

10. Where appropriate, there will be public consultation on proposals. Any changes effected through new legislation will be publicised and clearly explained to the public and stakeholders. Local authorities and other public landlords will be expected to play a role in information dissemination.

### *Implementation responsibilities*

11. Implementation work will be divided between teams in the Housing and Regeneration Group (HAR) of the Scottish Executive and Communities Scotland. As explained below, Communities Scotland will deal with the implementation of the sections of the Act dealing with Housing Renewal Areas; Local Housing Strategies; the tolerable standard; repair, improvement and demolition of houses; maintenance; the new scheme of assistance; the provision of the Purchaser's Information Pack and single survey on the sale of a house; and repayment charges. Staff within HAR will deal with the repairing standard for private rented housing; the right to adapt rented houses; schemes to protect tenancy deposits; the licensing of houses in multiple occupation (HMOs); mobile homes; and miscellaneous provisions of the Act. HAR will also deal with action to commence the various parts of the Act. Overall policy responsibility lies ultimately with Ministers.

12. The Executive will introduce transitional provisions and savings where these are appropriate for legislation that is repealed or modified by the Act, particularly in relation to processes that are already underway before commencement dates. For example, provision

will have to be made for the continuation of Housing Action Areas that are underway when Housing Renewal Areas are introduced.

### **Local authority role in implementation**

13. There are four aspects of the local authority role in the implementation of the Act, which will be based on the framework (guidance, secondary legislation, etc) put in place by the Executive. In the first place, a local authority will have a responsibility to integrate the improvement of local housing (taking into account the role of its partners) into its strategic approach for its area, as expressed in its Local Housing Strategy. Secondly, a local authority will be responsible for action arising from relevant provisions of the Act, such as declaring Housing Renewal Areas, issuing maintenance orders, implementing the changes to the HMO licensing system, and enforcing the provision of the Purchaser's Information Pack and single survey. Thirdly, a local authority may have a role as a landlord, for example in the provision of additional information to a tenant who requests a house valuation in connection with the right to buy. Finally, the local authority needs to be aware of the implications of other provisions where it is not directly involved in implementation (such as the new right to adapt a privately rented house), in order to fulfil its general role in housing (for example, the provision of information and the need to understand the housing market in its area).

14. The new powers for local authorities in the Act are flexible and may overlap into other areas of activity. There may therefore be potential to co-ordinate local authorities' use of the range of existing funding streams, such as Regeneration funding. The main funding stream for the purposes of the Act is Private Sector Housing Grant (PSHG) and there will be additional funding from the money allocated to support implementation of the Housing Improvement Task Force recommendations. The allocation methodology for PSHG is under active review with CoSLA to improve its recognition of needs.

15. Each local authority should take appropriate steps to prepare for the implementation of the measures in the Act, for example, ensuring that appropriate resources, including staff with the necessary skills, can be put in place. The amount of new resources required will become clearer as guidance is issued. It should also be borne in mind that some existing activities will disappear as they are replaced by new powers and duties contained in the Act. Local authorities will also need to consider how local conditions and housing needs can be addressed within the current framework of national priorities and the new requirements of the Act.

### **Implementation for each policy area: initial summary**

16. Below are initial details of the proposed implementation of the thirteen main policy areas in the Act plus some miscellaneous provisions. Further advice will be given on each area as the situation develops.

#### ***Housing Renewal Areas***

17. The Housing (Scotland) Act 1987 gives local authorities powers to deal with sub-standard houses on an area basis by means of Housing Action Areas (HAAs), but these can only be declared where the majority of houses fail to meet the tolerable standard. HAAs have been invaluable in improving Scotland's housing, but there is now a need for a more flexible approach to dealing with disrepair and house condition on an area basis, in order to allow a

local authority to stop the deterioration of an area before houses have to be condemned and to deal with area-based problems other than houses below the tolerable standard. The 2006 Act will allow a local authority to designate a locality as a Housing Renewal Area (HRA) when either a significant number of the houses in the locality are sub-standard or the appearance or state of repair of any houses in the locality is adversely affecting its amenity. "Sub-standard" means that a house does not meet the tolerable standard or is in a state of serious disrepair or is in need of repair such that, if action is not taken, it is likely to deteriorate rapidly into serious disrepair or to damage any other premises.

18. Within an HRA action may also be taken to improve safety and security, reduce the long-term costs of maintaining houses or enhance the amenity of any houses.

19. Local authorities will want to consider how an HRA would fit in with any other regeneration work within its boundaries or community planning area.

20. The powers relating to HRAs are closely linked to other parts of the Act, particularly those dealing with repair, improvement and demolition of houses and with the scheme of assistance.

#### *Scottish Executive approach*

21. Implementation of this aspect of the Act will be taken forward by a team in Communities Scotland.

22. The key steps in implementation will be

- considering the need to issue directions on identification of areas
- working with stakeholders to develop guidance on the operation of Housing Renewal Areas
- issuing guidance.

23. Our provisional estimate is that the HRA powers could be in place by early 2008.

#### *Local authority role*

24. Each local authority will have the power to identify areas appropriate for designation as HRAs. In doing so it must comply with any directions on this matter given by Ministers. There is a new duty to include in the Local Housing Strategy the local authority's policy for identifying localities that should be designated as HRAs.

25. Local authorities might use powers where, for example:

- improving the area's appearance is part of a wider economic regeneration approach;
- an issue does not lend itself to an individual house approach, such as security, access, or quality of private and open spaces; or
- there is a concentration of right to buy owners who may need targeted assistance to allow completion of a landlord improvement programme.

26. When a local authority proposes to designate a locality as an HRA, it must produce a draft designation order. This must include an action plan setting out the strategy to improve the condition and quality of housing in the HRA. The action plan will identify houses within the HRA that require to be demolished or need work carried out to bring them into a

reasonable state of repair or to enhance the amenity of the area. Schedule 1 of the Act describes the requirements for giving notice of and publicising a draft designation order. The local authority must consider representations on the draft order – the intention is to have community involvement in the HRA process - before submitting it to Ministers for approval.

27. Once Ministers have given approval, the local authority will be able to make the order. It will then have a duty to secure the implementation of the action plan, including the provision of information to owners and occupiers of houses identified in the plan. Implementation will be carried out by the issue of work and demolition notices on individual properties (a change from the HAA procedure). Local authorities will have powers to carry out works when owners do not do so, and to recover their costs.

28. The local authority will also have a duty to rehouse residents displaced by implementation of the action plan. The local authority has power to vary the plan at the request of the owner of any house identified in the action plan.

#### *Local authority preparation*

29. Local authorities will need to begin considering their policies on identifying areas suitable for HRA action and ensure that they deal with training and other staffing issues to support this activity, bearing in mind that work on HAAs will come to an end.

#### *Local Housing Strategies*

30. Section 10 of the Act expands the requirements relating to Local Housing Strategies in the Housing (Scotland) Act 2001, in order to make explicit the importance of the local authority's role in improving the condition of housing in its area and to ensure that this role is performed in a strategic way. The purpose to be accomplished by the local authority will include improving the standard of housing in the authority's area.

31. Furthermore, a local authority will have to include three additional elements in its Local Housing Strategy. The first is a strategy to ensure that it complies with section 85(1) of the Housing (Scotland) Act 1987, ie the duty to ensure that all houses in its area that are below the tolerable standard are closed, demolished or brought up to the standard within a reasonable period. The second element is the authority's policy for identifying localities within its area that should be designated as Housing Renewal Areas, and the third is its strategy for using the scheme of assistance to improve the condition of houses.

#### *Scottish Executive approach*

32. Implementation of this aspect of the Act will be taken forward by a team in Communities Scotland.

33. The key steps in implementation will include

- working with stakeholders to develop revised Local Housing Strategy guidance for local authorities, to reflect the Act's requirements
- issuing revised guidance
- amending Communities Scotland's monitoring framework to reflect the revised guidance.

34. It is provisionally estimated that the adapted Local Housing Strategy process will be in place between mid-2007 and early 2008.

#### *Local authority role*

35. A local authority will have to ensure that it considers how it will most effectively deal with houses below the tolerable standard, identify areas to be designated as Housing Renewal Areas, and use the scheme of assistance to improve house conditions in its area.

#### *Local authority preparation*

36. Local authorities should begin to consider how the issues of dealing with houses below the tolerable standard, identifying localities to be designated as Housing Renewal Areas, and using the scheme of assistance to improve house conditions fit into their strategic housing priorities.

#### ***Tolerable Standard***

37. The tolerable standard will continue to be the basic condemnatory standard for Scottish housing. Section 11 of the Act amends the criteria of the tolerable standard in three regards. In order to meet the standard a house will have to have satisfactory thermal insulation. It is recognised that, in modern circumstances, this is necessary for the proper functioning of a house. Furthermore, where a house has an electricity supply, the electrical wiring and associated components will have to be safe. Finally, the Act confirms that a waterless closet is an acceptable alternative to a water closet.

38. The Act gives Ministers powers to issue guidance on the interpretation of all the tolerable standard criteria (not just the new ones) and local authorities must have regard to such guidance. This will promote consistency in the interpretation of the tolerable standard throughout Scotland.

39. A local authority will be able to deal with an individual house below the tolerable standard by issuing a work notice, rather than an improvement order under the 1987 Act. This will no longer automatically create a requirement to provide grant (see paragraph 84 below). Such houses and other sub-standard houses will be dealt with on an area basis by the declaration of a Housing Renewal Area, rather than a Housing Action Area.

#### *Scottish Executive approach*

40. Implementation of this aspect of the Act will be taken forward by a team in Communities Scotland.

41. The key steps in implementation will be

- working with an expert team to draw up statutory and non-statutory guidance covering definitions of the tolerable standard criteria, assessment methodology and working with the standard
- issuing guidance.

42. The amended tolerable standard and guidance are provisionally estimated to be in place between mid-2007 and early 2008.

### *Local authority role*

43. The importance of the local authority role in dealing with houses that fail the tolerable standard is emphasised by a new duty regarding the Local Housing Strategy. This must include a strategy to ensure that the local authority complies with its duty to ensure that such houses in its area are closed, demolished or brought up to the standard within a reasonable period. The guidance to be issued by the Executive will make it easier for local authorities to identify houses below the tolerable standard. For example, it is intended that the guidance will define “wholesome water” (as referred to in section 86(1)(d) of the Housing (Scotland) Act 1987) in terms of the Scottish drinking water regulations, thus setting limits for concentrations of lead and other substances.

### *Local authority preparation*

44. The changes to the tolerable standard mean that there will be more houses failing to meet the standard than at the moment. It is estimated that the number will rise from about 20,000 to about 65,000, depending on the detailed guidance on definitions. Local authorities should therefore start planning how to deal with this increased number, including the allocation of resources and how to ensure they have suitable skills available.

### ***Repairing Standard for private rented housing***

45. In order to improve conditions in the private rented sector, where there is a particularly high concentration of disrepair, the Act expands the definition of the repairing standard for private rented housing. As well as the existing duty to repair and maintain, landlords will also have to ensure that

- any fixtures, fittings and appliances provided under the tenancy are in reasonable repair and working order
- any furnishings provided under the tenancy can be used safely
- there is satisfactory provision for detecting and giving warning of fires.

Landlords are likely to have a contractual duty in most of these areas, but the change puts that duty on a statutory basis. The duty does not apply to houses let under Scottish secure tenancies or short Scottish secure tenancies, or to some other categories of tenancy, but local authorities may let some houses under tenancies which *are* covered by these provisions.

46. Instead of having to take court action (a means of redress that is seldom used), a private tenant will be able to report an alleged breach of the landlord’s repairing duty to the new private rented housing panel. This will be a quicker and easier route to enforce the landlord’s obligations, and should result in more privately rented houses being in better repair.

47. The private rented housing panel will be based on the existing rent assessment panel. Cases will be heard by private rented housing committees.

48. If a private rented housing committee decides that the landlord has failed to comply with the duty, it must issue a repairing standard enforcement order requiring that the necessary work be carried out. If a private rented housing committee decides that the landlord has failed to comply with the repairing standard enforcement order, it must inform the local authority of this failure and it may make a rent relief order.

49. The requirement to meet the repairing standard should also be seen in the context of landlord registration, which requires landlords to meet standards of propriety.

#### *Scottish Executive approach*

50. This aspect of the Act will be taken forward by staff within the Housing and Regeneration Group of the Scottish Executive.

51. The key steps in implementation will be
- development of the private rented housing panel
  - recruitment and training of panel members
  - information for private landlords and tenants
  - commencement of new repairing standard.

52. It is provisionally estimated that the private rented housing panel will be in place by early 2007, so that the repairing standard can then be implemented.

#### *Local authority role*

53. Section 36 of the Act allows a local authority at its discretion to carry out the relevant work if it is notified by a private rented housing committee that a landlord either is unable to comply with the repairing standard duty or has failed to comply with a repairing standard enforcement order. The local authority will be able to recover its expenses from the landlord. A local authority will also be involved in providing information about the repairing standard to tenants and landlords. Where the local authority becomes aware of a breach it will wish to take this into account in connection with the registration of the landlord concerned.

#### *Local authority preparation*

54. Local authorities will need to be aware of these provisions and their potential role in individual cases. They should incorporate suitable information in any advice they make available to private sector tenants. Local authorities will also want to check whether any houses in their ownership are covered by the provisions because they do not fall within the exemptions in section 12.

### ***Repair, Improvement and Demolition of Houses***

55. A local authority will have the power to serve a work notice requiring the owner of a house to carry out work on it, either as part of the implementation of a Housing Renewal Area action plan or to bring any sub-standard house into, or to keep it in, a reasonable state of repair. "Sub-standard" covers houses that fail the tolerable standard or are in serious disrepair or in need of repair such that, if action is not taken, the condition is likely to deteriorate rapidly into serious disrepair or to cause damage to any other premises. The work notice will replace the current repair notice and improvement order under the 1987 Act, thus streamlining procedures. It will no longer automatically create a requirement to provide grant (see paragraph 84 below).

56. A local authority will have the power to serve a demolition notice in relation to a house that is identified in an HRA action plan as a house in serious disrepair that ought to be

demolished. This order will require the owner to demolish the house. (The power to make a demolition order in relation to houses that do not meet the tolerable standard under section 115 of the Housing (Scotland) Act 1987 remains.)

#### *Scottish Executive approach*

57. Implementation of this aspect of the Act will be taken forward by a team in Communities Scotland.

58. The key steps in implementation will be

- working with stakeholders to develop guidance that explains the changes from current procedures and the operation of the new framework
- issuing guidance to local authorities.

59. Powers are provisionally estimated to be in place between mid-2007 and early 2008.

#### *Local authority role*

60. If the owner of a house fails to comply with a work notice or demolition notice, local authorities will be able to carry out the work or demolition (and certain other work that may be found to be necessary) and recover their expenses. In the case of a house that is below the tolerable standard, this means that a local authority will be able to improve such a house without, as is the case at the moment, having to acquire it. A local authority will have power to acquire a house and its site where it is authorised by section 35 to demolish it.

61. There will be a power to suspend a work notice if the local authority believes that carrying out the work is likely to be detrimental to the health of any resident of the house.

#### *Local authority preparation*

62. It is expected that ending the link between statutory notices and mandatory grant (to be replaced by mandatory assistance) will lead to more notices being served on houses requiring repair and improvement. Local authorities will have to ensure that they have sufficient skilled and trained staff in place to deal with this new situation, bearing in mind that there will be some streamlining from the fact that they will no longer issue separate repair notices and improvement orders.

#### ***Maintenance***

63. Local authorities at present have powers to deal with houses that have fallen into disrepair. It is clearly desirable that they should be able to prevent disrepair from occurring as a result of poor maintenance, so the Act gives new powers to require that maintenance is carried out in order to ensure that houses remain in good condition. A local authority will be able to serve a maintenance order on the owner of a house which has not been, or is unlikely to be, maintained to a reasonable standard, or where any benefit resulting from work carried out as a result of a work notice or a repairing standard enforcement order has been reduced or lost because of a lack of maintenance. The latter criterion will help to protect any public money that has been invested in work on a house.

64. This power can be used in relation to an individual house or a group of houses, such as a block of flats. Furthermore, “house” is defined to include common parts and any garden, garage, out-house, etc, so a maintenance order may cover such features as well as the dwelling itself.

65. A maintenance order requires the owner or owners to draw up a maintenance plan for a period not exceeding five years. The plan must be submitted to the local authority, which may approve it (with modifications, if the local authority considers that necessary) or reject it. If the local authority rejects the plan, it can either make another maintenance order requiring that a new plan be drawn up or substitute a plan of its own. If a maintenance plan is not submitted to the local authority by the due date, it may devise a plan for the house or houses.

66. The local authority will have powers to vary or revoke a maintenance plan in certain circumstances. It will also be able to assist the owner to implement the plan or, if the plan has not been carried out, to take steps itself to ensure that implementation takes place (and to recover its expenses). In neither of these cases can the local authority pay money into a maintenance account (except under section 50 – see below) or to the owner (except under section 51 – see below).

67. It will be the responsibility of the local authority to register in the appropriate land register a maintenance order, a maintenance plan that has been approved, devised or varied, and notice of the revocation of a maintenance plan.

68. Repairs and maintenance of common parts (in, for example, a tenement) are often impeded because one or more of the owners does not pay his or her share of the costs. Under section 50, a local authority will have a new power to pay a “missing share” if certain conditions are met, provided that the owner who has not complied is unable to do so, it would be unreasonable to require that owner to deposit his or her share, or the owner cannot be identified or found. In these circumstances and on the request of any of the owners, the local authority will be able to deposit the money; it will have powers to recover it, including through a repayment charge (see paragraph 122). If these conditions are not met and an owner simply refuses to pay, it is for the other owners to resolve the situation, through legal action if necessary.

69. The Executive considers it desirable that owners of premises consisting of two or more houses (such as a block of flats) should set up a maintenance account, ie a bank or building society account to hold the money to pay for maintenance of the premises. Section 51 therefore gives a local authority the power to pay grants towards the expenses of opening, winding up or closing such an account (but not to make payments into the account). This power applies in relation to all maintenance accounts, not just those that are set up as a result of a maintenance order.

70. It may sometimes be appropriate to serve maintenance orders within areas that have been HRAs to ensure that the benefits of the work done are continued.

#### *Scottish Executive approach*

71. Implementation of this aspect of the Act will be taken forward by a team in Communities Scotland.

72. The key steps in implementation will be
- working with stakeholders to develop guidance on the new framework
  - issuing guidance to local authorities.
73. Powers are provisionally estimated to be in place between mid-2007 and early 2008.

#### *Local authority role*

74. As well as deciding which houses should be subject to maintenance orders, the local authority will have to consider the circumstances of each house on which an order is served, in order to decide whether the maintenance plan is satisfactory. For example, in the case of premises consisting of more than one house, the local authority may consider it appropriate that the plan require the appointment of a property manager to manage the implementation of the plan and the establishment of a maintenance account to hold the funds to pay for works.

#### *Local authority preparation*

75. Local authorities will want to consider when and how to make best use of this new power. They will want to ensure that they have staff with the skills necessary to identify houses that should have maintenance orders served on them, to assess or draft maintenance plans, and to assist owners who are implementing maintenance plans.

#### ***Right to Adapt Rented Houses***

76. Section 52 gives a private sector tenant the right to carry out work to adapt the house, either to meet the needs of a disabled occupant or to install central heating and other energy efficiency measures under Executive programmes. This right is subject to the landlord's consent, which cannot be withheld unreasonably and may be subject to reasonable conditions. The landlord is not expected to incur cost or loss of property value in connection with the works. The tenant can appeal to the sheriff against the landlord's refusal of consent or imposition of conditions.

77. The new right to carry out adaptations to meet the needs of a disabled occupant is part of a package of improved provision for disabled people (see also the relevant parts of the scheme of assistance). The provisions in the Act will improve the housing contribution to the Joint Futures approach to co-ordinating the help given to disabled people by housing, social work and health services.

78. The Disability Rights Commission will publish a Code of Practice which will provide practical guidance on the interpretation and implementation of these provisions and similar provisions that apply in England and Wales. The Code will also apply to requests to social landlords for consent for the tenant to make similar adaptations. The Code requires to be taken into account by a court hearing an appeal against a landlord's decision. The Equality Act 2006 gives the Commission the function of making such a Code and powers to provide assistance to tenants and mediation services in connection with the right.

#### *Scottish Executive approach*

79. This aspect of the Act will be taken forward by staff within the Housing and Regeneration Group of the Scottish Executive.

80. The key steps in implementation will be
- working with the Disability Rights Commission to put in place support arrangements
  - awareness raising among landlords and tenants.

81. The relevant sections of the Act (including appeal provisions) and the Commission's powers will come into effect on 4 December 2006.

#### *Local authority role*

82. A local authority will have to consider applications for assistance to carry out adaptations where a tenant is exercising this right. A landlord may require that the house be reinstated to the condition it was in before the adaptation was carried out; in such cases the local authority will have to consider applications for assistance to carry out works of reinstatement. See the section on the scheme of assistance for further details. A local authority may also be asked to provide information to tenants and landlords on the exercise of this right.

#### *Local authority preparation*

83. A local authority should bear issues relating to the right to adapt in mind when deciding its approach to the scheme of assistance (see below).

#### ***Scheme of Assistance***

84. Part 2 of the Act creates a new scheme of assistance for housing purposes, based on the principle that individual owners (including owners of privately rented houses) have primary responsibility for maintaining their properties in good condition, with assistance available when necessary. This scheme allows local authorities to provide assistance for house repairs, improvements, adaptations and construction, as well as the acquisition or sale of a house. The assistance can take various forms, including grants, standard and subsidised loans, practical assistance, information or advice. In certain circumstances – for work required by a work notice or an adaptation to meet the needs of a disabled occupant (or reinstatement) - local authorities must provide assistance. The new scheme replaces the system of improvement and repair grants contained in Part 13 of the Housing (Scotland) Act 1987 and section 92(3) of the Housing (Scotland) Act 2001.

85. Although in general the scheme of assistance allows local authorities to determine what type of assistance should be offered in each case and there is no longer an automatic requirement to provide grant when a statutory notice is served, mandatory grant is retained for the provision of a standard amenity to meet the needs of a disabled occupant. Ministers may also make regulations setting out further circumstances in which assistance for disabled adaptations must be provided by way of a grant, or another type of assistance prescribed in the regulations.

86. By allowing a wider range of assistance, the new scheme will permit better targeting of resources and encourage the carrying out of more works. For example, some house owners may not need financial assistance to carry out works, but may need advice on how to find a suitable contractor.

87. The introduction of the new scheme of assistance – particularly the replacement of mandatory grant by mandatory assistance – underlies the new local authority powers to deal with problems of condition in private housing.

*Scottish Executive approach*

88. Implementation of this aspect of the Act will be taken forward by a team in Communities Scotland.

89. The key steps in implementation will be

- designing, consulting on and making interim regulations on the scheme of assistance, based on the current means test, to allow local authorities to use new forms of assistance
- working with local authorities and other stakeholders to develop and support good practice guidance, training and public information
- support to local authorities on preparation of statements on their operation of the new system
- promotion of development of commercial equity release products and possibly not-for-profit loan vehicles
- publication of joint guidance on equipment and adaptations
- review of the grant/assistance regime for disability adaptations (including consultation and Regulatory Impact Assessment), making regulations, publishing guidance
- review of the means test, including consideration of whether a separate test should be introduced for adaptations, making regulations, publishing guidance.

90. Scheme of assistance powers are provisionally estimated to be in place between early and mid-2007. Disability assistance research, review and regulations are estimated to be completed after early 2008.

*Local authority role*

91. A local authority will have a wider range of options for providing assistance. It should make decisions on the use of those options as part of its wider strategic responsibilities on house conditions. It should ensure that it uses resources in the most appropriate way to improve housing quality, taking into account the circumstances of each case, and allowing as many people as possible to carry out necessary works that would not otherwise take place. Financial subsidies should be targeted at those in most need.

92. Section 72 requires each local authority to prepare and make available to the public a statement explaining details of its policy on deciding whether to provide assistance, the form of the assistance and whether to limit the approved expense. The statement will also contain details of the interest rate or other charges relating to a standard loan and the repayment element of a subsidised loan. See also paragraph 31 above on the new duty to include in the Local Housing Strategy a strategy for using the scheme of assistance to improve the condition of houses. The ability of a local authority to provide assistance with the sale of a house is intended to help with the possible situation where a house owner with few liquid resources has difficulty in affording the cost of providing the single survey and Purchaser's Information Pack.

93. In addition to giving assistance to individuals directly, a local authority will also be able to support improvements to private housing by making payments to a designated not-for-profit lender that lends money to individuals for these purposes.

#### *Local authority preparation*

94. Each local authority should begin to consider how it will use the scheme of assistance, taking account of local circumstances and priorities, and also of cross-cutting issues, such as the Joint Futures approach. It will be assisted in this if it engages in discussion with other authorities and Communities Scotland to exchange ideas and good practice.

95. The operation of the scheme of assistance, with a wider range of means of assistance and the need to match the type of assistance given to the circumstances, will clearly be more complex than the existing system. A local authority will need to develop means of assistance that suit given local circumstances. For example, it may be appropriate to develop equity loans or loans complying with Sharia law. The local authority will also need suitable skills available to assess applications for assistance and to make decisions on the appropriate method of assistance that should be provided.

#### ***Purchaser's Information Pack and Single Survey***

96. There will be a requirement on a person marketing a house (ie, a seller or the seller's agent) to provide to any potential buyer documents to be prescribed by Ministers. These will constitute the Purchaser's Information Pack, including the single survey.

97. The single survey has three key policy aims:

- to increase awareness of the physical condition of a house, so that either the seller will carry out necessary work on it or the buyer will be able to take the cost of carrying out the work into account when making an offer, and thus will be able to afford to carry it out
- to prevent the waste of resources involved in carrying out multiple surveys (either on behalf of an individual house buyer or in relation to a particular house)
- to prevent the upset price of a house being set at an unrealistically low level.

98. In order to improve the information provided to prospective right to buy purchasers, section 113 gives Ministers powers to prescribe additional information to be provided by a social landlord to a tenant who requests a house valuation in connection with the right to buy. This information may relate to costs of maintaining the house and common parts and other matters. Ministers also have powers to specify when such information is to be provided only if the tenant pays a specified charge.

#### *Scottish Executive approach*

99. Implementation of this aspect of the Act will be taken forward by a team in Communities Scotland.

100. The key steps in implementation are

- work with relevant professions and consumer groups to design the detail of the single survey and Purchaser's Information Pack
- consultation with Purchasers' Information Advisory Group and other stakeholders

- testing and research on the market effects
- production of Regulatory Impact Assessment and public consultation
- produce regulations on prescribed documents, exemptions, etc
- produce guidance, directions or regulations on support for low income sellers
- ensure quality controls and indemnity insurance are put in place
- liaise with local authority Trading Standards on enforcement regime
- awareness raising for selling agents, surveyors and lenders
- promotion of public awareness
- determine information to be provided to potential right to buy purchasers.

For right to buy information:

- work with stakeholders on the detail of the information to be provided
- consultation
- produce regulations
- engagement with valuation providers
- develop tender documents or revise service level agreement
- information for social landlords and tenants.

101. Systems are provisionally estimated to begin operating nationally by early to mid-2008.

#### *Local authority role*

102. A local authority may have three roles in this area. In the first place, responsibility for enforcing the requirement to provide the prescribed documents will lie with the local authority in its capacity as the local weights and measures authority. This will mean new duties for Trading Standards officers, who will have inspection powers and will issue penalty charge notices to people who have breached their duties under Part 3 of the Act.

103. Secondly, if the local authority has landlord functions, it will have a duty to provide the prescribed information to a tenant who requests a house valuation in connection with the right to buy. Thirdly, a local authority will have power to give assistance to a house seller who has difficulty in paying for the Purchaser's Information Pack (see paragraph 92 above).

#### *Local authority preparation*

104. A local authority will need to ensure that its Trading Standards department is suitably resourced – including the training of officers – to deal with the new enforcement duties. If appropriate, it will also need to begin planning how to deal with the provision of additional information to its own tenants in connection with the right to buy.

#### ***Tenancy Deposits***

105. Sections 120 to 122 deal with schemes to safeguard tenancy deposits. Ministers are given powers to make regulations setting out conditions that must be met by a tenancy deposit scheme and powers to approve such schemes. Schemes could help to protect vulnerable tenants and provide increased confidence in the private rented sector as a reliable form of accommodation. Schemes may provide methods of dispute resolution, though these will be developed with regard to any changes that might take place in the civil justice arena.

Landlord registration may also impact on the concerns regarding tenancy deposits and this is something the Executive will be monitoring. However, Ministers have made clear that they would not introduce a scheme for which the costs were disproportionate.

*Scottish Executive approach*

106. This aspect of the Act will be taken forward by staff within the Housing and Regeneration Group of the Scottish Executive.

107. The key steps in implementation will be
- consultation and research on options and implications
  - Regulatory Impact Assessment and consultation on draft regulations
  - making regulations
  - development of schemes
  - consultation on proposed schemes
  - approval of schemes
  - information for tenants and landlords.

108. Our provisional estimate is that arrangements could be operational by mid-2008.

*Local authority role*

109. If a tenancy deposit scheme or schemes were introduced, a local authority should include information on it in general advice they provide to private sector landlords and tenants and should consider breaches in connection with landlord registration.

***Licensing of Houses in Multiple Occupation***

110. The Act re-enacts in primary legislation the system of licensing of houses in multiple occupation (HMOs) that was established by orders under the Civic Government (Scotland) Act 1982. This overcomes the constraints imposed by the current legislative structure and allows some changes, such as giving Ministers powers to set national conditions for HMO licences, to permit local authorities to exempt specified types of HMO from licensing, and to make regulations about licence fees, including setting maximum amounts. This will promote consistency in the operation of licensing across Scotland.

111. Section 146 gives a local authority the power to serve an HMO amenity notice requiring the owner of a licensable HMO to carry out work to make the living accommodation reasonably fit for occupation by a specified number of persons.

*Scottish Executive approach*

112. This aspect of the Act will be taken forward by staff within the Housing and Regeneration Group of the Scottish Executive.

113. The key steps in implementation will be
- assessment that the sector is ready for the new HMO regime
  - consider whether secondary legislation is required
  - consultation on secondary legislation and guidance

- issue guidance
- make regulations and orders
- training local authority staff on new procedures.

114. In order to allow time for other changes to the private rented sector to become established, particularly registration of private landlords, it is not intended to implement the new system until 2008.

#### *Local authority role*

115. It is not expected that there will be much change from the current role of local authorities in HMO licensing, although they will obviously have to take account of any national conditions set. If Ministers lay an order specifying types of HMO that local authorities may exempt from licensing, then local authorities will have to decide whether circumstances in their area (or parts of their area), including other regulation of the private rented sector, are such as to justify a continued requirement for licensing of such HMOs.

#### *Local authority preparation*

116. Local authorities should continue to develop their expertise under the existing system of licensing, but could begin to consider how the new rules would apply in their areas.

#### ***Mobile Homes***

117. The Act extends the protection for people who occupy a mobile home and let a stance from a site operator. The current legislation can leave some mobile home owners in a vulnerable position, so the Act rebalances the rights of mobile home and site owners on issues around tenancy conditions, security of occupation, and the selling of mobile homes. Condition, but not age, will be able to be taken into account when deciding whether a mobile home is detrimental to a site. There is also a provision to improve protection for mobile home occupiers against harassment.

#### *Scottish Executive approach*

118. This aspect of the Act will be taken forward by staff within the Housing and Regeneration Group of the Scottish Executive.

119. The key steps in implementation will be

- carrying out research
- Regulatory Impact Assessment and consultation on modifications to Schedule 1 to the Mobile Homes Act 1983
- regulations
- publicity for relevant interests.

120. Our provisional estimate is that the regulations on the new schedule of rights for renters of mobile home stances will come into force in mid-2007.

### *Local authority role*

121. A local authority will have a role in providing information to occupiers of mobile homes and site operators.

### ***Repayment Charges***

122. Repayment charges are a modernised version of charging orders. The Act allows a local authority to use repayment charges where it is entitled to recover certain expenses and payments, including interest and administrative expenses. The local authority will be able to register a repayment charge in the property registers in respect of the relevant living accommodation or, in the case of a demolished house, of its site. The repayable amount will be payable in 30 equal annual instalments, unless it is redeemed early.

123. A local authority will still be able to make a charging order in relation to section 131 of the 1987 Act, ie where it has incurred expenses under section 123 in the demolition of a building.

### *Scottish Executive approach*

124. Implementation of this aspect of the Act will be taken forward by a team in Communities Scotland.

125. The bringing into force of sections 172 to 174 will make repayment charges available. Ministers have power by order to specify the form of a repayment charge or discharge and to make further provision about repayment or early redemption.

126. Repayment charges are expected to be introduced along with the bringing into force of the relevant sections of the Act permitting recovery of expenses (sections 59(1) and (2) and paragraph 6(1) of schedule 5).

### *Local authority role*

127. Local authorities will have to decide which cases are suitable for the use of repayment charges. As well as registering the repayment charge, they will also be responsible for registering its discharge in the appropriate land register.

### *Local authority preparation*

128. Repayment charges are updated versions of charging orders, most of which they will replace; local authority staff will have experience of the use of the latter under powers in the Housing (Scotland) Act 1987.

### ***Miscellaneous***

129. Part 8 of the Act contains six miscellaneous provisions. Five of these - sections 175 to 178 and 180 - have already been brought into force.

130. Section 175 amended the landlord registration provisions in the Antisocial Behaviour etc (Scotland) Act 2004. It gives Ministers the power to issue a Letting Code, which would

be a code of practice on management standards for landlords and their agents. However, before preparing a Letting Code, the Executive would have to carry out and publish an assessment of the effectiveness of existing arrangements, such as landlord registration (following at least a year of operation) and voluntary accreditation, and would have to consult various interests, including bodies representing local authorities. If a Letting Code were issued, a local authority would have to take it into account when deciding whether someone is a fit and proper person to act as a landlord in relation to landlord registration.

131. It is provisionally estimated that a statutory Letting Code, if it is required, could be in place by late 2008. This issue will be taken forward by staff within the Housing and Regeneration Group of the Scottish Executive.

132. Section 176 also amended the system of landlord registration established by the Antisocial Behaviour etc. (Scotland) Act 2004. Section 177 gave Ministers powers to direct the delegation of functions by certain registered social landlords.

133. Section 178 makes clear that the permissible purposes of a registered social landlord include improving the economic, social and environmental circumstances of the communities in which they own houses or hostels and that such activities may benefit both the registered social landlord's residents and other people. These activities are often referred to as "wider role" because they go beyond the provision of housing. Where registered social landlords are engaged in such activities, local authorities will wish to work with them, where appropriate.

134. Section 180 amended the Housing (Scotland) Act 1988 to ensure that a landlord may seek possession, on the grounds of antisocial behaviour, of a house let under a contractual assured tenancy, even if the tenancy agreement does not provide for this. This change to the law will be of interest to local authorities in connection with policy on dealing with antisocial behaviour.

135. Section 179 requires Ministers to publish a strategy for improving energy efficiency in living accommodation. The Executive is currently developing an Energy Efficiency and Microgeneration Strategy and Action Plan for Scotland which is due for consultation and publication later this year. The strategy will take a holistic approach to reducing carbon emissions through energy efficiency and microgeneration. It will outline existing and consider future measures across the domestic, business and public sectors and will set and report on realistic targets for addressing these that will help deliver our contribution to the overarching Scottish Climate Change Programme target. Local authorities will have an interest in implementing and promoting the measures set out in the strategy. The development of the strategy is being taken forward by the Energy Efficiency Team within Enterprise, Transport and Lifelong Learning Department of the Scottish Executive.

136. Section 185, which requires Scottish Ministers and local authorities to perform their functions under the Act so as to encourage equal opportunities and in accordance with equal opportunity requirements, and section 193 on Crown application have been brought into force.

**Development Department**  
**Scottish Executive**  
**19 July 2006**

## **ANNEX: CONTACTS**

Housing Renewal Areas  
Tolerable Standard  
Repair, Improvement and Demolition of Houses  
Maintenance  
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Local Housing Strategies  
**Contact: Gavin Kennedy on 0131-479 5204**

Repairing Standard for private rented housing  
Right to Adapt Rented Houses  
Mobile Homes  
**Contact: Roger Harris on 0131-244 7952**

Scheme of Assistance  
**Contact: David Blair on 0131-479 5298**

Purchaser's Information Pack and Single Survey  
**Contact: Neil Ferguson on 0131-479 5361**

Tenancy Deposits  
**Contact: Geoff Owenson on 0131-244 7486**

Licensing of Houses in Multiple Occupation  
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General Enquiries about this Circular and the Act  
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**19 July 2006**

ISBN 0 7559 1390 6 (web only publication)