

POLICY NOTE

THE PRIVATE RENTED HOUSING (SCOTLAND) ACT 2011 (COMMENCEMENT NO. 7) ORDER 2015

SSI 2015/326 (C. 39)

The above Order is made in exercise of the powers conferred by Section 41(3) of the Private Rented Housing (Scotland) Act 2011(a). The instrument is laid in the Scottish Parliament by virtue of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

Section 181(4) of the Housing (Scotland) Act 2006 (“the 2006 Act”) gives landlords the right of entry to a property in a relevant tenancy for the purposes of checking that the house meets the repairing standard or carrying out work needed to comply with the repairing standard duty or Repairing Standard Enforcement Order (RSEO).

Landlords have expressed concern about difficulties in obtaining entry to their properties in order to carry out inspections and repairs. Landlords can apply to the courts to enforce their legal right of entry but anecdotal evidence from landlords indicates that it can be time consuming to apply for a warrant.

This instrument commences provisions within section 35 of the Private Rented Housing (Scotland) Act 2011 (“the 2011 Act”) which amend the 2006 Act to enable a landlord to apply to the Private Rented Housing Panel (“the PRHP”) for assistance in exercising their legal right of entry, in connection with the repairing standard.

Article 1(1) provides that this instrument comes into force on 22 September 2015.

Article 2(1) commences the following provisions from 22 September 2015:

Provision	Effect
Section 35(1)	Introduces the amendments which will be made to the 2006 by the remaining subsections of section 35.
Section 35(4)	This is commenced for the purpose of enabling the Scottish Ministers to make regulations containing further provision about: i) the making and determination of applications made by landlords to the PRHP for assistance under section 28B(1) of the of 2006 Act; and ii) the action the panel member is to take when arranging a suitable time for access for the landlord under 28C (11) of the 2006 Act.
Section 35(8)	Amends section 191 of the 2006 Act to require that any Regulations made under section 28B(1) of the 2006 Act that relate to anything other than the prescribing of fees in relation to applications are not to be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament

Section 2(3) commences the following provisions from 1 December 2015:

Provision	Effect
Section 35(2)	Amends section 21 of the Housing (Scotland) Act 2006 relating to the naming of the panel and re-naming of committees to allow for the exercise of functions in relation to a landlord application for assistance
Section 35(4) is commenced insofar as not already in force.	Introduces new sections 28A, 28B and 28C into the 2006 Act (sections 28B and 28C(11) are commenced by article 2(1) of this Order). Section 28A makes provision for: <ul style="list-style-type: none"> • a landlord to apply to the PRHP for assistance in exercising their right of entry to the house under section 181(4) of the 2006 Act; • the action a panel member must take in deciding whether to assist a landlord or to reject the application, and the notifications that must be sent to the tenant and landlords about the decision of the panel member; • the tenant to be able to make representation to the panel member as to why it would be inappropriate or unnecessary for the landlord to exercise their right of entry under section 181(4) at that time; • the panel member to make any further enquiries following any representations made by the tenant, and to decide whether to continue or to stop assisting the landlord; • the decision of the panel member in relation to rejecting an application; to continue or stop assisting the landlord is final; and • provides that no application is to be made where the landlord is a local authority, a registered social landlord or Scottish Water.
Section 35(5)	Introduces changes to the annual report requirements for the President of the PRHP to incorporate information on landlord applications for assistance in exercising their right of entry under section 181 (4).
Section 35(6)	Introduces a new section 181(2A) into the 2006 Act giving a right of entry for a member of the PRHP (and any person authorised by any such member) to any house in respect of which a decision has been made to assist the landlord to exercise their right of entry.
Section 35(7)	Makes provision for a sheriff to grant a warrant authorising entry for a panel member and any persons authorised by such a member, in connection with the right of entry introduced under 181 (2A).

Consultation

During 2010 the Scottish Government carried out a policy consultation which informed the drafting of the Housing Bill. The results of the consultation are available on the Scottish Government website at:

<http://www.gov.scot/Publications/2010/05/17110017/0>

Impact Assessments

The finalised EQIA for the 2011 Act is available on the Scottish Government website at:
<http://www.scotland.gov.uk/Topics/People/Equality/18507/EQIASearch/PrivRentedHsg>.

Financial Effects

The Regulatory Impact Assessment for the 2011 Act is available on the Scottish Government website at:

<http://www.scotland.gov.uk/publications/2011/04/Impactassessment>.

Updated impact assessments will be completed and published when draft regulations under 28B(1) are laid before the Scottish Parliament.

Housing, Regeneration & Welfare Directorate
Scottish Government

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