



# Housing (Scotland) Act 2014

## 2014 asp 14

### PART 6

#### PRIVATE HOUSING CONDITIONS

#### 85 Tenement management scheme

- (1) In the Tenements (Scotland) Act 2004 (asp 11)—
- (a) in section 4(14) (defined terms), after “section” insert “and section 4A”,
  - (b) after section 4, insert—

#### “4A Power of local authority to pay share of scheme costs

- (1) The local authority for the area in which a tenement is situated may pay a sum representing an owner’s share of scheme costs if that owner—
  - (a) is unable or unwilling to do so, or
  - (b) cannot, by reasonable inquiry, be identified or found.
- (2) But a local authority may not pay a sum representing an owner’s share of scheme costs which are attributable to a scheme decision mentioned in rule 3.1(e) of the Tenement Management Scheme.
- (3) For the purposes of this section an owner’s share of any scheme costs is to be determined in accordance with—
  - (a) the Tenement Management Scheme as it applies to the owner’s tenement, or
  - (b) where a tenement burden provides that the entire liability for those scheme costs (in so far as liability for those costs is not to be met by someone other than an owner) is to be met by one or more of the owners, that burden.
- (4) Before making a payment under this section, the local authority must give notice to the owner who has failed to pay a share of any scheme costs.

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- (5) The local authority may recover from the owner who failed to pay a share of any scheme costs any—
    - (a) payments made under this section, and
    - (b) administrative expenses incurred by it in connection with the making of the payment.
  - (6) This section is without prejudice to any entitlement to recover sums in accordance with section 11 or 12.”
  - (c) in section 13(1)(a) (persons who may register a notice of potential liability for costs), after paragraph (ii) insert—
    - “(iia) a local authority entitled to recover costs under section 4A(5),”
  - (d) in rule 5 of schedule 1 (redistribution of share of costs), after “then” insert “(unless that share has been paid by the local authority under section 4A)”, and
  - (e) in rule 8.4 of schedule 1 (enforcement by third party), after “concerned” insert “and a local authority entitled to recover costs under section 4A(5)”.
- (2) In section 172 of the 2006 Act (repayment charges)—
- (a) in subsection (1), for “or paragraph 6(1) of schedule 5” substitute “, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11)”,
  - (b) in subsection (2)(a), for “or paragraph 6(1) of schedule 5” substitute “, section 61(3A), subsection (6A) below, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004”, and
  - (c) after subsection (6A), insert—
    - “(6B) Subsection (6A)(c) does not apply where the recoverable amount relates to a sum the local authority is entitled to recover under section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11).”.
- (3) After section 174 of the 2006 Act, insert—

**“174A Repayment charges: registered social landlords**

- (1) The Scottish Ministers may by regulations make provision allowing a registered social landlord to make in favour of itself a charge to recover a sum which—
  - (a) the registered social landlord is entitled to recover from an owner of a flat in a tenement, and
  - (b) represents the owner’s share of scheme costs as determined in accordance with section 4A(3) of the 2004 Act.
- (2) Regulations under subsection (1) may, in particular—
  - (a) apply (with or without modifications), or make provision similar to, any provision of or made under this Part,
  - (b) prescribe conditions which must apply before a charge can be made in relation to a sum mentioned in subsection (1), including conditions relating to—
    - (i) the registered social landlord which may make a charge,
    - (ii) the circumstances leading to the sum becoming recoverable by the registered social landlord,

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- (c) modify the Tenement Management Scheme or its operation,
  - (d) make provision about rights of appeal which apply in relation to—
    - (i) the decision to impose a charge,
    - (ii) the terms of the charge.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
  - (a) such bodies representing local authorities,
  - (b) such bodies representing registered social landlords,
  - (c) such other persons,as they think fit.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).
- (5) In this section—
  - “owner of a flat in a tenement” is to be construed in accordance with the definition of “owner” in section 28 of the 2004 Act,
  - “registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 ([asp 17](#)),
  - “Tenement Management Scheme” has the same meaning as in the 2004 Act, and
  - “the 2004 Act” means the Tenements (Scotland) Act 2004 ([asp 11](#)).”.
- (4) In section 191(5) of the 2006 Act (affirmative procedure for regulations), for “or 121(1)” substitute “, 121(1) or 174A(1)”.

## **86 Notice of potential liability for costs: notice of discharge**

- (1) In section 10A of the Title Conditions (Scotland) Act 2003 ([asp 9](#)) (notice of potential liability for costs: further provision), after subsection (3) insert—
  - “(3A) The owner of a burdened property may apply to register a notice (a “notice of discharge”) if—
    - (a) a notice of potential liability for costs in relation to the property has not expired,
    - (b) the liability for costs under section 10(2) to which the notice of potential liability relates has, in relation to the property which is the subject of the application, been fully discharged, and
    - (c) the person who registered the notice of potential liability for costs consents to the application.
  - (3B) A notice of discharge—
    - (a) must be in the form prescribed by order made by the Scottish Ministers, and
    - (b) on being registered, discharges the notice of potential liability for costs as it applies to the property which is the subject of the application.”.
- (2) In the Tenements (Scotland) Act 2004—

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- (a) in section 13 (notice of potential liability for costs: further provision), after subsection (3) insert—

“(3A) The owner of a flat may apply to register a notice (a “notice of discharge”) if—

- (a) a notice of potential liability for costs in relation to the flat has not expired,
- (b) the liability for costs under section 12(2) to which the notice of potential liability relates has, in relation to the flat which is the subject of the application, been fully discharged, and
- (c) the person who registered the notice of potential liability for costs consents to the application.

(3B) A notice of discharge—

- (a) must be in the form prescribed by order made by the Scottish Ministers, and
- (b) on being registered, discharges the notice of potential liability for costs as it applies to the flat which is the subject of the application.”, and

- (b) in section 29(1) (interpretation), in the definition of “register” after “costs” insert “, a notice of discharge”.

## 87 Work notices

In section 30(1) of the 2006 Act (work which may be required under a work notice)—

- (a) the word “or” at the end of paragraph (a) is repealed, and
- (b) at the end of paragraph (b), insert “, or
- (c) otherwise improving the security or safety of any house (whether or not situated in an HRA).”.

## 88 Maintenance orders

In section 42(2) of the 2006 Act (circumstances in which a maintenance order may be made)—

- (a) the words “the local authority considers” are repealed,
- (b) before paragraph (a), insert—
  - “(za) a work notice has been served in relation to the house and no certificate has been granted under section 60 in relation to the work required by that notice,”, and
- (c) at the beginning of each of paragraphs (a) and (b), insert “the local authority considers”.

## 89 Maintenance plans

(1) In section 24 of the Building (Scotland) Act 2003 ([asp 8](#)) (information in the building standards register)—

- (a) in subsection (1)—
  - (i) the word “and” at the end of paragraph (c) is repealed, and
  - (ii) after paragraph (d), insert “, and

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- (e) decisions to approve, devise, vary or revoke maintenance plans under Part 1 of the Housing (Scotland) Act 2006.”
  - (b) in subsection (2)(a), for “(d)” substitute “(e)”.
- (2) In section 47 of the 2006 Act (variation and revocation of maintenance plans)—
- (a) in subsection (3), after “if” insert “subsection (3A) applies or if”, and
  - (b) after subsection (3), insert—
- “(3A) This subsection applies where the local authority is satisfied that a property factor (within the meaning of section 2(1) of the Property Factors (Scotland) Act 2011 (asp 8)) has been appointed to manage or maintain the premises to which the plan relates.”.
- (3) In section 61(1) of the 2006 Act (registration in the appropriate land register), paragraphs (e) and (f) are repealed.

## **90 Non-residential premises: repayment charges**

- (1) In section 172 of the 2006 Act (repayment charges)—
- (a) in subsection (1), for “living accommodation” in both places where it occurs substitute “property”,
  - (b) in subsection (5), for “living accommodation” substitute “property”,
  - (c) in subsection (6A), for “living accommodation” substitute “property”,
  - (d) in subsection (7), for “living accommodation” substitute “property”,
  - (e) in subsection (8), for “living accommodation” in both places where it occurs substitute “property”,
  - (f) after subsection (8), insert—
- “(9) In this section and in section 173, “property” means a place which is—
- (a) living accommodation, or
  - (b) non-residential premises within the meaning of section 69(3).”.

(2) In section 173 of the 2006 Act (effect of registering repayment charges etc.)—

    - (a) in subsection (1), for “living accommodation” substitute “property”,
    - (b) in subsection (2), for “living accommodation” in each place where it occurs substitute “property”,
    - (c) in subsection (3), for “living accommodation” substitute “property”, and
    - (d) in subsection (4), for “living accommodation” substitute “property”.

## **91 Repayment charges: recovery of repayable amount**

- (1) In section 172 of the 2006 Act (repayment charges)—
- (a) in subsection (1)—
    - (i) the word “and” immediately preceding paragraph (b) is repealed, and
    - (ii) after paragraph (b), insert—
- “(c) providing that the repayable amount is payable in the number of equal annual instalments and on the date in each year determined under subsection (3)(a),

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- (d) providing that in default of such payment each instalment, together with any amount recoverable in respect of that instalment under subsection (6A), is to be separately recoverable as a debt, and
  - (e) providing that if immediately after the final instalment falls due any balance of the repayable amount remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.”
- (b) for subsection (3), substitute—
- “(3) The local authority must—
- (a) determine—
    - (i) the number of equal annual instalments, being no fewer than 5 and no more than 30, in which the repayable amount is to be paid, and
    - (ii) the date in each year on which the instalment becomes due, and
  - (b) notify the owner of its determination under paragraph (a).” ,
- and
- (c) after subsection (4), insert—
- “(4A) The owner of a property who is liable for the repayable amount does not, by virtue only of ceasing to be such an owner, cease to be liable for the repayable amount.”.

- (2) After section 172 of the 2006 Act, insert—

**“172A Repayment charge: appeals to the sheriff**

- (1) A person aggrieved by a determination under section 172(3)(a)(i) may appeal to the sheriff.
- (2) On an appeal under this section the sheriff may make such order relating to the number of annual instalments as the sheriff thinks fit.
- (3) The decision of the sheriff on appeal under this section is final.”.

**92 Charging orders**

- (1) In Schedule 9 to the 1987 Act (recovery of expenses by charging order)—
- (a) in paragraph 2, the words “, and shall commence from the date of the order and be payable for a term of 30 years to the local authority” are repealed,
  - (b) after paragraph 2, insert—
 

“2A The local authority must—

    - (a) determine—
      - (i) the term of the charging order, being no fewer than 5 years and no more than 30 years, and
      - (ii) the date in each year on which the annuity is payable, and
    - (b) notify the owner of its determination under paragraph (a).

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- 2B Section 187 of the Housing (Scotland) Act 2006 ([asp 1](#)) applies to a notification under paragraph 2A(b) as if the notification were a formal communication referred to in section 187(1) of that Act.”, and
- (c) after paragraph 3, insert—
- “3A A charging order must provide—
- (a) that the annuity is payable for the term and on the date in each year determined under paragraph 2A(a),
  - (b) that in default of payment of an annuity, the annuity is to be separately recoverable as a debt, and
  - (c) that if immediately after the final annuity falls due any balance of the expenses charged by the order remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.
- 3B (1) A person aggrieved by a determination under paragraph 2A(a)(i), may appeal to the sheriff.
- (2) On an appeal under this paragraph the sheriff may make such order relating to the term of the charging order as the sheriff thinks fit.
- (3) The decision of the sheriff on appeal under this paragraph is final.”,
- (d) in paragraph 4, sub-paragraph (b)(i) is repealed,
- (e) after paragraph 5, insert—
- “5A The owner of the premises on which an annuity has been charged by a charging order does not, by virtue only of ceasing to be such an owner, cease to be liable for each annuity charged.”, and
- (f) paragraph 6 is repealed.
- (2) In section 108(2) of the Civic Government (Scotland) Act 1982 ([c.45](#)) (recovery of expenses by charging order), for the words from “modifications” to “paragraph” in the last place where it appears substitute “modification, that is to say, in sub-paragraph (b) (ii) of paragraph 4 of that Schedule”.
- (3) In section 19(3) of the Crofters (Scotland) Act 1993 ([c.44](#)) (priority of sums due), the words “heads (i), (ii) and (iii) of” are repealed.