



# Housing (Scotland) Act 1987

## 1987 CHAPTER 26

### PART XIV

#### ASSISTANCE FOR OWNERS OF DEFECTIVE HOUSING

##### *Eligibility for assistance*

#### **257 Designation of defective dwellings by Secretary of State.**

- (1) The Secretary of State may designate as a class any buildings each of which consists of or includes one or more dwellings if it appears to him that—
  - (a) buildings in the proposed class are defective by reason of their design or construction, and
  - (b) by virtue of the circumstances mentioned in paragraph (a) having become generally known, the value of some or all of the dwellings concerned has been substantially reduced.
- (2) A dwelling which is, or is included in a building in a class so designated is referred to in this Part as a “defective dwelling”; and in this Part in relation to such a dwelling—
  - (a) “the qualifying defect” means what, in the opinion of the Secretary of State, is wrong with the buildings in that class; and
  - (b) “the cut-off date” means the date by which, in the opinion of the Secretary of State, the circumstances mentioned in subsection (1)(a) became generally known.
- (3) A designation shall describe the qualifying defect and specify—
  - (a) the cut-off date,
  - (b) the date (being a date on or after the cut-off date) on which the designation is to come into operation,
  - (c) the period within which persons may seek assistance under this Part in respect of the defective dwellings concerned.

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- (4) A designated class shall not be described by reference to the area in which the buildings concerned are situated.
- (5) Notice of a designation shall be published in the Edinburgh Gazette.
- (6) Any question arising as to whether a building is or was at any time in a class designated under this section shall be determined by the Secretary of State.

## **258 Variation or revocation of designation.**

- (1) The Secretary of State may—
  - (a) vary a designation under section 257, but not so as to vary the cut-off date, or
  - (b) revoke such a designation.
- (2) The Secretary of State may by a variation of the designation extend the period referred to in section 257(3)(c) (period within which assistance must be applied for) whether or not it has expired.
- (3) The variation or revocation of a designation does not affect the operation of the provisions of this Part in relation to a dwelling if, before the variation or revocation comes into operation, the dwelling is a defective dwelling by virtue of the designation in question and an application for assistance under this Part has been made.
- (4) Notice of the variation or revocation of a designation shall be published in the Edinburgh Gazette.

## **259 Conditions of eligibility.**

- (1) Subject to the following provisions of this Part, a person to whom this section applies is eligible for assistance in respect of a defective dwelling for the purposes of this Part if—
  - (a) his interest in the dwelling is that of owner (“the owner’s interest”), and
  - (b) one of the following sets of conditions is satisfied.
- (2) This section applies to—
  - (a) an individual who is not a trustee,
  - (b) trustees, if all the beneficiaries are individuals, and
  - (c) personal representatives.
- (3) The first set of conditions is that—
  - (a) there was a disposal by a public sector authority of the owner’s interest in the dwelling before the cut-off date; and
  - (b) there has been no disposal for value by any person of owner’s interest in the dwelling on or after the cut-off date;

and for the purposes of this subsection where a public sector authority hold an interest in a dwelling a disposal of that interest by or under any enactment is to be treated as a disposal by the authority.
- (4) The second set of conditions is that—
  - (a) a person to whom this section applies acquired the owner’s interest in the dwelling on a disposal for value occurring within the period of 12 months beginning with the cut-off date;

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- (b) on the date of that disposal he was unaware of the association of the dwelling with the qualifying defect;
- (c) the value by reference to which the price for the disposal was calculated did not take any, or any adequate, account of the qualifying defect; and
- (d) if the cut-off date had fallen immediately after the date of the disposal, the first set of conditions would have been satisfied.

## **260 Exceptions to eligibility.**

A person is not eligible for assistance in respect of a defective dwelling if the local authority are of the opinion that—

- (a) work to the building that consists of or includes the dwelling has been carried out in order to deal with the qualifying defect, and
- (b) on the completion of the work, no further work relating to the dwelling was required to be done to the building in order to deal satisfactorily with the qualifying defect.

## **261 Construction of references to disposal, etc.**

- (1) References in this Part to a disposal include a part disposal; but for the purposes of this Part a disposal of an interest in a dwelling is a disposal of a relevant interest in the dwelling only if on the disposal the person to whom it is made acquires a relevant interest in the dwelling.
- (2) Subject to subsection (3), where any interest in land is disposed of, the time at which the disposal is made is, for the purposes of this Part, the time the missives are concluded (and not, if different, the date of entry specified in the missives).
- (3) If the missives contain a condition precedent (and in particular if they contain a condition relating to the exercise of an option) the time at which the disposal is made for those purposes is the time when the condition precedent is satisfied.
- (4) References in this Part to a disposal of an interest for value are to a disposal for money or money's worth, whether or not representing full value for the interest disposed of.
- (5) In relation to a person holding an interest in a dwelling formed by the conversion of another dwelling, references in this Part to a previous disposal of an interest in the dwelling include a previous disposal on which an interest in land which included that part of the original dwelling in which his interest subsists was acquired.

### *Determination of entitlement*

## **262 Application for assistance.**

A person seeking assistance under this Part in respect of a defective dwelling shall make a written application to the local authority within the period specified in the relevant designation.

## **263 Application not to be entertained where grant application pending or approved.**

- (1) The local authority shall not entertain an application for assistance under this Part if—

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- (a) an application has been made in respect of the defective dwelling (whether before or after the relevant designation came into operation) for a grant under Part XIII, and
  - (b) the relevant works in relation to that grant include the whole or part of the work required to reinstate the dwelling,
- unless the grant application has been refused or has been withdrawn under subsection (2) or the relevant works have been completed.
- (2) Where a person has applied for such a grant in respect of a dwelling and—
- (a) the dwelling is a defective dwelling, and
  - (b) the relevant works include the whole or part of the work required to reinstate it,
- he may withdraw his application, whether or not it has been approved, if the relevant works have not been begun.
- (3) In this section “relevant works”, in relation to a grant, means works of improvement or repair within the meaning of Part XIII.

#### **264 Determination of eligibility.**

- (1) A local authority receiving an application for assistance under this Part shall as soon as reasonably practicable give notice in writing to the applicant stating whether in their opinion he is eligible for assistance in respect of the defective dwelling.
- (2) If they are of opinion that he is not so eligible, the notice shall state the reasons for their view.
- (3) If they are of opinion that he is so eligible, the notice shall inform him of his right to make such a claim as is mentioned in section 265(2) (claim that assistance by way of reinstatement grant is inappropriate in his case).

#### **265 Determination of form of assistance to which applicant is entitled.**

- (1) A local authority receiving an application for assistance under this Part shall, if the applicant is eligible for assistance, determine [<sup>F1</sup>as soon as reasonably practicable] whether he is entitled to assistance by way of reinstatement grant or by way of repurchase.
- (2) If the authority are satisfied, on a claim by the applicant to that effect, that it would be unreasonable to expect him to secure or await the carrying out of the work required to reinstate the defective dwelling, the applicant is entitled to assistance by way of repurchase.
- (3) Subject to subsection (2), the applicant is entitled to assistance by way of reinstatement grant if the authority are satisfied that the conditions for such assistance set out in section 266 are met, and otherwise to assistance by way of repurchase.

#### **Textual Amendments**

**F1** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 166(2)

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## 266 Conditions for assistance by way of reinstatement grant.

- (1) The conditions for assistance by way of reinstatement grant are, subject to any order under subsection (2)—
  - (a) that the dwelling is a house (as defined in section 302);
  - (b) that if the work required to reinstate the dwelling (together with any other work which the local authority are satisfied the applicant proposes to carry out) were carried out—
    - (i) the dwelling would be likely to provide satisfactory housing accommodation for a period of at least 30 years, and
    - (ii) an individual acquiring ownership of the dwelling with vacant possession would be likely to be able to obtain a loan on the security of it on satisfactory terms from a lending institution;
  - (c) that giving assistance by way of reinstatement grant is justified having regard, on the one hand, to the amount of reinstatement grant that would be payable in respect of the dwelling and, on the other hand, to the likely value of the dwelling with vacant possession after the work required to reinstate it has been carried out; and
  - (d) .....<sup>F2</sup>
- (2) The Secretary of State may by order amend the conditions set out in subsection (1) so as to modify or omit any of the conditions or to add or substitute for any of the conditions other conditions.
- (3) An order—
  - (a) may make different provision for different classes of case,
  - (b) shall be made by statutory instrument, and
  - (c) shall not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (4) An order does not affect an application for assistance made before the order comes into force.

### Textual Amendments

**F2** S. 266(1)(d) repealed by [S.I. 1988/978, art. 2](#)

## 267 Meaning of “work required for reinstatement” and “associated arrangement”.

- (1) For the purposes of this Part the work required to reinstate a defective dwelling is the work relating to the dwelling that is required to be done to the building that consists of or includes the dwelling in order to deal satisfactorily with the qualifying defect, together with any further work—

[<sup>F3</sup>(1A) In any case where—

- (a) the most satisfactory way of dealing with the qualifying defect is substantially to demolish the building that consists of or includes the defective dwelling or a part of that building, and
- (b) it is practicable to rebuild the building or part concerned on, or substantially on, its existing foundations and reconstruct the dwelling to the same, or substantially the same, plan,

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the work required to carry out those operations shall be regarded for the purposes of this Part as work required to reinstate the defective dwelling.]

- (a) required to be done, in order to deal satisfactorily with the qualifying defect, to any garage or outhouse designed or constructed as that building is designed or constructed, being a garage or outhouse in which the interest of the person eligible for assistance subsists and which is occupied with and used for the purposes of the dwelling or any part of it, or
  - (b) reasonably required in connection with other work falling within this subsection.
- (2) In this Part, “associated arrangement” means an arrangement which is entered into in connection with the execution of the work required to reinstate a defective dwelling and is likely to contribute towards the dwelling being regarded as an acceptable security by a lending institution.

#### Textual Amendments

**F3** S. 267(1A) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 166(3)

## 268 Notice of determination.

- (1) Where an applicant is eligible for assistance, the authority to whom the application was made shall as soon as reasonably practicable give him notice in writing (a “notice of determination”) stating the form of assistance to which he is entitled.
- (2) If, on such a claim by the applicant as is mentioned in section 265(2) (claim that assistance by way of reinstatement grant is inappropriate in his case), the authority are not satisfied that it would be unreasonable to expect him to secure or await the carrying out of the work required to reinstate the defective dwelling, the notice shall state the reasons for their view.
- (3) A notice stating that the applicant is entitled to assistance by way of reinstatement grant shall also state—
  - (a) the grounds for the authority’s determination;
  - (b) the work which, in their opinion, is required to reinstate the defective dwelling;
  - (c) the amount of expenditure which, in their opinion, may properly be incurred in executing the work;
  - (d) the amount of expenditure which, in their opinion, may properly be incurred in entering into an associated arrangement;
  - (e) the condition required by section 270 (execution of work to satisfaction of authority within specified period), including the period within which the work is to be carried out; and
  - (f) their estimate of the amount of grant payable in respect of the dwelling in pursuance of this Part.
- (4) A notice stating that the applicant is entitled to assistance by way of repurchase shall also state the grounds for the authority’s determination and the effect of—
  - (a) paragraphs <sup>F4</sup>2, 3 and 7] of Schedule 20 (request for notice of proposed terms of repurchase), and

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- (b) sections [F4282, 284 and 285] (provisions for grant of tenancy to former owner-occupier of repurchased dwelling).
- (5) References in the following provisions of this Part to a person entitled to assistance by way of reinstatement grant or, as the case may be, by way of repurchase are to a person who is eligible for assistance in respect of the dwelling and on whom a notice of determination has been served stating that he is entitled to that form of assistance.

#### Textual Amendments

**F4** Words substituted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(1\), Sch. 7 para. 19](#)

### *Assistance by way of reinstatement grant*

#### **269 Reinstatement grant.**

- (1) Where a person is entitled to assistance by way of reinstatement grant, the local authority shall pay reinstatement grant to him in respect of—
  - (a) the qualifying work, and
  - (b) any associated arrangement,subject to and in accordance with the following provisions of this Part.
- (2) The “qualifying work” means the work stated in the notice of determination, or in a notice under section 272 (notice of change of work required), to be the work which in the opinion of the local authority is required to reinstate the dwelling.

#### **270 Conditions of payment of reinstatement grant.**

- (1) It is a condition of payment of reinstatement grant that the qualifying work is carried out—
  - (a) to the satisfaction of the local authority, and
  - (b) within the period specified in the notice of determination, or that period as extended.
- (2) The period so specified shall be such reasonable period (of at least 12 months), beginning with service of the notice, as the authority may determine.
- (3) The authority shall, if there are reasonable grounds for doing so, by notice in writing served on the person entitled to assistance, extend or further extend the period for carrying out the qualifying work (whether or not the period has expired).
- (4) Payment of reinstatement grant shall not be subject to any other condition, however expressed.

#### **271 Amount of reinstatement grant.**

- (1) The amount of reinstatement grant payable is the appropriate percentage of whichever is the least of—
  - (a) the amount stated in the notice of determination, or in a notice under section 272 (notice of change in work required or expenditure permitted), to be the amount of expenditure which, in the opinion of the local authority, may

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- properly be incurred in executing the qualifying work and entering into any associated arrangement,
- (b) the expenditure actually incurred in executing the qualifying work and entering into any associated arrangement, and
  - (c) the expenditure which is the maximum amount permitted to be taken into account for the purposes of this section.
- (2) The appropriate percentage is 90 per cent. or, in a case where the authority are satisfied that the person entitled to assistance would suffer financial hardship unless a higher percentage of the expenditure referred to in subsection (1) were paid to him, 100 per cent.
- (3) The Secretary of State may by order vary either or both of the percentages mentioned in subsection (2).
- (4) The maximum amount of expenditure permitted to be taken into account for the purposes of this section is the amount specified as the expenditure limit by order made by the Secretary of State, except in a case or description of case in which the Secretary of State, on the application of a local authority, approves a higher amount.
- (5) An order under subsection (4) may make different provision for different areas, different designated classes and different categories of dwelling.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

## **272 Changes in work or expenditure.**

Where the local authority are satisfied that—

- (a) the work required to reinstate the defective dwelling is more extensive than that stated in the notice of determination or in a previous notice under this section, or
- (b) the amount of the expenditure which may properly be incurred in executing that work is greater than that so stated, or
- (c) there is an amount of expenditure which may properly be incurred in entering into an associated arrangement but no such amount is stated in the notice of determination or a previous notice under this section, or
- (d) where such an amount is so stated, the amount of expenditure which may be properly so incurred is greater than that amount,

they shall by notice in writing served on the person entitled to assistance state their opinion as to that amount or, as the case may be, that work and that amount; and the amount of reinstatement grant shall be adjusted accordingly.

## **273 Payment of reinstatement grant.**

- (1) The local authority may pay reinstatement grant in respect of the qualifying work in a single sum on completion of the work or by instalments.
- (2) No instalment shall be paid if the instalment, together with any amount previously paid, would exceed the appropriate percentage of the cost of so much of the qualifying work as has been executed at that time.



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- (3) The authority shall pay reinstatement grant in respect of an associated arrangement when payment in respect of the expenditure incurred in entering into the arrangement falls to be made.

#### **274 Repayment of grant for breach of condition.**

- (1) Where an amount of reinstatement grant has been paid in one or more instalments and the qualifying work is not completed within the period for carrying out the work, the local authority may, if they think fit, require the person who was entitled to assistance to repay that amount to them forthwith.
- (2) The amount required to be repaid (or, if it was paid in more than one instalment, the amount of each instalment) shall carry interest, at such reasonable rate as the authority may determine, from the date on which it was paid until repayment.

#### *Assistance by way of repurchase*

#### **275 Repurchase.**

Schedule 20 shall have effect with respect to assistance by way of repurchase, as follows—

Part I—The agreement to repurchase.

Part II—Price payable and valuation.

#### **276 Repurchase by authority other than local authority.**

Where the local authority give a notice of determination to a person stating that he is entitled to assistance by way of repurchase and they are of opinion that—

- (a) a relevant interest in the dwelling was disposed of by a public sector authority mentioned in column 1 of the following Table (or a predecessor mentioned there of such an authority),
- (b) there has been no disposal within paragraph (a) since the time of that disposal, and
- (c) any conditions mentioned in column 2 of the Table in relation to the authority are met,

they shall forthwith give that other authority a notice in writing, together with a copy of the notice of determination, stating that the authority may acquire, in accordance with this Part, the interest of the person entitled to assistance.

TABLE

| <i>Public sector authority</i>  | <i>Conditions</i> |
|---|-------------------|
| 1. A registered housing association (other than a co-operative housing association) or a predecessor housing association of that association. | None.             |
| [ <sup>F5</sup> 2. Scottish Homes or the Scottish Special Housing Association]  | None.             |

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|   |  |
|---|--|
| 3. A development corporation.   | None.  |
| 4. Another local authority or a predecessor of that authority.  | The local authority provide housing accommodation in the vicinity of the defective dwelling with which the dwelling may conveniently be managed. |
| 5. Any other public sector authority prescribed by order of the Secretary of State, or a predecessor so prescribed. | Any conditions prescribed by the order.  |

- (2) The other authority may, within the period of four weeks beginning with the service of the notice on them, give notice in writing to the local authority—
- (a) stating that they wish to acquire the interest, and
  - (b) specifying the address of the principal office of the authority and any other address which may also be used as an address for service;
- and the local authority shall forthwith give to the person entitled to assistance a transfer notice, that is, a notice in writing of the contents of the notice received by them and the effect of subsection (3).
- (3) After a transfer notice has been given to the person entitled to assistance, the other authority shall be treated as the appropriate authority for the purposes of anything done or falling to be done under this Part, except that—
- (a) a request under paragraph 2 of Schedule <sup>F6</sup>20] (request for notice of proposed terms of acquisition) may be made either to the local authority or to the other authority, and
  - (b) any such request given to the local authority (whether before or after the notice) shall be forwarded by them to the other authority;
- and references in this Part to “the purchasing authority” shall be construed accordingly.
- (4) An order under this section shall be made by statutory instrument.

#### Textual Amendments

- F5** Entry substituted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), ss. 1, 3, Sch. 2 para. 14](#)
- F6** Figure substituted (*retrospectively*) by [Housing \(Scotland\) Act 1988 \(c.43, SIF 61\), s. 72\(1\), Sch. 7 para. 20](#)

### 277 Interest subject to right of pre-emption, etc.

- (1) This section applies where a person (“the owner”) is entitled to assistance by way of repurchase in respect of a defective dwelling and there is a condition in the title relating to his interest in the dwelling whereby—
- (a) before disposing of the interest he must offer to dispose of it to a public sector authority, or
  - (b) in the case of an interest under a lease, he may require a public sector authority who are his landlords to accept a surrender of the lease but is otherwise prohibited from disposing of it.
- (2) If the public sector authority are the local authority in whose area the dwelling is situated, the condition in the title shall be disregarded for the purposes of Schedule 20 (repurchase).

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- (3) If the public sector authority are not the local authority, the provisions of this Part as to repurchase do not apply so long as there is such a condition in the title; but if—
- (a) the owner disposes of his interest to the public sector authority in pursuance of the condition in the title or lease, and
  - (b) the interest acquired by that authority on the disposal subsists only in the land affected, that is to say, the defective dwelling and any garage, outhouse, garden, yard and pertinents belonging to or usually enjoyed with the dwelling or any part of it,
- the owner is entitled to be paid by the local authority the amount (if any) by which 95 per cent. of the defect-free value exceeds the consideration for the disposal.
- (4) For the purposes of this section—
- (a) the “consideration for the disposal” means the amount before any reduction required by section 72 (reduction corresponding to amount of discount repayable) or any provision to the like effect, and
  - (b) the “defect-free value” means the amount that would have been the consideration for the disposal if none of the defective dwellings to which the designation in question related had been affected by the qualifying defect.

**278 Compulsory purchase compensation to be made up to 95 per cent. of defect-free value.**

- (1) Where a person (“the owner”) has disposed of an interest in a defective dwelling, otherwise than in pursuance of Schedule 20 (repurchase), to an authority possessing compulsory purchase powers and—
- (a) immediately before the time of the disposal he was eligible for assistance under this Part in respect of the dwelling,
  - (b) the amount paid as consideration for the disposal did not include any amount attributable to his right to apply for such assistance, and
  - (c) on the disposal the authority acquired an interest in any of the affected land, that is to say, the defective dwelling and any garage, outhouse, garden, yard and pertinents belonging to or usually enjoyed with the dwelling or any part of it,
- he is entitled, subject to the following provisions of this section, to be paid by the local authority the amount (if any) by which 95 per cent. of the defect-free value exceeds the amount of the compensation for the disposal.
- (2) For the purposes of this section—
- (a) the “amount of compensation for the disposal” means the amount that would have been the proper amount of compensation for the disposal (having regard to any relevant determination of the Lands Tribunal) or, if greater, the amount paid as the consideration for the disposal, and
  - (b) the “defect-free” value means the amount that would have been the proper amount of compensation for the disposal if none of the defective dwellings to which the designation in question related had been affected by the qualifying defect;
- but excluding, in either case, any amount payable for disturbance or for any other matter not directly based on the value of land.
- (3) For the purposes of this section, it shall be assumed that the disposal occurred on a compulsory acquisition (in cases where it did not in fact do so).

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- (4) Where the compensation for the disposal fell to be assessed by reference to the value of the land as a site cleared of buildings and available for development, it shall be assumed for the purposes of determining the defect-free value that it did not fall to be so assessed.
- (5) The amount payable by the local authority under this section shall be reduced by the amount of any payment made in respect of the defective dwelling under section 304 or 305 (payments for well-maintained houses).
- (6) In this section “authority possessing compulsory purchase powers” has the same meaning as in the <sup>M1</sup>Land Compensation (Scotland) Act 1963.

#### Marginal Citations

M1 1963 c. 51.

### 279 Supplementary provisions as to payments under s.277 or 278.

- (1) The local authority are not required to make a payment to a person under—
  - (a) section 277 (making-up of consideration on disposal in pursuance of right of pre-emption, etc.), or
  - (b) section 278 (making up of compulsory purchase compensation),
 unless he makes a written application to them for payment before the end of the period of two years beginning with the time of the disposal.
- (2) Where the authority—
  - (a) refuse an application for payment under section 277 on any grounds, or
  - (b) refuse an application for payment under section 278 on the grounds that the owner was not eligible for assistance in respect of the defective dwelling,
 they shall give the applicant written notice of the reasons for their decision.
- (3) Any question arising—
  - (a) under section 277 or 278 as to the defect-free value, or
  - (b) under section 278 as to the amount of compensation for the disposal,
 shall be determined by the district valuer if the owner or the local authority so require by notice in writing served on the district valuer.
- (4) A person serving a notice on the district valuer in pursuance of subsection (3) shall serve notice in writing of that fact on the other party.
- (5) Before making a determination in pursuance of subsection (3), the district valuer shall consider any representation by the owner or the authority made to him within 4 weeks from the service of the notice under that subsection.

### 280 Reimbursement of expenses incidental to repurchase.

- (1) A person whose interest in a defective dwelling is acquired by the purchasing authority in pursuance of Schedule 20 (repurchase) is entitled to be reimbursed by the purchasing authority the proper amount of—
  - (a) expenses in respect of legal services provided in connection with the authority’s acquisition, and

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- (b) other expenses in connection with negotiating the terms of that acquisition, being in each case expenses which are reasonably incurred by him after receipt of a notice under paragraph 3 of that Schedule (authority's notice of proposed terms of acquisition).
- (2) An agreement between a person and the purchasing authority is void in so far as it purports to oblige him to bear any part of the costs or expenses incurred by the authority in connection with the exercise by him of his rights under this Part.

#### *Effect of repurchase on occupier*

### **281 Effect of repurchase on certain existing tenancies.**

- (1) Where an authority mentioned in section 44 (authorities satisfying the landlord condition for secure tenancy) acquire an interest in a defective dwelling in pursuance of Schedule 20 (repurchase) and—
  - (a) the land in which the interest subsists is or includes a house occupied as a separate dwelling, and
  - (b) the interest of the person entitled to assistance by way of repurchase is, immediately before the completion of the authority's acquisition, subject to a tenancy of the house,the tenancy shall not, on or after the acquisition, become a secure tenancy unless the conditions specified in subsection (2) are met.
- (2) The conditions are—
  - (a) that the tenancy was a protected tenancy throughout the period beginning with the making of an application for assistance under this Part in respect of the defective dwelling and ending immediately before the authority's acquisition; and
  - (b) no notice was given in respect of the tenancy in accordance with any of Cases 11 to 14 and 16 to 21 in Schedule 2 to the <sup>M2</sup>Rent (Scotland) Act 1984 (notice that possession might be recovered under that Case) or under section [F79(1)(d) of the Rent (Scotland) Act 1984] (notice that tenancy is to be a protected short tenancy).

#### **Textual Amendments**

**F7** Words substituted (*retrospectively*) by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), s. 72(1), **Sch. 7 para. 21**

#### **Marginal Citations**

**M2** 1984 c. 58.

### **282 Grant of tenancy to former owner-occupier.**

- (1) Where an authority acquire an interest in a defective dwelling in pursuance of Schedule 20 (repurchase), or in the circumstances described in section 277(3) (exercise of right of pre-emption, etc.), and—
  - (a) the land in which the interest subsists is or includes a house occupied as a separate dwelling, and

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- (b) an individual is an occupier of the house throughout the period beginning with the making of an application for assistance under this Part in respect of the dwelling and ending immediately before the completion of the authority's acquisition, and
- (c) he is a person entitled to assistance by way of repurchase in respect of the defective dwelling, or the persons so entitled are in relation to the interest concerned his trustees,

the authority shall, in accordance with this section, either grant or arrange for him to be granted a tenancy of that house or another on the completion of their acquisition of the interest concerned.

- (2) If the authority are among those mentioned in section [F844(2)] (public sector authorities capable of granting secure tenancies) their obligation is to grant a secure tenancy.
- (3) In any other case their obligation is to grant or arrange for the grant of either—
  - (a) a secure tenancy, or
  - (b) a protected tenancy other than one under which the landlord might recover possession under one of the cases in Part II of Schedule 2 to the <sup>M3</sup>Rent (Scotland) Act 1984 (cases in which the court must order possession).
- (4) Where two or more persons qualify for the grant of a tenancy under this section in respect of the same house, the authority shall grant the tenancy, or arrange for it to be granted, to such one or more of them as they may agree among themselves or (if there is no such agreement) to all of them.

#### Textual Amendments

**F8** Figure substituted (*retrospectively*) by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), s. 72(1), [Sch. 7 para. 22](#)

#### Marginal Citations

**M3** [1984 c. 58](#).

### 283 Grant of tenancy to former statutory tenant.

- (1) Where an authority mentioned in section 44 [F9(2)] (public sector authorities capable of granting secure tenancies) acquire an interest in a defective dwelling in pursuance of Schedule 20 (repurchase), and—
  - (a) the land in which the interest subsists is or includes a house occupied as a separate dwelling, and
  - (b) an individual is an occupier of a house throughout the period beginning with the making of an application for assistance under this Part in respect of the dwelling and ending immediately before the completion of the authority's acquisition, and
  - (c) he is a statutory tenant of the house at the end of that period, and
  - (d) no notice was given in respect of the original tenancy in accordance with any of Cases 11 to 14 and 16 to 21 in Schedule 2 to the Rent (Scotland) Act 1984 (notice that possession might be recovered under that Case) or under section [F109(1)(d) of the Rent (Scotland) Act 1984 (notice that the tenancy is to be a short tenancy)], and

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- (e) the interest of the person entitled to assistance would, if the statutory tenancy were a contractual tenancy, be subject to the tenancy at the end of the period mentioned in paragraph (b),  
the authority shall grant him a secure tenancy (of that house or another) on the completion of their acquisition of the interest concerned.
- (2) Where two or more persons qualify for the grant of a tenancy under this section in respect of the same house, the authority shall grant the tenancy to such one or more of them as they may agree among themselves or (if there is no such agreement) to all of them.
- (3) If at any time after the service of a notice of determination it appears to the purchasing authority that a person may be entitled to request them to grant him a secure tenancy under this section, they shall forthwith give him notice in writing of that fact.

#### Textual Amendments

- F9** Figure inserted (*retrospectively*) by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(1\), Sch. 7 para. 23\(a\)](#)
- F10** Words substituted (*retrospectively*) by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(1\), Sch. 7 para. 23\(b\)](#)

### 284 Alternative accommodation under s.282 or 283.

- (1) The house to be let under the tenancy granted to a person—
- (a) under section 282 or 283 (grant of tenancy to former owner-occupier or statutory tenant of defective house acquired by authority), or
- (b) under arrangements made for the purposes of section 283,
- shall be the house of which he is the occupier immediately before the completion of the authority's acquisition (the "current house"), except in the following Cases—

#### Case 1

By reason of the condition of any building of which the current house consists or of which it forms part, the house may not safely be occupied for residential purposes.

#### Case 2

The authority intend, within a reasonable time of the completion of their acquisition of the interest concerned—

- (a) to demolish or reconstruct the building which consists of or includes the defective dwelling in question, or
- (b) to carry out work on any building or land in which the interest concerned subsists,

and cannot reasonably do so if the current house remains in residential occupation.

- (2) In those Cases the house to be let shall be another house which, so far as is reasonably practicable in the case of that authority, affords accommodation which is—
- (a) similar as regards extent and character to the accommodation afforded by the current house,
- (b) reasonably suitable to the means of the prospective tenant and his family, and

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- (c) reasonably suitable to the needs of the prospective tenant and his family as regards proximity to place of work and place of education.

### **285 Request for tenancy under s.282 or 283.**

- (1) An authority are not required to grant, or arrange for the grant of, a tenancy to a person under section 282 or 283 unless he requests them to do so in writing before—
- (a) in the case of an acquisition under Schedule 20 (repurchase), the service on the person entitled to assistance of an offer to purchase under [F11 paragraph 3] of that Schedule, or
  - (b) in the case of an acquisition in the circumstances described in section 277(3) (acquisition in pursuance of right of pre-emption, etc.), the time of the disposal.
- (2) An authority receiving a request under subsection (1) shall, as soon as reasonably practicable, give notice in writing to the person making the request stating whether in their opinion either of the Cases in section 284(1) applies (cases in which tenancy may be of a house other than the current house).
- (3) If their opinion is that either Case does apply, the notice shall also state which of the Cases is applicable and the effect of section 284.

#### **Textual Amendments**

**F11** Words substituted (*retrospectively*) by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), s. 72(1), [Sch. 7 para. 24](#)

### **286 Interpretation of ss.281 to 285.**

In sections 281 to 285 (effect of repurchase on occupier)—

- (a) “house” has the same meaning as in Part III (secure tenancies);
- (b) “occupier”, in relation to a house, means a person who occupies the house as his only or principal home or (in the case of a statutory tenant) as his residence;
- (c) references to the grant of a secure tenancy are to the grant of a tenancy which would be a secure tenancy assuming that the tenant under the tenancy occupies the house as his only or principal home.

#### *Local schemes*

### **287 Designation of defective dwellings under local schemes.**

- (1) A local authority may by resolution designate as a class buildings in their area each of which consists of or includes one or more dwellings if it appears to them that—
- (a) buildings in the proposed class are defective by reason of their design or construction, and
  - (b) by virtue of the circumstances mentioned in paragraph (a) having become generally known, the value of some or all of the dwellings concerned has been substantially reduced.
- (2) Subsection (1) does not apply to a building in a class designated under section 257 (designation by Secretary of State); but a building does not cease to be included in



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a class designated under this section by virtue of its inclusion in a class designated under that section.

- (3) A dwelling which is, or is included in, a building in a class so designated is referred to in this Part as a “defective dwelling”; and in this Part, in relation to such a dwelling—
  - (a) “the qualifying defect” means what, in the opinion of the authority, is wrong with the buildings in that class, and
  - (b) “the cut-off date” means the date by which, in the opinion of the authority, the circumstances mentioned in subsection (1)(a) became generally known.
- (4) A designation shall describe the qualifying defect and specify—
  - (a) the cut-off date,
  - (b) the date (being a date falling on or after the cut-off date) on which the designation is to come into operation, and
  - (c) the period within which persons may seek assistance under this Part in respect of the defective dwellings concerned.
- (5) A designation may not describe a designated class by reference to the area (other than the authority’s district) in which the buildings concerned are situated; but may be so described that within the authority’s area there is only one building in the class.
- (6) Any question arising as to whether a building is or was at any time in a class designated under this section shall be determined by the local authority concerned.

## **288 Variation or revocation of designation under local schemes.**

- (1) The local authority may by resolution—
  - (a) vary a designation under section 287, but not so as to vary the cut-off date, or
  - (b) revoke such a designation.
- (2) The authority may by a variation of the designation extend the period referred to in section 287(4)(c) (period within which assistance must be applied for) whether or not it has expired.
- (3) The variation or revocation of a designation does not affect the operation of the provisions of this Part in relation to a dwelling if, before the variation or revocation comes into operation, the dwelling is a defective dwelling by virtue of the designation in question and application for assistance under this Part has been made.

## **289 Secretary of State’s control over designation, variation or revocation.**

- (1) Where a local authority have passed a resolution under—
  - (a) section 287 (designation under local scheme), or
  - (b) section 288 (variation or revocation of designation under local scheme),they shall give written notice to the Secretary of State of the resolution before the expiry of the period of 28 days beginning with the date on which it is passed.
- (2) The designation, variation or revocation shall not come into operation before [<sup>F12</sup>the cut-off date or if it is later] the expiry of the period of 2 months [<sup>F12</sup>or such longer period as the Secretary of State may direct for the purposes of this subsection under subsection (2A) below] beginning with the receipt by the Secretary of State of the notice under subsection (1).

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- [<sup>F13</sup>(2A) If, within the period for the time being specified in or (by virtue of the previous operation of this subsection) for the purposes of subsection (2) above, the Secretary of State is satisfied that he does not have reasonably sufficient information to enable him to come to a decision with respect to the resolution concerned, he may direct for the purposes of that subsection that it shall have effect as if for the period so specified there were substituted such longer period as is specified in the direction.]
- (3) If [<sup>F14</sup>before the cut-off date or, if it is later, the expiry of the period for the time being specified in or for the purposes of subsection (2) above] the Secretary of State serves notice in writing to that effect on the authority, the designation, revocation or variation shall not come into operation.

#### Textual Amendments

**F12** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 166(4)(a)

**F13** S. 289(2A) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 166(4)(b)(5)

**F14** Words substituted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 166(4)(c)

#### *Miscellaneous*

### **290 Duty of local housing authority to publicise availability of assistance.**

- (1) A local authority shall, within the period of 3 months beginning with the coming into operation of—
- (a) a designation under section 257 (designation of defective dwellings by Secretary of State) or section 287 (designation of defective dwellings under local scheme), or
  - (b) a variation of such a designation,
- publish in a newspaper circulating in their area notice suitable for the purpose of bringing the effect of the designation or variation to the attention of persons who may be eligible for assistance in respect of such of the dwellings concerned as are situated within their area.
- (2) No such notice need be published by a local housing authority who are of opinion—
- (a) that none of the dwellings concerned are situated in their area, or
  - (b) that no-one is likely to be eligible for assistance in respect of the dwellings concerned which are situated in their area.
- (3) If at any time it becomes apparent to a local authority that a person is likely to be eligible for assistance in respect of a defective dwelling within their area, they shall forthwith take such steps as are reasonably practicable to inform him of the fact that assistance is available.

### **291 Duties of public sector authority disposing of defective dwelling.**

- (1) A public sector authority shall, where a person is to acquire a relevant interest in a defective dwelling on a disposal by the authority, give him notice in writing before the time of the disposal—
- (a) specifying the qualifying defect, and

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- (b) stating that he will not be eligible for assistance under this Part in respect of the dwelling.
- (2) A public sector authority shall, before they convey a relevant interest in a defective dwelling in pursuance of completed missives to a person on whom a notice under subsection (1) has not been served, give him notice in writing—
  - (a) specifying the qualifying defect,
  - (b) stating, where the time of disposal of the interest falls after the cut-off date, that he will not be eligible for assistance under this Part, and
  - (c) stating the effect of subsection (3).
- (3) A person on whom a notice under subsection (2) is served—
  - (a) is not obliged to complete the conveyance before the expiry of the period of 6 months beginning with the service of that notice on him, and
  - (b) may within that period withdraw from the transaction by notice in writing to the authority to that effect.
- (4) Where a public sector authority are required to serve a notice under section 63(2), 68, 69 or 70 (landlord's response to notice claiming to exercise right to buy) in respect of a defective dwelling, the notice under subsection (1) shall be served with that notice.
- (5) A notice under subsection (1) or (2) shall, (except in the case of a notice under subsection (1) which is served in accordance with subsection (4)), be served at the earliest date at which it is reasonably practicable to do so.

## **292 Reinstatement of defective dwelling by local authority.**

- (1) Where a relevant interest in a defective dwelling has been disposed of by a public sector authority, the local authority may, before the end of the period within which a person may seek assistance under this Part in respect of the dwelling, enter into an agreement with—
  - (a) any person holding an interest in the dwelling, or
  - (b) any person who is a statutory tenant of it,to execute at his expense any of the work required to reinstate the dwelling.
- (2) For the purposes of this section a disposal by or under an enactment of an interest in a dwelling held by a public sector authority shall be treated as a disposal of the interest by the authority.

## **293 Death of person eligible for assistance, etc.**

- (1) Where a person who is eligible for assistance in respect of a defective dwelling—
  - (a) dies, or
  - (b) disposes of his interest in the dwelling (otherwise than on a disposal for value) to such a person as is mentioned in section 259(2) (persons qualifying for assistance: individuals, trustees for individuals and personal representatives),this Part applies as if anything done (or treated by virtue of this subsection as done) by or in relation to the person so eligible had been done by or in relation to his personal representatives or, as the case may be, the person acquiring his interest.
- (2) In sections 277 to 279 (subsidiary forms of financial assistance) references to the owner of an interest in a defective dwelling include his personal representatives.

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**294 Dwellings included in more than one designation.**

The provisions of Schedule 21 have effect with respect to dwellings included in more than one designation.

**295 Application of Act in relation to lenders on security of defective dwelling.**

(1) The Secretary of State may by regulations made by statutory instrument subject to annulment by either House of Parliament make provision for the purpose of conferring rights and obligations on any person who has granted a loan on the security of a defective dwelling where—

- (a) a power of sale is exercisable by the lender, and
- (b) the borrower is eligible for assistance in respect of the defective dwelling.

(2) The rights that may be conferred on a lender by regulations under this section are—

- (a) rights corresponding to those conferred by this Part on a person holding a relevant interest in the defective dwelling, and
- (b) the right to require the local authority to acquire in accordance with the regulations any interest in the defective dwelling to be disposed of in exercise of the power of sale,

and the rights that may be so conferred may be conferred in place of any rights conferred on any other person by this Part.

(3) Regulations under this section may provide that, where the conditions in subsection (1) (a) and (b) are or have been satisfied, this Part, the power of sale and any enactment relating to the power of sale in question shall have effect subject to such modifications as may be specified in the regulations.

(4) Regulations under this section—

- (a) may make different provision for different cases, and
- (b) may make incidental and consequential provision.

**296,** ..... F15  
**297.**

**Textual Amendments**

**F15** Ss. 296, 297 repealed by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), s. 72(3), **Sch. 10**

*Supplementary provisions*

**298 Service of notices.**

(1) A notice or other document under this Part may be given to or served on a person, and an application or written request under this Part may be made to a person—

- (a) by delivering it to him or leaving it at his proper address, or
- (b) by sending it to him by post,

and also, where the person concerned is a body corporate, by giving or making it to or serving it on the secretary of that body.

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- (2) For the purposes of this section, and of section 7 of the <sup>M4</sup>Interpretation Act 1978 as it applies for the purposes of this section, the proper address of a person is—
- (a) in the case of a body corporate or its secretary, the address of the principal office of the body,
  - (b) in any other case, his last known address)
- and also, where an additional address for service has been specified by that person in a notice under section 276(2) (notice of intention to assume responsibility for repurchase), that address.

#### Marginal Citations

M4 1978 c. 30.

### 299 Jurisdiction of sheriff in Scotland.

- (1) A sheriff of the sheriff court district within which the defective dwelling is situated has jurisdiction—
- (a) to determine any question arising under this Part; and
  - (b) to entertain any proceedings brought in connection with the performance or discharge of any obligations so arising, including proceedings for the recovery of damages or compensation in the event of the obligations not being performed.
- (2) Subsection (1) has effect subject to—
- (a) sections 257(6) and 287(6) (questions of designation to be decided by designating authority),
  - (b) section 279(3) and [<sup>F16</sup>paragraph 11(1) of Schedule 20] (questions of valuation to be determined by district valuer).
- (3) Where an authority required by section 270(3) or paragraph 7 of Schedule 20 to extend or further extend any period fail to do so, the sheriff may extend or further extend that period until such date as he may specify.
- [<sup>F17</sup>(4) Where damages are awarded in proceedings commenced before 1st December 1994 which arise out of a failure on the part of the public sector authority to give a person acquiring a relevant interest in a dwelling notice in writing under section 291, the amount of damages for the purposes of this subsection shall be equal to the difference between—
- (a) the market value of the dwelling assessed as if it were not a defective dwelling and were available for sale on the open market with vacant possession; and
  - (b) the market value of the dwelling assessed as a defective dwelling and as if available for sale on the open market with vacant possession.
- (5) Subsection (4) applies in relation to proceedings which arise out of a failure by the authority before the coming into force of section 156 of the Leasehold Reform, Housing and Urban Development Act 1993 as it does to proceedings which arise out of a failure by the authority after that date.]

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### Textual Amendments

- F16** Words substituted (*retrospectively*) by [Housing \(Scotland\) Act 1988 \(c.43, SIF 61\)](#), s. 72(1), [Sch. 7 para. 26](#)
- F17** S. 299(4)(5) added (27.9.1993) by [1993 c. 28, s. 156](#); [S.I. 1993/2163, art. 2](#), [Sch. 1](#).

## 300 Meaning of “public sector authority”.

(1) In this Part—

(a) “public sector authority” means—

- a <sup>F18</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994] (or a predecessor of such a council),  
 a joint board and a joint committee of which every constituent member is, or is appointed by, such a council or predecessor of such a council,  
<sup>F19</sup>Scottish Water],  
 the Housing Corporation,  
 the Scottish Special Housing Association,  
 a registered housing association other than a co-operative housing association (or a predecessor housing association of such an association),  
 a development corporation,  
 the National Coal Board, or  
 the United Kingdom Atomic Energy Authority,

or a body corporate or housing association specified by order of the Secretary of State in accordance with the following provisions;

- (b) “co-operative housing association” means a fully mutual housing association which is a <sup>F20</sup>registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014], and “fully mutual”, in relation to a housing association, means that the rules of the association—
- (i) restrict membership to persons who are tenants or prospective tenants of the association, and
  - (ii) preclude the granting or assignation of tenancies to persons other than members.

(2) The Secretary of State may provide that a body corporate shall be treated as a public sector authority if he is satisfied—

- (a) that the affairs of the body are managed by its members, and
- (b) that its members hold office by virtue of appointment (to that or another office) by a Minister of the Crown under an enactment,

or if he is satisfied that it is a subsidiary of such a body.

(3) The Secretary of State may provide that a housing association shall be treated as a public sector authority if he is satisfied that the objects or powers of the association include the provision of housing accommodation for individuals employed at any time by a public sector authority or dependants of such individuals.

(4) Where the Secretary of State is satisfied that a body or association met the requirements of subsection (2) or (3) during any period, he may, whether or not he makes an order in respect of the body or association under that subsection, provide that it shall be treated as having been a public sector authority during that period.

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- (5) If the Secretary of State is satisfied that a body or association specified in an order under subsection (2) or (3) has ceased to meet the requirements of that subsection on any date, he may by order provide that it shall be treated as having ceased to be a public sector authority on that date.
- (6) An order under this section shall be made by statutory instrument.

#### Textual Amendments

- F18** Words in s. 300(1)(a) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 152(6)**; S.I. 1996/323, **art. 4**
- F19** Words in s. 300(1)(a) substituted (1.4.2002) by 2002 asp 3, s. 71, **Sch. 7 para. 18(5)** (with s. 67); S.S.I. 2002/118, **art. 2(3)** (subject to savings in **art. 3**)
- F20** Words in s. 300(1)(b) substituted (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 4 para. 39** (with Sch. 5)

### 301 Disposal of certain Crown interests in land treated as disposal by public sector authority.

References in this Part to a disposal of an interest in a dwelling by a public sector authority include a disposal of—

- (a) an interest belonging to Her Majesty in right of the Crown,
- (b) an interest belonging to, or held in trust for Her Majesty for the purposes of, a government department or Minister of the Crown.

### 302 Meaning of “dwelling” and “house”.

- (1) In this Part, “dwelling” means any house, flat or other unit designed or adapted for living in.
- (2) For the purposes of this Part a building so designed or adapted is a “house” if it is a structure reasonably so called; so that where a building is divided into units so designed or adapted—
  - (a) if it is so divided horizontally, or a material part of a unit lies above or below another unit, the units are not houses (though the building as a whole may be), and
  - (b) if it is so divided vertically, the units may be houses.
- (3) Where a house which is divided into flats or other units is a defective dwelling in respect of which a person is eligible for assistance, the fact that it is so divided shall be disregarded for the purposes of section 266(1)(a) (first condition for assistance by way of reinstatement: that the dwelling is a house).

### 303 Interpretation.

In this Part—

- “associated arrangement” has the meaning given by section 267(2);
- “cut-off date” is to be construed in accordance with section 257(2) or, as the case may be, 287(3);
- “defective dwelling” is to be construed in accordance with section 257(2) or, as the case may be, 287(3);

*Status: Point in time view as at 01/12/2017.*

*Changes to legislation: Housing (Scotland) Act 1987, PART XIV is up to date with all changes known to be in force on or before 01 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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“interest in dwelling” includes an interest in land which is or includes the dwelling;

“lending institution” means a building society, a bank or an insurance company;

“person entitled to assistance” (by way of reinstatement grant or repurchase) is to be construed in accordance with section 268(5);

“public sector authority” has the meaning given by section 300;

“purchasing authority” is to be construed in accordance with section 276(3);

“qualifying defect” is to be construed in accordance with section 257(2) or, as the case may be, section 287(3);

“relevant interest” means the interest of the owner;

“work required to reinstate a defective dwelling” is to be construed in accordance with section 267(1).



**Status:**

Point in time view as at 01/12/2017.

**Changes to legislation:**

Housing (Scotland) Act 1987, PART XIV is up to date with all changes known to be in force on or before 01 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.