

THE REPAIRING STANDARD: AN ADVICE PACK FOR PRIVATE LANDLORDS

This pack contains:

1. A short summary of the Repairing Standard (page 1)
2. Additional information on the Repairing Standard and the PRHP (pages 2-5)
3. Scottish Government guidance on smoke and fire detectors (pages 6-7)
4. Statutory guidance on the tenant's right to information (page 8).

The Housing (Scotland) Act 2006 sets out a Repairing Standard covering the responsibilities of private landlords to carry out repairs. This pack provides guidance on the Repairing Standard. A short summary of your duties as a landlord is given below.

- The 2007 Repairing Standard applies to most tenancies of houses in the private sector. It covers various aspects of the house, including the structure and exterior, various installations and fixtures, the safety of furniture, and fire detection and fire alarm systems.
- **Landlords must ensure that the house meets the Repairing Standard at the start of the tenancy.** This means that you (or someone authorised by you) has to inspect the house before the tenancy starts and tell the tenant if any work has to be done, as well as carrying out the work. It would be best practice to carry out the inspection in time to deal with any necessary repairs before the tenancy begins.
- **The landlord also has to ensure that the house meets the Repairing Standard throughout the tenancy.**
- **If a tenant believes that the landlord has not complied with the Repairing Standard, he or she can apply to the Private Rented Housing Panel.** The Panel can reject the application, refer it to a Private Rented Housing Committee, or delay a decision if there is a good chance that the landlord and tenant can settle the dispute, possibly by mediation. If a Committee decides that the Repairing Standard has not been met, it can require the landlord to do the necessary work.
- **At the start of the tenancy or earlier the landlord must tell the tenant about the effect of the Repairing Standard and Private Rented Housing Panel arrangements on the tenancy.** You have complied with this duty when you have provided your tenant with a copy of the mandatory Tenant Information Pack, which can be downloaded at www.scotland.gov.uk/tenant/info.

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

ADDITIONAL INFORMATION ON THE REPAIRING STANDARD AND PRIVATE RENTED HOUSING PANEL

1. Private landlords have legal obligations to repair and maintain the properties they rent out. The Repairing Standard under the Housing (Scotland) Act 2006 modified and extended these obligations and established the Private Rented Housing Panel (PRHP) to make it easier for a tenant to enforce them. Most private landlords keep their properties in good repair and ensure that they meet their legal obligations. Enforcement action through the PRHP will only be necessary for the small minority of landlords who fail to do so. The Scottish Government wants to ensure that everyone has access to decent, affordable housing and the Repairing Standard contributes to this.

2. Section 20(2) of the Housing (Scotland) Act 2006 gives the Scottish Ministers powers to issue guidance in relation to the Repairing Standard. Guidance issued under that section is included in this pack.

The Repairing Standard

3. Chapter 4 of Part 1 of the Housing (Scotland) Act 2006 established the Repairing Standard. The Repairing Standard applies to the most private sector tenancies and those relatively few public sector tenancies which are not Scottish secure tenancies or short Scottish secure tenancies. The Repairing Standard also applies to a tied house, i.e. a house occupied by a person under that person's terms of employment. Occupancy arrangements which are not leases (e.g. when people are living in hostels or other short-term accommodation) are not covered. The Repairing Standard applies even if the tenancy predates 2007.

4. To meet the Repairing Standard, a landlord must ensure that:

- **the house is wind and water tight and reasonably fit for human habitation** (taking account of any extent to which the house falls short of any building regulations, because of disrepair or sanitary defects);
- **the structure and exterior of the house** (including drains, gutters and external pipes) **are in reasonable repair and proper working order** (having regard to the house's age, character and prospective life and the locality). Where the house forms part of premises (e.g. a flat), this criterion includes any part of the premises that the owner is responsible for maintaining, solely or communally, but the Repairing Standard only applies if any part of, or anything in, the premises that the tenant is entitled to use is adversely affected;
- **the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in reasonable repair and proper working order** (including installations outside the house but serving it, and which the owner is responsible for maintaining, solely or communally);
- **any fixtures, fittings and appliances provided under the tenancy are in reasonable repair and proper working order.** the Repairing Standard does not require that landlords provide appliances, but if they are provided they must be in reasonable repair and proper working order;

- **any furnishings provided under the tenancy are capable of being used safely for the purpose for which they are designed.** The Repairing Standard does not require that landlords provide furnishings, but if they are provided they must be capable of being used safely; and
- **there is satisfactory provision for detecting and giving warning of fires.**

5. It is a landlord's duty to ensure that a house meets the Repairing Standard at the start of the tenancy and at all times during it. The landlord (or someone authorised by the landlord) must inspect the house before the tenancy starts, in order to identify work necessary to meet the Repairing Standard, and must notify the tenant of any such work. The landlord should carry out the pre-tenancy inspection in time to deal with any necessary repairs before the tenancy begins. Once the tenancy has begun, the duty only applies where the landlord is aware that work is required, for example because the tenant has notified the landlord. It is good practice for landlords to advise tenants how to report repairs during the tenancy (for example, by notifying their agent or by email).

6. In order to comply with the duty, the landlord must carry out any necessary work within a reasonable time. (The meaning of "a reasonable time" will obviously depend upon the nature and urgency of the work.) It would be helpful if the landlord could indicate to the tenant how long work is likely to take; apart from keeping the tenant informed, this could prevent the tenant from making an unnecessary application to the Private Rented Housing Panel. The 2006 Act gives a landlord (or someone authorised by the landlord) a right of entry to check whether the house meets the Repairing Standard and to carry out any work necessary to meet it or to comply with a repairing standard enforcement order. But landlords and their agents must give tenants reasonable notice that they intend to carry out an inspection or work on the house.

7. The Repairing Standard includes common parts of tenements and other kinds of flats (e.g. roofs and shared close) if:

- The landlord is responsible as owner for maintaining those parts of the building, even if that responsibility is shared with other owners in the building, **and**
- The part of the building that the tenant is entitled to use is adversely affected by the disrepair to the common part.

8. The Act specifies exceptions to the landlord's duty to repair, for example, when the tenant is required to carry out work by the terms of a tenancy lasting for at least three years (and which cannot be terminated within that period), or when the landlord lacks rights necessary to carry out work (e.g. rights of access), despite having taken reasonable steps to acquire them. Contracting out from the landlord's duty to repair is prohibited, unless an application is made to the sheriff to contract out wholly or partly, both the landlord and the tenant consent, and the sheriff is satisfied that such action is reasonable.

The Private Rented Housing Panel

9. The 2006 Act created the Private Rented Housing Panel (PRHP), which is an expanded version of the former Rent Assessment Panel. A tenant who believes that the landlord has failed to comply with the duty to meet the Repairing Standard can apply to the PRHP. The tenant must have notified the landlord that the work requires to be done and has to provide the PRHP with details of how this notification has been made. An application cannot be made if the landlord is a local authority landlord, a registered social landlord or Scottish Water, even though the Repairing Standard may apply to some of their houses. Tenants in these cases have access to a formal complaints system, backed up by the Scottish Public Services Ombudsman.

10. The PRHP will consider whether cases can be resolved by the tenant and landlord, including the possibility of mediation. Cases accepted by the PRHP are heard by Private Rented Housing Committees, which have powers to require landlords to carry out repairs by issuing a repairing standard enforcement order. If a landlord fails to comply with an enforcement order, the PRHP may issue a rent relief order, which will reduce rent paid under the tenancy by up to 90%. If a landlord will not or cannot do the work, the local authority may carry it out and recover its costs.

11. It is a criminal offence if a landlord fails to comply with a repairing standard enforcement order without reasonable excuse. It is also a criminal offence for a landlord to enter into a tenancy or occupancy arrangement relating to a house subject to a repairing standard enforcement order without the consent of the Private Rented Housing Committee. Under the Antisocial Behaviour etc. (Scotland) Act 2004 as amended by the Private Rented Housing (Scotland) Act 2011, a repairing standard enforcement order is relevant to a decision by a local authority whether a landlord meets the “fit and proper person” test.

12. The decisions of the PRHP are published on their website and are searchable by postcode at <http://www.prhpscotland.gov.uk/prhp/221.html>. Repairing standard enforcement orders are also recorded on the landlord register, which is also searchable online at www.landlordregistrationscotland.gov.uk/.

13. Information about the PRHP is available at www.prhpscotland.gov.uk or from

Private Rented Housing Panel
Europa Building
450 Argyle Street
Glasgow
G28LH

Tel: 0141 242 0142

Email: prhpadmin@scotland.gsi.gov.uk

Guidance

14. Regard must be had to statutory guidance issued under section 20(2) when carrying out the landlord's legal obligation to provide a tenant with written information about the effect of the Chapter 4 provisions (i.e. the Repairing Standard and PRHP) in relation to the tenancy.
15. Under section 13(5) landlords should also have regard to Scottish Government guidance and building regulations in deciding whether a house to which the Repairing Standard applies has satisfactory provision for detecting and giving warning of fires.
16. Guidance under both sections has been issued and is set out below.
17. Any enquiries about the guidance should be directed to:

**Directorate for Housing, Regeneration and Welfare
Scottish Government
Highlander House
58 Waterloo Street
Glasgow G27DA**

Tel. 0141 271 3786

Email: Housing_Information@scotland.gsi.gov.uk

HOUSING (SCOTLAND) ACT 2006: SCOTTISH GOVERNMENT GUIDANCE ON SATISFACTORY PROVISION FOR DETECTING AND WARNING OF FIRES

1. Section 13(1) of the Housing (Scotland) Act 2006 sets out the criteria that must be met if a house is to comply with the Repairing Standard. One part of the Repairing Standard is that a house should have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. There are more than 7000 reported fires in dwellings (e.g. houses, flats and maisonettes) every year in Scotland. Fires can have a devastating effect on the lives of people and results in around 60 deaths and 1700 injuries each year. According to national fire statistics dwelling fires in which smoke alarms raise the alarm continue to:

- be discovered more rapidly (less than 5 minutes) after ignition; and
- be associated with lower fatal casualty rates.

2. The installation of smoke and fire detectors is intended to reduce the risk of fire and the consequent loss of life, injury and damage to property. Because of these dangers, the Repairing Standard sets a high benchmark for smoke and fire detection, matching the standard required for new building and which is higher than many owner-occupiers will meet for their own homes. All privately rented homes should, if at all possible, meet this standard. However, the most important thing is that there should be some provision to detect fires and that this should be operational and in good working order.

3. As stated in section 13(5) of the 2006 Act, in deciding whether this standard is met in relation to the fire safety standard, regard must be had to any building regulations and any guidance on the subject issued by the Scottish Ministers.

4. Building regulations set out the essential standards to be met when building work or a conversion takes place. The reference to building regulations in the Repairing Standard does not mean that privately rented property must always comply with building regulations. However, landlords should be aware of what the building regulations say in relation to smoke and fire detectors and have regard to those regulations in assessing what level of smoke and fire detectors are needed to ensure that the home has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. This means that landlords should either install smoke and fire detectors that meet the standard set by building regulations or be able to justify why a lesser level of protection is appropriate in a particular home. Reasons why a lesser level of protection might be appropriate could include:

- Where the proximity of an open fireplace would make a detector impracticable,
- Where the cost of installing detectors would be prohibitive (this is more likely to be due to the cost of structural alterations necessary to install detectors rather than the cost of the detectors themselves)
- Where the landlord intends to install detectors within a reasonable timescale as part of a programme of upgrading property.

5. Landlords are entitled to rely on professional advice from qualified electricians on their compliance with the standards in building regulations.
6. Landlords should note that building standards were amended from 1 October 2010, and revised technical guidance has been issued by Building Standards Division (Technical Handbooks 2013: – Domestic – Fire, <http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/publications/pubtech/th2013dom2>).
7. The revised Domestic Technical Handbook guidance states there should be at least:
- one functioning smoke alarm in the^{*} room which is frequently used by the occupants for general daytime living purposes,
 - one functioning smoke alarm in every circulation space, such as hallways and landings,
 - one heat alarm in every kitchen, and
 - all alarms should be interlinked.
8. When the Repairing Standard was introduced (3 September 2007) the building standards regulations required that there should be one or more than one functioning smoke alarm installed in the house, the number and position of alarms to be determined by the size and layout of the house. There was normally to be at least one smoke alarm on each floor. If there were multiple alarms, they should be interlinked. A smoke alarm installed from 3 September 2007 onwards had to be mains powered with a standby power supply. Note that the manufacturer's recommended life span of a fire alarm is usually 5-10 years and all battery-powered fire alarms in private rented houses should hardwired when they are replaced.
9. If there is a requirement for the house to meet a more stringent standard of provision for detecting and giving warning of fire (for example, in a house in multiple occupation (HMO) requiring to be licensed, or under building regulations), then the Repairing Standard criterion is only to be regarded as met if that requirement is met. An alarm should be installed in accordance with the recommendations contained in the British Standard on the design of fire detection installations for dwellings (BS5839 Part 6) in conjunction with the Domestic Technical Handbook guidance under Standard 2.11 Communication. The fitting of a hardwired smoke/heat alarm system may require a building warrant and landlords should consult the Building Standards department of the local authority.
10. The repairing standard does not include carbon monoxide alarms. At least 50 people die of carbon monoxide poisoning every year in the UK and installation of carbon monoxide alarms is recommended as good practice. However, from 1 October 2013 Scottish building regulations require carbon monoxide detectors to be fitted when a new or replacement boiler or other fixed heating appliance is installed in a dwelling.

* Text amended September 2014. Building regulations were updated in May 2014 and the word "every" was replaced by "the" in clause 2.11.1 of the technical handbook. See <http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/techbooks/techhandbooks/therrt14>.

The need for carbon monoxide detection applies to any fixed heating appliance powered by a carbon based fuel, that is, gas (both mains and liquid petroleum gas), oil and solid fuel (coal, coke, wood, wood pellets, etc.).

11. Landlords should ensure that smoke and heat alarms are regularly maintained in accordance with the manufacturer's recommendations.

12. It is recommended as good practice that landlords advise tenants to test alarms on a weekly basis. It is also recommended that landlords should advise tenants not to tamper with alarms.

13. The risk of fire can be reduced by ensuring the electrical installations and appliances are safe. It is also part of the Repairing Standard that the installations in the house for the supply of electricity and any appliances provided by the landlord are in a reasonable state of repair and in proper working order. The Electrical Safety Council suggest that the best way for landlords to comply with this is by having a registered electrician carry out an inspection and test of the electrical installation (known as an Electrical Installation Condition Report) and Portable Appliance Testing at suitable intervals. Landlords may also wish to provide advice for tenants on ensuring the safety of any appliances brought into the house by the tenants.

14. Before a tenancy commences, landlords should:

- Carry out an inspection check to confirm that the house meets the repairing standard (required by section 19 of the Housing (Scotland) Act 2006, see page 3 of this advice pack).
- Provide a new tenant with a copy of a gas safety certificate (required by regulation 36 of the Gas Safety (Installation and Use) Regulations 1998).
- Provide a new tenant with a copy of an electrical safety certificate (best practice).
- Provide a new tenant with a copy of a valid energy performance certificate (required by the Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012).

15. The Scottish Fire and Rescue Service (SFRS) offer free home (i.e. domestic premises) fire safety visits (HFSVs) comprising an assessment of fire risk within the home at that time and the provision of advice on preventing fires, avoiding fire spread and formulating an escape plan in event of fire. Additionally, SFRS staff may on occasion, if available and appropriate, fit long life battery operated smoke and heat alarm(s). Note that a HFSV is neither a substitute for responsible persons complying with their specific legal obligations under the Fire (Scotland) Act 2005 nor does it signify compliance by persons with any other legislative requirement or standard. To arrange a free Home Fire Safety Visit: call 0800 0731 999; or visit www.firescotland.gov.uk.

HOUSING (SCOTLAND) ACT 2006: STATUTORY GUIDANCE ON TENANT'S RIGHT TO INFORMATION ABOUT LANDLORD'S DUTY

1. Section 20(1) of the Housing (Scotland) Act 2006 states that, at the beginning of the tenancy or earlier, the landlord is required to provide the tenant with written information on the effect of the Repairing Standard provisions (including the means of enforcing the standard) in relation to the tenancy. This requirement has applied to tenancies starting from 3 September 2007 onwards. The requirement to provide information also applies to local authorities and other social landlords where they are parties to tenancies to which the Repairing Standard applies. The Scottish Ministers may, under section 20(2), issue guidance to such persons as they think fit on the form and content of such information and the manner of its provision. A landlord to whom such guidance is issued must have regard to it. The Scottish Ministers may vary or revoke any such guidance issued. This revised guidance has been issued to take account of the introduction of the Tenant Information Pack.
2. The Scottish Ministers advise that the landlord will comply with the requirement when he or she provides the tenant with a copy of the Tenant Information Pack as required under section 30A of the Housing (Scotland) Act 1988. The Tenant Information Pack is published online at <http://www.scotland.gov.uk/tenant/info>.
3. In addition, a landlord may wish to provide the tenant with a copy of the **Brief Guide For Tenants** produced by the Private Rented Housing Panel (<http://www.prhpscotland.gov.uk/prhp/files/a-brief-guide-for-tenants.pdf>).

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