

THE HOUSING (SCOTLAND) ACT 2006 (MODIFICATION OF THE REPAIRING STANDARD) REGULATIONS 2019

THE HOUSING (SCOTLAND) ACT 2006 (SUPPLEMENTAL PROVISION) ORDER 2019

Summary of measures in these instruments

- 1. Tolerable Standard.** The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019 (“the Modification Regulations”) inserts a new element in the repairing standard to provide that a house must meet the statutory tolerable standard. The tolerable standard is the minimum standard for all housing, and a house which is below this standard is considered to be unfit for human habitation. This amendment will ensure that any work required to comply can also be raised in an application by a private tenant to the First-tier Tribunal. Because this is not a change to the standard of housing that private landlords should provide, it will come into force **from 1 March 2019**.
- 2. Safe Kitchens.** The Modification Regulations insert a new element in the repairing standard to have safely accessible food storage and food preparation space. This will be supported by Scottish Government guidance. We have previously committed to allow landlords five years to carry out work to bring housing up to new elements in the standard, so this will come into force **from 1 March 2024**.
- 3. Fixed Heating System.** The Modification Regulations amend the existing duty to ensure that installations for the supply of heating are in a reasonable state of repair and in proper working order, by specifying that there must be a fixed heating system. This will be supported by Scottish Government guidance. Because it is a new element in the repairing standard it will come into force **from 1 March 2024**.
- 4. Safe Access to Common Parts.** The Modification Regulations amend the existing duty to ensure that the structure and exterior of the house is in a reasonable state of repair and in proper working order, by specifying that where the house is a flat in a tenement, the tenant is able to safely access and use any common parts of the tenement, such as common closes. Because it is a new element in the repairing standard it will come into force **from 1 March 2024**.
- 5. Consent to Work on Common Parts.** The Housing (Scotland) Act 2006 (Supplemental Provision) Order 2019 amends section 16 of the Housing (Scotland) Act 2006, which deals with exceptions to the landlord’s repairing duty, to make it clear that a house which is a flat in a tenement does not fail the repairing standard if work otherwise needed to comply with the standard cannot be carried out because a majority of owners in the tenement have refused consent to carry out the work. This clarifies existing legislation and will come into force **from 1 March 2019**.

6. **Safe and Secure Common Doors.** The Modification Regulations amend the existing duty to ensure fire safety, by specifying that common doors must be secure and fitted with satisfactory locks. This will be supported by Scottish Government guidance which will specify that locks must allow users to open them from the inside without a key so that they do not inhibit exit in the event of a fire. Because it is a new element in the repairing standard it will come into force **from 1 March 2024.**
7. **Residual Current Devices.** The Modification Regulations amend the existing duty to ensure that installations for the supply of electricity are in a reasonable state of repair and in proper working order, by specifying that these must include a residual current device (a device to reduce the risk of electrocution and fire by breaking the circuit in the event of a fault). We will revise existing guidance on electrical safety to include this measure. Because it is a new element in the repairing standard it will come into force **from 1 March 2024.**
8. **Other Fuels.** The Modification Regulations amend the existing duty to ensure that installations for the supply of gas and electricity are in a reasonable state of repair and in proper working order, by adding a reference to any other type of fuel. Because it is a new element in the repairing standard it will come into force **from 1 March 2024.**
9. **Holiday Lets.** The Modification Regulations amend the list of tenancies to which the repairing standard does not apply, by adding tenancies of less than 31 days for the purpose of a holiday. This makes it clear that short holiday lets are not subject to the repairing standard. Currently this depends on whether a holiday let is treated as a tenancy or an occupancy arrangement and this is not always clear. Holiday lets are subject to other rules on non-domestic residential accommodation and it is not appropriate for them to be subject to the repairing standard as well. Longer lets may be subject to the repairing standard depending on the circumstances of the case. Because this clarifies the existing legislation it will come into force **from 1 March 2019.**
10. **Agricultural Tenancies.** The Modification Regulations amend the list of tenancies to which the repairing standard does not apply, by removing the existing exclusion for various types of tenancy on agricultural land. This meets the objective, announced by the Minister and Cabinet Secretary for the Rural Economy at the Agricultural Housing Summit on 1 October 2018, for housing in this sector to meet the repairing standard within 8 years. This provision will come into force **from 28 March 2027.**
11. **Fire and Smoke Alarms.** The current standards for provision of fire and smoke alarms, and for carbon monoxide alarms, in private rented housing will be extended to all tenures by the Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criteria) Order 2019, coming into force from 1 February 2021). Because this duty will be inserted into the tolerable standard it does not need to be included in the repairing standard, and is therefore removed. To align with the changes to the tolerable standard, this measure will come into force **from 1 February 2021.**

12. **Guidance.** Landlords are currently required to have regard to building regulations and guidance issued by Scottish Ministers on electrical safety inspections, fire and smoke alarms, and carbon monoxide alarms. The Modification Regulations replace this with a provision to have regard to guidance on a number of specific parts of the repairing standard. We propose to develop this guidance with stakeholders over a period of 12-18 months following the coming into force of the regulations, so that it is in place well before the new elements of the standard are required. Stakeholders will be given an opportunity to contribute to and comment on the guidance as it is drafted.
13. **Lead Pipes - Guidance.** There is an existing duty to ensure that installations for the supply of water are in a reasonable state of repair and in proper working order. The Modification Regulations will allow the Scottish Government to provide guidance, to which landlords must have regard, on the condition of pipes supplying water for human consumption. We intend that the guidance should specify that the house should be free of lead pipes from the boundary stopcock to the kitchen tap, and that if this cannot be confirmed, a water quality test must be carried out. The power to make guidance will come into force from 1 March 2019, but it is our intention to publish guidance on this point together with other guidance on new elements in the repairing standard so that it applies to private rented housing **from 1 March 2024**

Scottish Government
14 February 2018