**Common Housing Quality Standard Forum**

**Supplement to Topic Papers**

**Purpose**

1. This paper collects some points arising from the seven topic papers considered by the Common Housing Quality Standard Forum.[[1]](#footnote-1)

**Housing and Human Rights**

2. There is a recommended standard for adequate housing under EU human rights legislation.[[2]](#footnote-2) The Scottish Human Rights Commission suggests that the tolerable standard should be reviewed to ensure that it meets the habitability standard above.[[3]](#footnote-3) The habitability standard says that adequate housing must provide occupants with adequate space and protect them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors, and that their physical safety must be guaranteed as well. Other standards included in the right to adequate housing are:

security of tenure,

availability of services, materials, facilities and infrastructure,

affordability,

accessibility,

location, and

cultural adequacy.

**Disrepair and the tolerable standard** (see paper 1, para 35)

3. In paper 1 we considered essential fabric elements of a common standard. One issue we looked at was serious disrepair. Serious disrepair is not an element of the tolerable standard. We have noted that there is a similar standard in Northern Ireland that does include serious disrepair, and this could be a model for an amendment to the Scottish standard.[[4]](#footnote-4)

**Safety elements – child safety** (see paper 2)

4. One stakeholder recommended two additional elements relevant to child safety. The first was for cupboard safety latches which make it difficult for small children to open cupboards which may contain harmful substances. The other was for blind cord cleats to help address the increasing number of injuries and fatalities caused by children being tangled in blind cords. It was acknowledged that this may be difficult to monitor but has the potential to help protect children in the home. The respondent advised that new European standards introduces in 2014 require that new builds must be ‘safe by design’ or have child safety devices installed.

**Changes to private rented tenancies** (see paper 3, para 11)

5. In paper 3 we noted that the repairing standard applies principally to assured and short assured tenancies in private rented homes. This will be amended by the changeover to the new private residential tenancies.[[5]](#footnote-5)

**Agricultural tenancies** (see paper 3, paras 15-19)

6. During the last Parliament the Cabinet Secretary for Rural Affairs, Food and Environment agreed that action was needed to improve the condition of some agricultural tenancies, but that comprehensive research was first needed to assess the range of issues, including costs, that must be addressed to bring houses up to standard.[[6]](#footnote-6)An options paper is being prepared for the new Cabinet Secretary’s consideration.

**Noise insulation** (see paper 4)

7. Noise insulation was not considered in the possible elements of an amenity standard. However, it is an issue known to affect occupiers in tenements. The amount of impact noise transmitted onto the dwelling below increases considerably when soft floor covering such as a carpet is removed to be replaced by a hard floor finish.

8. There are insulation grants for excessive noise caused by new road traffic developments.[[7]](#footnote-7) Element 43 of the Scottish Housing Quality Standard requires social housing to have adequate noise insulation from certain external sources of noise such as trunk road traffic, airport runways, railway tracks or industrial premises.[[8]](#footnote-8) There is no requirement to provide noise insulation from internal sources of noise from other people, objects or activities in neighbouring properties.

9. Local authorities have powers to secure the abatement of a statutory nuisance, and this includes noise which they determine to be either prejudicial to health or a nuisance.[[9]](#footnote-9) There are also statutory provisions on noise levels in antisocial behaviour legislation. These include prescribed levels of permitted noise and take account of the complexities of measurement and underlying noise factors.[[10]](#footnote-10) However, if people are going about their normal day to day activity and the resulting noise problem is due to poor sound insulation then an abatement notice is unlikely to be served. Edinburgh Council have a requirement for floor coverings in HMO properties. <http://www.edinburgh.gov.uk/info/20058/private_housing/372/houses_in_multiple_occupation_hmo>

10. Some social landlords specify in tenancy agreements that tenants are not allowed to fit laminate flooring without permission. These generally follow wording recommended in the DEFRA draft *Guide for the Control of Noise from Laminate and Wooden Flooring Surfaces*[[11]](#footnote-11) Scottish Government guidance on *Neighbour Noise between Flats* recognises the problem and suggests good practice, but concludes that there are limited options to address the problem.[[12]](#footnote-12)

11. We think that a noise insulation element should be considered as part of a common parts and interest standard for occupiers in tenements. This might help to prevent changes to flooring which adversely affect other occupiers and might make it easier for local authorities to require work to be carried out where problems arise.

**Looking after your home – gas and electrical safety checks** (see paper 5, annex)

12. In the draft guidance for owners on looking after homes, it may be helpful to add some specific advice on periodic gas and electrical safety checks. This could tie in to proposals to ensure that the same standards are specified in social and private rented homes. The suggested additional text is underlined below:

Make sure that electrical and gas supplies are safe to use by arranging a regular inspection. Gas installations should be checked annually and electrical installations every ten years (5 years for rented property). Installing residual current devices (RCDs) offers a level of protection that ordinary fuses and circuit-breakers cannot provide.

**Enforcement and improvement by tenants** (see paper 3, para 20 and paper 7, paras 16-17)

13. In paper 7 we noted the role of the private rented housing panel in enforcing the repairing standard. We have also looked at options for standards for private and social rented housing closer, and in paper 3 there is a summary of differences between these standards. We think it would also be useful to compare the rights of tenants to get work done on their homes.

|  | **Private Sector** | **Social Sector** |
| --- | --- | --- |
| Right to make alterations and improvements | Only with landlord’s consent | Only with landlord’s consent, but consent must not be unreasonably withheld [[13]](#footnote-13) |
| Compensation for improvements | At landlord’s discretion | Compensation for qualifying work carried out with the landlord’s consent, at end of tenancy and subject to depreciation [[14]](#footnote-14) |
| Timescale for repairs | Within a reasonable time of being notified [[15]](#footnote-15) | Some specified small repairs within a fixed number of working days,[[16]](#footnote-16) otherwise within a reasonable time of being notified [[17]](#footnote-17) |
| Choice about when work is done | At landlord’s discretion | Tenants must be given reasonable choices about when work is done [[18]](#footnote-18) |
| Damage caused during repair work | No statutory duty but possibly common law liability [[19]](#footnote-19) | Right to reinstatement or compensation for damage to house or property in connection with inspections, repairs or improvements or entry [[20]](#footnote-20) |
| Right of appeal | Right to apply to the Private Rented Housing Panel for determination [[21]](#footnote-21) (and local authority has discretionary power to make third party applications on behalf of tenants) [[22]](#footnote-22) | Right of complaint to landlord and escalation to Scottish Public Services Ombudsman,[[23]](#footnote-23) in cases of significant performance failure can report to the Scottish Housing Regulator [[24]](#footnote-24) |
| Enforcement | Repairing Standard Enforcement Order,[[25]](#footnote-25) Rent Relief Order,[[26]](#footnote-26) referral to local authority to carry out work,[[27]](#footnote-27) statutory offence [[28]](#footnote-28) | There are no formal enforcement powers for complaints or the Ombudsman, but the tenant has the right to carry out repairs if the landlord fails to do them,[[29]](#footnote-29) and the Regulator has regulatory intervention powers in cases of serious performance failure [[30]](#footnote-30) |

14. We think that the differences between enforcement and improvement by tenants in social and private rented homes would be an obstacle to a single common rented standard, but would not prevent changes to existing standards to ensure that all kinds of rents are covered and that standards are consistent across sectors.

**Comments**

15. We have not asked any structured questions for this paper but we invite any comments from members of the forum on either points raised in this paper or on any other issue considered in previous topic papers or otherwise considered relevant to consideration of a common housing quality standard.

**Scottish Government**

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1. <http://www.gov.scot/Topics/Built-Environment/Housing/sustainable/quality> [↑](#footnote-ref-1)
2. Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), <https://www1.umn.edu/humanrts/gencomm/epcomm4.htm>. [↑](#footnote-ref-2)
3. The Scottish Human Rights Commission Submission to the United Nation’s Committee on Economic Social and Cultural Rights for the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, April 2016, footnote 134, <http://www.scottishhumanrights.com/resources/policysubmissions/icescr2016> [↑](#footnote-ref-3)
4. Housing (Northern Ireland) Order 1981, article 46, as substituted by Housing (Northern Ireland) Order 1992, Schedule 5,.<http://www.legislation.gov.uk/nisi/1981/156/article/46> [↑](#footnote-ref-4)
5. Private Housing (Tenancies) Scotland Act 2016, Schedule 5, <http://www.legislation.gov.uk/asp/2016/19/schedule/5> [↑](#footnote-ref-5)
6. Official Report of the Rural Affairs, Climate Change and Environment Committee for 10 February 2016, <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10368> [↑](#footnote-ref-6)
7. Noise from Roads, <http://www.transport.gov.scot/report/j11747-00.htm> [↑](#footnote-ref-7)
8. SHQS Annex E, <http://www.gov.scot/Topics/Built-Environment/Housing/16342/shqs/AppendixE> [↑](#footnote-ref-8)
9. Environmental Protection Act 1990, sections 79-80, <http://www.legislation.gov.uk/ukpga/1990/43/part/III/crossheading/statutory-nuisances-england-and-wales> (provisions applying in Scotland are reproduced following each section) [↑](#footnote-ref-9)
10. The Antisocial Behaviour (Noise Control) (Scotland) Regulations 2005 (SSI 2005/43), <http://www.legislation.gov.uk/ssi/2005/43/contents/made>, and Guidance on Noise Nuisance, <http://www.gov.scot/Publications/2004/10/20151/45699> [↑](#footnote-ref-10)
11. The Development and Production of a guide for noise Control from Laminate and Wooden Flooring (2005), Annex A, <http://www.gov.scot/resource/doc/37428/0009545.pdf> [↑](#footnote-ref-11)
12. Neighbour Noise Between Flats: The Influence of Laminate and Hardwood Flooring, <http://www.gov.scot/Publications/2006/10/02102752/1> [↑](#footnote-ref-12)
13. Housing (Scotland) Act 2001, section 28(1), <http://www.legislation.gov.uk/asp/2001/10/section/28> [↑](#footnote-ref-13)
14. Housing (Scotland) Act 2001, section 30 and the Scottish Secure Tenants (Compensation for Improvements) Regulations 2002 (SSI 2002/312), see “Right to Compensation for Improvements”, <http://www.gov.scot/Publications/2002/09/15486/11216> [↑](#footnote-ref-14)
15. Housing (Scotland) Act 2006, section 14(4), <http://www.legislation.gov.uk/asp/2006/1/section/14> [↑](#footnote-ref-15)
16. The Scottish Secure Tenants (Right to Repair) Regulations 2002 (SSI 2002/316), see “Right to Repair”, <http://www.gov.scot/Publications/2002/09/15485/11214> [↑](#footnote-ref-16)
17. Housing (Scotland) Act 2001, Schedule 4, para 3, <http://www.legislation.gov.uk/asp/2001/10/schedule/4> [↑](#footnote-ref-17)
18. Scottish Social Housing Charter, outcome 5, <http://www.gov.scot/Publications/2012/03/2602/0> [↑](#footnote-ref-18)
19. The legal commentary on the reference in the next footnote refers to a common law duty and cites McGreal v Wake (1984) 128 SJ 11, see <http://www.gov.scot/Publications/2002/09/15391/10809> [↑](#footnote-ref-19)
20. Model Revised Scottish Secure Tenancy Agreement, para 5.14, <http://www.gov.scot/Publications/2002/09/15391/10796> [↑](#footnote-ref-20)
21. Housing (Scotland) Act 2006, section 22(1), <http://www.legislation.gov.uk/asp/2006/1/section/22> [↑](#footnote-ref-21)
22. Housing (Scotland) Act 2006, section 22(1A)-(1B), inserted by Housing (Scotland) Act 2014, section 25, <http://www.legislation.gov.uk/asp/2014/14/section/25> [↑](#footnote-ref-22)
23. Scottish Public Services Ombudsman Act 2002, Schedule 2, paras 7 and 17, <http://www.legislation.gov.uk/asp/2002/11/schedule/2> [↑](#footnote-ref-23)
24. Housing (Scotland) Act 2010, section 47, <http://www.legislation.gov.uk/asp/2010/17/section/47>, and see <https://www.scottishhousingregulator.gov.uk/what-we-do/raising-concerns-about-landlord> [↑](#footnote-ref-24)
25. Housing (Scotland) Act 2006, section 24(2), <http://www.legislation.gov.uk/asp/2006/1/section/24> [↑](#footnote-ref-25)
26. Housing (Scotland) Act 2006, section 27, <http://www.legislation.gov.uk/asp/2006/1/section/27> [↑](#footnote-ref-26)
27. Housing (Scotland) Act 2006, section 36, <http://www.legislation.gov.uk/asp/2006/1/section/36> [↑](#footnote-ref-27)
28. Housing (Scotland) Act 2006, section 28(1), <http://www.legislation.gov.uk/asp/2006/1/section/28> [↑](#footnote-ref-28)
29. See footnote 20, para 5.19 [↑](#footnote-ref-29)
30. Housing (Scotland) Act 2010, section 52, <http://www.legislation.gov.uk/asp/2010/17/section/52> [↑](#footnote-ref-30)