



Housing Services: Right to Repair and Right to Compensation for Improvements Policy

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This policy is available, on request, in different formats such as audio format, Braille and in large print. It can also be made available in other languages on request.

Foreword

Orkney Islands Council is committed to ensuring that its Right to Repair and Right to Compensation for Improvements Policy meets all relevant legal and good practice requirements. It is also committed to providing an overall repairs service that is subject to continuous improvement. This commitment involves regular review of service delivery that satisfies the following principles:

Firstly, we will continually challenge all aspects of our repair services ensuring overall efficiency and effectiveness.

Secondly, we will compare service provision regularly against agreed targets, as well as good practice initiatives elsewhere.

Thirdly, we will consult with tenants and other service users in the development of this Right to Repair and Right to Compensation for Improvements Policy and related services. For example, consultation on our approach to repairs generally will be an integral part of our Tenant Participation Strategy.

Finally, we will provide all our repair services competitively to ensure value for money; this will include developing effective procurement and partnership arrangements.

In developing this Policy, we recognise that it is linked to a broad range of other strategic policies such as Tenant Participation and Voids (Empty House Policy) that aims to re-let empty housing as quickly as possible to minimise rental loss.

In line with these principles we will strive to provide services that are:

- Sustainable and minimise waste.
- Sensitive to the needs of individuals and offer customer satisfaction, for instance, advising tenants regularly of progress in meeting repair targets.
- Easily accessible, for example, well-publicised and clearly accountable.
- Conducive to staff welfare and safety.

This document has been produced by Housing Services and is intended to ensure that we:

“act in a manner which encourages equal opportunities and in particular the observance of the requirements of the law for the time being related to equal opportunities” (Housing (Scotland) Act 2010, Section 39).

In addition we aim to ensure that we meet the Scottish Social Housing Charter's Repairs, Maintenance and Improvements outcome and standard:

Social landlords manage their businesses so that:

- Tenants' homes are well maintained, with repairs and improvements carried out when required, and tenants are given reasonable choices about when work is done.

This outcome describes how landlords should meet their statutory duties on repairs and provide repairs, maintenance and improvement services that safeguard the value of their assets and take account of the wishes and preferences of their tenants. This could include setting repair priorities and timescales; setting repair standards such as getting repairs done right, on time, first time; and assessing tenant satisfaction with the quality of the services they receive.

In reviewing this policy we have taken into account the Counter Terrorism Act 2015 and related guidance and procedures. No specific measures are required in respect of our repairs and maintenance policy.

Signature of Chief Executive.

Section 1: Introduction

We recognise that a quality repairs and maintenance service is essential if tenants' rights and interests are to be protected. Moreover, repairs are central to an effective tenant and landlord relationship. Repair and maintenance issues, indeed form a large part of the Council's Tenancy Agreement that details contractual rights and obligations of both the Council and tenants.

In order to satisfy both law and regulatory standards, then, we have developed this Policy. This represents our commitment (a) to maintain our housing stock to quality standards and (b) to maximise tenant satisfaction.

Section 2: Aims and Objectives of Policy

1.1. We will aim to meet all legal and good practice repair requirements, in particular to satisfy the right to repair legislation and best value commitments. Section 3 details current legal obligations. Appendix 1 summarises the relevant legal provisions.

1.2. We will categorise repairs by specific categories and complete work within specified time scales. Emergency repairs will be minimised as far as possible. Compensation will be paid to tenants where certain repairs are not completed on time. We will ensure equal access to the maintenance service for all tenants.

1.3. We will ensure that maintenance work generally is carried out both effectively and efficiently, thus achieving value for money.

1.4. We will maintain our housing stock to a high standard to minimise future repairs work, as well as to maximise the life of the stock.

1.5. We will establish planned maintenance programmes in liaison with tenants and other service users such as owners where relevant. These programmes will cover works such as external pointing and painting of windows. Details of progress will be notified to tenants in accordance with our Tenant Participation Strategy.

1.6. We will consult with our tenants on our Right to Repair policy and any proposed changes prior to making changes. We will also ensure that tenants are aware of our Right to Repair policy through a variety of sources including:

- Tenants' Handbook.
- The Tenancy Agreement.
- Annual Reports.
- Newsletters.
- Website.

1.7. We will set quality standards that contractors must meet to be considered under tender procedures. This will include commitment by contractors to the principles of our Equality and Diversity Policy.

Section 11 outlines the key principles of our procurement strategy.

1.8. We will consult with tenants prior to setting repair budgets about the implications such budgets may have on rent levels.

1.9. We will seek to recover repair charges owed by tenants. Our Rechargeable policy is covered in section 6.

1.10. We will undertake tenant satisfaction surveys through a variety of methods as follows:

- Completion by tenants of our Repairs Satisfaction Surveys.
- Formal surveys, for example, using staff, consultants, or student research placements (every three years).

- Evaluation of complaints received.

1.11. We will ensure that training is provided to relevant staff on the following:

- Policy and procedures.
- Law and good practice requirements, including landlord obligations and tenants' rights.
- Specialist training, for example, building regulations, the Right to Repair.
- Equalities.
- Accessibility.
- Customer care.

1.12. We will treat all complaints seriously and implement our corporate complaints policy to redress complaints as quickly as possible.

1.13. We will monitor our performance through a system of performance indicators as outlined in the Annual Return against the Charter (Section 10).

1.14. We will review our Right to Repair policy on a regular basis and consult with tenants in this review.

Section 3: Legal Framework

3.1. Legal Repair Obligations

Legal provisions exist that govern our repair obligations. (Housing (Scotland) Act 2001, s27 and Schedule 4).

These obligations are as follows:

- To ensure at the beginning of the tenancy that (a) the house is wind and watertight and in all other respects reasonably fit for human habitation and (b) to keep the house in such condition throughout the tenancy.
- To inspect the house before the tenancy begins and identify any work required to meet the above standard. The tenant must also be notified of any such work.
- To carry out repairs to make the house wind and watertight and fit for habitation within a reasonable time of the need for such repairs being reported to us by the tenant, or whenever we become aware of the need for such repairs, for example, during a routine property inspection.
- To make good any damage that we cause in carrying out such repairs, for instance, damage to wall decorations.

We have a legal right to enter a house, at any reasonable time, to view its state and condition, or to carry out repair work needed to make the house wind and watertight. We must first give the tenant or occupier at least 24 hours notice in writing.

Under the Right to Repair legislation, we must carry out certain repairs within set time scales. Where we fail to do so, tenants are entitled to compensation. This is covered in Section 4.

The other main source of repair obligations is contained in the Scottish secure Tenancy Agreement signed by tenants. Information on these repair obligations is contained in section 5 of the Agreement.

The link to the Statutory Instrument which brought in the Right to Repair is available at Appendix 2. The link to the Statutory Instrument covering the Right to Compensation for Improvements is available at Appendix 3.

It is this aspect that this policy focuses on specifically. The Right to Repair is a very specific area of repairs legislation and therefore has been separated from our overall Repairs and Maintenance Policy.

Section 4: Repair Categories and Timescales

4.1. Repair Time Scales

We have categorised repairs under the following headings:

- If it is an **emergency** repair, we will respond within 4 hours and make safe within 24 hours. An emergency repair includes repairs affecting health, safety and security such as broken glass in external door or window, exposed live electrical fittings or wiring, no heating where no alternative is available, water leaking through roofs or ceiling.
- If it is an **urgent** repair, we will respond in 3 working days. Urgent repairs include repairs such as no hot water, toilet not flushing where there is only one, a constantly running hot or cold tap.
- If it is a **routine** repair, we will respond within 20 working days and these could include exterior repairs to doors and windows, repairs to kitchen or bathroom units, replacement of chimney cans, leaking rain water gutters.

Our Repairs and Maintenance Policy covers the above in greater detail.

4.2. Right to Repair Scheme

Scottish secure tenants have a right for certain repairs, known as “qualifying repairs”, to be completed within set time scales. Where we don’t complete repairs within time scales, tenants have a right to compensation unless one of the exceptions applies.

Tenants have the right also to request an alternative contractor to carry out these repairs where the Council’s main contractor has not started the repair work by the date required.

Where this alternative contractor fails to complete the repairs within the required time scales, further compensation must be paid to tenants. Full details of this Scheme are provided to all tenants, both when they start their tenancy and also annually in writing.

Section 5: Alterations and Improvements

Scottish secure tenants have a right to carry out work to their homes provided they first obtain our written consent. Such consent cannot be withheld unreasonably. (Housing (Scotland) Act 2001, s28).

Work means the following things:

- Improvements.
- Alterations.
- Enlargement of the house or any fittings / fixtures.
- Addition of new fittings / fixtures.
- Erection of a garage, shed or other structure.

When applications are received, we may consent to work, consent subject to reasonable conditions being met, or refuse consent where it is reasonable to do so. Conditions include standards the work should meet, for example, compliance with relevant building regulations.

We must notify tenants in writing of our decision within one month of receiving the formal written application (Housing (Scotland) Act 2001, Schedule 5, 4). Failure to respond means that consent is given automatically.

The application form is available by contacting our Housing Management Section on 873535. This form can be made available in different languages and other formats as required, including large print.

Where we refuse permission, tenants have a right of appeal to the sheriff court. In considering appeals, the sheriff will consider in particular:

- The safety of occupiers of the house or other premises.
- Any expenditure likely to be incurred by the Council in agreeing to the work.
- Whether the work is likely to reduce the value of the house, or make it less suitable for letting.
- Any effect which the work is likely to have on the extent of the accommodation.

(Housing (Scotland) Act 2001, Schedule 5, 8 (a) –(d)).

5.1. Right to Compensation for Improvements Scheme

The law provides for Scottish secure tenants to be compensated, in specific circumstances, for certain types of improvements to their homes when tenancies are ended, or assigned, that is, passed over to another person.

(The Housing (Scotland) Act 2001, sections 30 and 109(2) and the Scottish Secure Tenants (Compensation for Improvements) Regulations 2002).

Full details of this Scheme, including cases that qualify for compensation, are provided to all tenants, both when they start their tenancy and also annually in writing.

Tenants who are dissatisfied with our decision can have their case reviewed or reconsidered by an internal appeals panel. Should they remain dissatisfied with the decision taken after this appeal, tenants can also appeal to the sheriff court. Full details of this appeals process is notified to tenants as part of the general information they receive about the right to compensation scheme.

Section 6: Rechargeable Repairs

It is Council policy to recharge for repairs where:

- The repair has arisen due to wilful or deliberate damage and this damage was not caused by external vandalism*.
- The repair has arisen due to tenant neglect or inappropriate use of the property for instance damage caused by pets, damage caused following poor quality DIY/tenant repair or inappropriate steps being taken to address condensation.
- The repair arose as a result of poor keeping of property, breach of tenancy conditions of failing to address points raised during the pre-tenancy termination inspection.

*In cases of vandalism, this should be reported to the Police who will provide an incident number which should be recorded by the Council. The Council may pursue damages in consultation with Northern Constabulary.

The tenant is recharged for the work at the level detailed in the invoice the Council receives from the Contractors.

The tenant should pay the recharge within 30 days. Should they be unable to do so they can set up an arrangement for payment by contacting our Debtors Section on 873535.

Tenants have the right to appeal against recharges issued. In order to do so they should appeal in writing to the Head of Community Learning, Leisure and Housing clearly stating why they wish to appeal and any points of relevance. The Citizen's Advice Bureau can assist with this process.

Appeals are monitored and issues arising are used to inform future policy development.

Section 7: Tenants' Remedies

Tenants have a number of remedies available to them if we do not carry out our repair obligations. These may include appeals to the Sheriff Court, internal appeals and use of specific implement. Information on these remedies are available in the Tenants' Handbook and also the Tenancy Agreement.

Examples of possible remedies for tenants include:

- Exercising the statutory right to repair scheme by calling in an alternative contractor.
- Suing for damages where these have occurred due to the Council failing to carry out its contractual obligations.
- Carrying out repairs (by the tenant using a reputable firm) and deduction of reasonable costs from the rent provided the tenant has:
 - Given the Council notice of repairs.
 - Repairs have not been done within a reasonable time.
 - The tenant has lodged a formal complaint under the internal Complaints system.
 - The tenant is still not satisfied with the decision, or no decision has been made within 3 months of lodging the complaint under the Complaints system.

Section 8: Complaints

The Council has a corporate complaints procedure and information on this is available from our website, our complaints leaflet and from Orkney Citizen's Advice Bureau.

To obtain a copy of this leaflet please contact Customer Services on 873535.

Where a complaint is received which refers to the standard of work or conduct of workmen, this will be addressed in close consultation with the Contractors involved.

Section 9: Consultation Arrangements

This policy document deals specifically with the Right to Repair and the Right to Compensation for Improvements. Largely these processes are determined by legislative requirements but it is vital to provide efficient services to our tenants that are sensitive to the rights and needs of individuals, considerate to their individual situations and yet ensure that we maximise the use of our stock and ensure that our stock remains of a high standard.

The consultation arrangements for this document have been closely intertwined with our Tenant Participation Strategy, and our delivery of our Advice and Information Strategy to ensure that we provide good quality housing advice across all areas of our service and our continued drive to improve our strategic documents to ensure openness and clarity.

The process of consultation has involved:

- A small working group of officers and representatives from Orkney Islands Council have met to discuss how the policy might be developed to balance both the Right to Repair with Best Value and our existing Measured Term Contract. A similar discussion took place in relation to the Right to Compensation for Improvements.
- An audit of the existing arrangements for processing repairs and compensation and their effectiveness.
- A detailed assessment of our Repairs Satisfaction Survey results and any complaints relating to repairs.
- A review of best practice.
- Consultation with Staff.
- Consultation with relevant partner agencies.
- An article in the Housing News.

This policy has been developed taking into account the initial feedback. It will be reviewed regularly to ensure it remains reflective of this.

Section 10: Performance Monitoring

The Scottish Housing Regulator has developed a range of performance indicators around repairs through the Annual Return against the Charter and we monitor through this process primarily. We also monitor the following issues:

Repairs (excluding right to repair).

Numbers of repairs per category.

Completion rates by time scales per category:

- Emergency - 24 hours.
- Urgent - 3 working days.
- Routine - 20 working days.

Right to Repair Scheme.

- Number and percentage of qualifying repairs completed within time scales.
- Numbers of qualifying repairs as a percentage of total works.
- Numbers and levels of flat rate payments and payments to alternative contractors compensation payments.
- Numbers of times alternative contractors are contacted and used by trade.
- Numbers and levels of compensation to tenants who use alternative contractors.
- Numbers of repair visits by the contractor involving no access.
- Numbers of disputes, for example, disputes concerning access.

Right to Compensation for Improvements.

- Number of successful claims for compensation for improvements and types of improvements.
- Number of unsuccessful claims and reasons for refusal.
- Number of appeals and outcome.
- Levels of compensation paid.

Complaints.

- Types of complaints and outcomes.
- Types of complaints and timescales to address these.
- Number and types of complaints which must be dealt with by contractor such as those referring to conduct of workmen and outcomes.

Tenant Remedies.

Numbers of actions raised and outcomes.

(Internal Appeal, Appeal to Sheriff Court, Specific Implement etc).

Section 11: Procurement and Partnering

The Council's procurement strategy aims to meet the following principles:

- Balancing the needs of the Council and contractor as service provider.
- Ensuring that contractors know what standards they must meet.
- Making all potential service providers subject to the same requirements.
- Avoiding a restricted perspective on how services should be delivered.
- Auditing the procurement process to show contracts are awarded fairly based on a clear written policy on assessing tenders and granting contracts.

We have adopted a partnering approach to service delivery. This involves working with particular organisations to improve performance through mutually agreed objectives. Partnering is based on an ethos of trust and working jointly to ensure continuous improvement in service delivery.

Our partnering strategy aims to meet the following principles:

- Implement effective problem-solving initiatives.
- Mutual learning and sharing of specialist skills/knowledge.
- Developing contractor understanding of the Council's needs/preferences.
- Open book pricing not curtailed by adherence to rigid costing criteria.
- Long term approach so that "teams" are sustainable through time and, therefore, benefit from shared experience.

Appendix 1: Legal and Good Practice Framework

Housing (Scotland) Act 2001.

Housing (Scotland) Act 2010.

Scottish Statutory Instrument 2002 No. 316, The Scottish Secure Tenants (Right to Repair) Regulations 2002.

Scottish Statutory Instrument 2002 No. 312, The Scottish Secure Tenants (Compensation for Improvements) Regulations 2002.

Chartered Institute of Housing Standards.

Scottish Social Housing Charter 2017 (under review during 2021).

Appendix 2: Statutory Instrument (316)

Scottish Statutory Instrument 2002 No 316: The Scottish Secure Tenants (Right to Repair) Regulations 2002.

Available from: <https://www.legislation.gov.uk/ssi/2002/316/made>

Appendix 3: Statutory Instrument (312)

Scottish Statutory Instrument 2002 No 312: The Scottish Secure Tenants (Compensation for Improvement) Regulations 2002.

Available from: <https://www.legislation.gov.uk/ssi/2002/312/contents/made>