# **APPENDIX 11**

# **Local Housing Strategy**

# **2011-2016**

**Housing Renewal Area (HRA) Policy**

# This policy outlines how Falkirk Council will identify

# parts of its area for designation under Section 1

# (housing renewal areas) of the

# Housing (Scotland) Act 2006

# Contents

**Page**

**Introduction** 3

**Policy Context** 4

**Key Elements of an HRA** 6

**HRA Designation** 8

**Criteria for Determining an HRA** 12

**Implementation of an HRA** 16

**Levels of Assistance: Scheme of Assistance** 20

**Conclusion** 21

APPENDIX A: Reference Documents 22

APPENDIX B: Local Authority Powers: Conditions of Housing and 23

Neighbourhood

APPENDIX C: Enforcement Panel Flowchart 26

APPENDIX D: Part 9 – Rights of Entry 27

APPENDIX E: The Tolerable Standard, as amended by the Housing 28

(Scotland) Act 2006

APPENDIX F: Scottish Housing Quality Standard definition of Serious 29

Disrepair

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# Introduction

* 1. Housing Renewal Area designation is a power which enables a local authority to enforce housing standards.
  2. Falkirk Council’s use of this enforcement power will fit into the wider Scheme of Assistance process of assisting owners to maintain and improve the condition of their properties. Where voluntary action does not occur and where enforcement action is necessary, consideration will be given corporately to the use of this as well as all other powers available to the Council.
  3. The purpose of this policy is to outline the approach Falkirk Council will take in its consideration whether to designate any locality within the Falkirk Council area, as a Housing Renewal Area (HRA).
  4. This policy will outline:
     + - * The Policy Context
         * Key Elements of an HRA
         * HRA Designation
         * Criteria for determining an HRA
         * Implementation of an HRA
         * Level of Assistance: Scheme of Assistance
  5. Appendix A provides a list and internet links to reference documents detailed within this policy.

# Policy Context

****Introduction:****

* 1. This section explains the legislative background to the introduction of Housing Renewal Areas as well as highlighting the policy context in which this power sits.

****Background:****

* 1. In March 2001, the Scottish Executive established the Housing Improvement Task Force (HITF) to undertake a comprehensive review of private sector housing policy with a particular focus on property condition. In March 2003, their final report, ‘Stewardship and Responsibility’ was published, which contained a comprehensive set of recommendations to improve private sector housing.
  2. The report formed the basis of the Housing (Scotland) Act 2006 which received Royal Assent on 5th January 2006. The main purpose of the Act is to address problems of condition and quality in private sector housing.
  3. Part 1, Chapter 2 of the Act introduced three strategic duties which must be set out within the local housing strategy, namely:

(a) **Below Tolerable Standard Strategy**: which outlines how Falkirk Council will

seek to ensure that all properties

comply with this standard;

(b) **Housing Renewal Area Policy:** which outlines how Falkirk Council will identify parts of its area for HRA

designation;

(c) **Scheme of Assistance Strategy:** which outlines the assistance that

Falkirk Council will give to owners to

improve the condition of houses.

* 1. This policy addresses the Housing Renewal Area duty although all three documents are interconnected. Scottish Government Guidance is available for all elements of Parts 1 and 2 of the Housing (Scotland) Act 2006 (see Appendix A).

****Housing (Scotland) Act 2010:****

* 1. This policy has been updated in line with the changes introduced by the Housing (Scotland) Act 2010 which received Royal Assent on 9/12/10. Further information on the Act is available at: <http://www.legislation.gov.uk/asp/2010/17/contents/enacted>

Local Context:

* 1. This Policy currently links to the following corporate documents/ identified objectives:
* **Local Housing Strategy**
  + Reduction in the numbers of Below Tolerable Standard properties
* **Draft Strategic Community Plan 2010-15:**
  + Our open spaces with be attractive, accessible and safe
  + Transforming Places – town centre and other regeneration initiatives, as well the
  + HELIX and tourism;
* **Corporate Plan 2008-11**
  + Our open spaces will be attractive, accessible and safe
  1. This Policy covers the period of 2011–2016, which mirrors the lifespan and links into the strategic priorities of the developing Falkirk Council, Local Housing Strategy (LHS) 2011-16.
  2. In dealing with a HRA designation, equalities issues will be taken into account so that interventions will be appropriate to the needs of individuals. We will work to secure the assistance of other departments and organisations as necessary to support those with particular needs. An **Equalities Impact Assessment**, part of the process of devising the HRA Policy and Scheme of Assistance strategy, will help ensure Falkirk Council meets its obligations and commitments including those within the Falkirk Council Equal Opportunities Policy.

# Key Elements of an HRA

Introduction:

* 1. This section provides background information about Housing Renewal Areas and outlines:
* When an HRA designation can be made
* What an HRA can contain
* What an HRA Designation Order should contain, and
* Benefits of an HRA

When an HRA designation can be made:

* 1. A local authority can designate an HRA where it considers:

(a) *that a significant number of the houses in the locality are sub-standard, or*

Where houses are sub-standard, the HRA can outline the work required to bring a property up to and keep it in a state of reasonable repair.

(b) *that the appearance or state of repair of any houses in the locality is adversely*

*affecting the amenity of that locality.*

Where the amenity of an area is affected, the HRA can specify the work required

to enhance the amenity of an area.

What an HRA can contain:

* 1. An HRA can cover non-residential premises but only if they are part of or adjoining a building containing housing which is either sub-standard or affecting the amenity of the area and, the work or demolition is needed to deal with housing issues.
  2. An HRA can include within its identified boundaries, premises which are entirely non-residential as well as housing which is not sub-standard or affecting the amenity of the area. Discussion can take place around voluntary work but the Council cannot instruct any work or demolition to be carried out on properties of this nature under this enforcement power.

What an HRA Designation Order should contain:

* 1. In order for an area to be designated, a local authority must set out the reasons for designation; produce both a Map and an Action Plan.

Map of the proposed HRA: The map should delineate the area as well as mark

each house/ non-residential property within it so that it is clearly linked to the Action Plan.

HRA Action Plan: The action plan will identify each house or non-

residential property which requires works carried

out or demolished. It should also clarify any

houses and non-residential properties where no

works/ demolition are required but which fall

within the designated HRA boundary.

The action plan forms the basis upon which the

notices issued to each affected property/ premises will take. Any work detailed within the action plan must at least bring the property up to the Tolerable Standard.

Benefits of an HRA:

* 1. The benefits of using Housing Renewal Areas are:

**Amenity:** Housing that has a detrimental effect on the visual amenity

of the area can be tackled using Work Notices only if served

within an HRA;

**Safety and Security Work** e.g. Door Entry Systems and work to reduce the long-

term maintenance costs may be included within Work

Notices only if served within an HRA;

**Engagement** The consultation process may help increase voluntary

compliance with statutory notices (e.g. Work Notices,

Demolition Notices, Maintenance Orders);

**Demolition** Properties can be designated for demolition without a

Compulsory Purchase Order;

**Regeneration** HRA powers can help achieve aims of wider Regeneration

strategies.

# HRA Designation

Introduction:

* 1. HRA designation will be considered by Falkirk Council where:
* identified works have not been carried out, following officer assistance, or
* where problems within an area have been highlighted and evidenced (including in

the context of a wider regeneration strategy or plan) and

* all other available options have been discounted; and
* appropriate approval has been given
  1. The remainder of this section details the main steps in the process of designating an HRA, namely:

1. The sources of information that will be referred to in highlighting areas of concern

2. Internal process for assessing the collected data

3. Approval for draft HRA designation

4. Stages of Designation

Information Sources:

* 1. Areas of concern will be identified from a range of information sources available to the Council and are likely to include:
* All Tenure Local House Condition Survey
* Development Plan (including regeneration areas)
* Sasines Register of house sales data
* Internal cross-service information on properties in poor condition
* Cross-service complaints database, as well as
* Any other reliable source of information relevant to the exercise
  1. The above sources of information will be cross referenced with areas identified within Scottish Index for Multiple Deprivation (SIMD), associated ongoing/ planned works as well as larger area based regeneration plans. This information will also feed in to the BTS Strategy.
  2. Corporate and Neighbourhood Services will lead the collation and internal assessment of this information.
  3. As this policy is an integral part of the Local Housing Strategy the information collected in carrying out this exercise will be used to determine future housing priorities within Falkirk. The priorities contained within the LHS will affect those detailed within other corporate documents which will include the Corporate and Neighbourhood Service Plan, Local Plan and the Single Outcome Agreement.

Internal process for assessing data:

* 1. Based on the information collected, Corporate and Neighbourhood Services will carry out, in conjunction with other relevant Council services, an internal assessment of the nature and scale of any area exhibiting negative signs throughout the LHS period 2011-16.
  2. Areas identified by the above process will inform the Scheme of Assistance and help prioritise how assistance to owners is focused across the Falkirk Council area. Where Council assistance and voluntary action does not work, individual areas will be referred on to the Enforcement Panel for corporate consideration. The Enforcement Panel is a corporate group of Council officers representing relevant Council services. The group will meet on an ad hoc basis and cover the following issues:
* Landlord Registration Enforcement
* Determining the most appropriate corporate approach to take when enforcing private property conditions:
  + Issuing Notices
  + Carrying out works
  + Recharging costs
  + HRA consideration and, where appropriate, escalation for approval
  1. Appendix B outlines the powers currently available to Falkirk Council.
  2. In carrying out the assessment, the Enforcement Panel will consider amongst other issues:
* the nature and scale of the problem
* evidenced actions to date
* professional judgement of officers involved
* effect on house valuations
* effect on the wider community
* the impact that not taking action may have, and
* the available resources
  1. The above list is not exhaustive but outlines a number of areas where consideration will be given. Appendix C details a flowchart of the various decision-making processes of this panel.

Approval for draft HRA designation:

* 1. Where the Enforcement Panel determine that the most appropriate course of action would be to further investigate the area for a possible Housing Renewal Area designation, the Panel would delegate to appropriate panel members, the drafting of a report to be presented to Housing and Social Care Committee seeking authorisation to:
* Investigate the scale and number of properties likely to be affected
* Investigate the range of works likely to be required for each affected property
* Confirm the basis for the designation *(Sub-standard/ Amenity/ both)*
* Draft a Map and Action Plan
* Outline the resources required to deliver the provisional HRA
* Outline options for assistance to residents (wider Scheme of Assistance)
  1. Given the possible resource issues associated with a designation, it is envisaged that a referral to Policy and Resources Committee prior to the commencement of an investigation may need to be considered.
  2. S.181 (1), Part 9 of the Housing (Scotland) Act 2006 allows officers authorised by the local authority to enter any land or premises for the purposes of enabling or assisting the local authority to decide whether any part of its area should be designated as an HRA. See Appendix D.
  3. Where authorisation to investigate is refused by Committee, the Enforcement Panel would attempt to address the identified issues in the area using alternative methods.
  4. Where authorisation to investigate is granted by Committee, officers would carry out the investigation and provide a further report to Committee, covering the above outlined elements. The report would outline whether, on investigation, a draft HRA designation is recommended.
  5. If an HRA designation is recommended, the report would confirm the basis upon which the HRA would be made (Sub-standard housing, Amenity or both), where necessary outline the proposed phases, detailing draft HRA Maps and Action Plans. Permission would also be sought to commence stage 1 of the HRA designation process (see paragraph 4.19).
  6. Given the level of detail required to outline the necessary elements of a possible designation and the resources which would need to be deployed to carry out this task, the associated timescale has the potential, to be lengthy.

Stages within the Designation Process:

**Stage 1:** Public Consultation – minimum period of 3 months

* 1. Falkirk Council will:
* Notify the owners of all affected properties;
* Issue notification of the draft order within two newspapers, and
* Consult with a range of other stakeholders/ interested parties during this consultation period.
  1. The above notifications will advise residents where and when a copy of the Map and Action Plan will be made available, how long the consultation period will last and where comments can be forwarded. The draft HRA will outline how the Scheme of Assistance will apply.
  2. The main aim of the consultation will be to feed information into the process to determine whether:

1. Encouraging voluntary action would be productive?

2. Serving individual work notices would be effective?

3. An HRA designation would be the best way forward for the area?

4. (If an HRA designation is the best way forward) What would be the most appropriate basis for the designation (Sub-standard, Amenity or both)?

**Stage 2:** Modification of Draft Order

* 1. Responses’ received during the consultation will be considered and modifications may be made to the draft Order. Modifications cannot include extending the proposed HRA area. If any modifications are made, owners and occupiers affected by the change will again be informed directly and notification will be issued within two newspapers.

**Stage 3:** Designation of an HRA

* 1. At this stage a decision can be taken whether to proceed with the HRA designation.

Not Activated: It may be decided that a modified order will not achieve the

intended outcome. Falkirk Council will publicise its decision

not to activate an HRA designation

Activated: Falkirk Council will give notice within two newspapers that the

HRA designation has been activated and also notify the

owners and occupiers of each house. The notice will describe

the general effect of the designation, detail how owners will

be supported through the Scheme of Assistance as well as

specifying where a copy of the designation order can be

accessed (for the duration it remains in force).

# Criteria to determining an HRA

Introduction:

* 1. As outlined within 3.2 above, there are two criteria upon which an HRA designation can be made namely, sub-standard housing or where the amenity of an area is affected.

This section provides an outline of:

* the key factors for each criterion, and
* how each criterion will be managed

**Criteria 1:** *“.. a significant number of the houses in the locality are sub*

*standard”*

* 1. There is no legal definition of what will constitute a significant number of houses. It is not intended to provide a definition of what will constitute significant, instead, officers will use their professional judgement and gather evidence in relation to any HRA designations made during the current LHS period (2011-2016).
  2. As touched upon within 4.10 above, evidence is likely to include previous officer involvement in tackling problems of the area, views of local residents, any impact on house valuations and the effect that taking no action is likely to have.
  3. The definition of a house is contained within s.194(1) of the Housing (Scotland) Act 1987 and includes facilities or areas which are communally owned as well as other related areas such as gardens or out-houses. Issues pertaining to: stairwells, bin stores, boundary walls, roofs, gardens, drying greens, back courts, yards and garages will all be covered.
  4. The definition of a sub-standard house is contained within s.68(1) of the Housing (Scotland) Act 1987 and is a property which:

*“a) Does not meet the tolerable standard; or*

*b) Is in a state of serious disrepair; or*

*c) Is in need of repair and, if nothing is done to repair it, is likely to:*

*(i) deteriorate rapidly into a state of serious disrepair, or*

*(ii) damage any other property.”*

* 1. In determining whether a house is sub-standard consideration cannot be given to the age, character, location and internal decorative repair of a property.
  2. Any property which fails to meet the *“tolerable standard”* will not to be considered to be in a state of reasonable repair. The legislated elements of the Tolerable Standard, amended by the Housing (Scotland) Act 2006 have been outlined within Annex E.
  3. There is no legal definition for *“state of serious disrepair”.* It is not intended to provide a definition for serious disrepair, with reliance being placed on the professional judgement of officers involved.
  4. Officers will have regard to the elements contained within the Scottish Housing Quality Standard Scottish Government guidance (see Appendix F). All cases of this kind will be approached in a consistent manner, with supporting evidence being collected, showing the reasonableness and the proportional response to the issue involved.
  5. There is no definition for *“in need of repair”* within the Housing (Scotland) Act 2006. The Housing (Scotland) Act 1987 allows houses deemed to be in need of repair as though they were in a state of serious disrepair. As with serious disrepair, it is not intended to provide a definition and reliance will be placed on the professional judgement of officers. All cases will be approached in a consistent manner, with supporting evidence being collected, showing the reasonableness and the proportional response to the issue involved.
  6. The sub-standard criteria can be applied either on an HRA basis or out-with an HRA on an individual house basis.

**HRA - Area basis**  Local Authority Powers:

Work Notice

Demolition Notice

Closing Order (Housing (Scotland) Act 1987)

Demolition Order (Housing (Scotland) Act 1987)

Work Notice can also require:

works to improve Safety and Security of any persons or houses;

the reduced long term costs of maintaining any houses;

**Out-with an HRA -**

**Individual House** Local Authority Powers:

* Work Notice
* Closing Order (Housing (Scotland) Act 1987)
* Demolition Order (Housing (Scotland) Act 1987)

When an HRA is not in place, Work Notices can only be used on an individual house basis to deal with sub-standard housing issues. They cannot deal with amenity issues.

**Criteria 2:** *“…the appearance or state of repair of any houses in the locality is*

*adversely affecting the amenity of that locality”*

* 1. No legal definition has been provided. Given the range of factors that could be taken into account in deciding whether the amenity of an area is being affected, it is not intended to set criteria for determining this element. Consideration is however likely to include previous officer involvement in the addressing condition in the area, views of local residents, any impact on house valuations, comparisons with other areas, number of empty houses, the effect that taking no action is likely to have as well as best value considerations.
  2. Where an Amenity only designation is made and there are some houses that require work to bring them up to a reasonable standard, as long as there was not a significant amount of properties falling into the substandard category, then work notices could be issued. Otherwise the HRA would need to be designated on both an Amenity basis and a Sub-standard basis.
  3. There will be a reliance on the professional judgement of officers involved to assess the situation, collect the necessary evidence, showing the reasonableness and the proportional response to the issue involved. Consideration can be given to age, character, location and internal decorative repair of a property for this amenity criterion.
  4. Designations made on the sole criterion of amenity can only be made on an area basis.

**HRA Area basis:** Powers:

* Work Notice
* Demolition Notice
* Closing Order (Housing (Scotland) Act 1987)
* Demolition Order (Housing (Scotland) Act 1987)

Work Notice can also require:

* work to enhance the amenity of any houses
  1. **Overview HRA designation options**



**Diagram 1:** extracted from Scottish Government Advisory Guidance:

Volume 2, Housing Renewal Areas and Repair,

Improvement and Demolition, Page 11

* 1. An HRA can be designated on the following basis:
* Sub-standard only;
* Amenity only;
* Sub-standard and Amenity.
  1. Where a designation is made on both the sub-standard and amenity criteria basis the standard principles of each criterion are applied to the identification of works.
  2. Where a Work Notice is issued, officers will work with the property owner to voluntarily develop a Maintenance Plan. Where an owner fails to develop a Maintenance Plan within a reasonable period, a Maintenance Order will be placed on the owner requiring the development and submission to the local authority for approval of a Maintenance Plan for the property. General Maintenance Plan information will be available through the s.72 Statement of Assistance.

# Implementation of an HRA

Introduction:

* 1. To implement the HRA, the local authority must issue a Work Notice to each property detailing the work highlighted within the Action Plan. Owners have the right of appeal against the issuing of a notice. See section 6.27 for information on appeals process.
  2. Where a work notice is issued, the local authority must outline the standard of work required and provide assistance to the owner to carry out the works. The assistance provided can take the form of Information, Advice, Practical Assistance, Grants or Loans.
  3. The remainder of this section outlines how the following situations will be managed.

Works carried out before the HRA Designation Order is approved:

* 1. In some instances, highlighted work may have already been completed before the designation is made. In these instances, no Work Notice need be issued although a completion certificate can be issued to the owner at their request.
  2. Where improvement work has been carried out on a house highlighted for demolition and the property reaches an acceptable standard, a Demolition Notice will not be issued and if the owner requests, a completion certificate can be issued.

Local authority can carry out the work:

* 1. Falkirk Council has the power to carry out the work detailed within a Work Notice where the owner is agreeable. The owner would be liable for the costs associated with the works. A completion certificate will only be issued when the outstanding account for the works has been settled.
  2. It is not intended to automatically offer to carryout the work for everyone who is issued with either a Work Notice or Demolition Notice. Where owners experience difficulty in carrying out the work detailed within either notice, consideration through the Enforcement Panel will be given to the factors affecting the work from being carried out.

Work not carried out by the advised completion date:

* 1. Where a Work Notice or Demolition Notice has not been completed by the identified completion date, Falkirk Council has the power to carry out the works (or arrange for them to be carried out) and recover the associated costs. Consideration should be given to why the works outlined have not been carried out. Enforcement action is an important last resort after an owner has failed, without good reason, to comply with a statutory notice and where the risk to the wellbeing of the wider community is such that taking no action would be unacceptable. Decisions regarding enforcing such work by the local authority will ultimately depend on resource availability and appropriate approvals.
  2. A Suspension of Works Notice can be issued where it is believed that carrying out the work, would have a detrimental affect on the health of the house’s residents. The suspension can be lifted at any time by Falkirk Council issuing another notice. The notice lifting the suspension can also extend the completion date by a reasonable period.
  3. The Council cannot enforce notices until the completion date has passed unless they have received notice from the owner that:
     + - They are unable to comply with the notice because of a lack of necessary right of access or otherwise. The owner must have taken reasonable steps for the purposes of acquiring those rights; or
       - They consider that carrying out the work or demolition is likely to endanger any person.
  4. In these instances, the local authority will have more powers than an individual to implement the notice, e.g.: the Compulsory Purchase power and the power to insist on evacuation of premises where there is a potential danger.

Local authority enforces the notice:

* 1. Falkirk Council does not need to notify an owner that it intends to enforce a Work Notice or Demolition Notice. Notice is required where any additional works are planned which were not detailed in the issued notice. In this case a 21 days notice will be given in advance of works commencing, unless the situation is considered urgent (e.g.: a building with a demolition notice is about to fall down and cause damage).
  2. Owners can appeal against these additional works. Please refer to section 6.27 for information on the appeals process.
  3. Consideration will be given to the need to evacuate the property before commencing the work or demolition. If this is required a notice will be issued to the occupants of the property outlining why this is considered necessary. The notice will allow at least 14 days for evacuation. If there are immediate concerns, alternative measures may be taken to ensure the property is evacuated immediately.
  4. Where the property is not evacuated by the deadline the local authority will have to apply to the Sheriff for a warrant of ejection. A person cannot be ejected unless they have suitable alternative living accommodation.

Duty to re-house displaced residents:

* 1. If a demolition notice results in a person becoming permanently displaced from their only or main residence on the day the notice is given, the local authority must ensure that, if asked, they are given suitable alternative living accommodation.
  2. Alternative accommodation does not have to be sourced from Council stock. The accommodation must be given on reasonable terms, be suitable and is, as far as reasonably practical, close to the previous accommodation.

Recovery of Expenses:

* 1. Where Falkirk Council enforces a works or demolition notice, it can recover the costs form the owners.
  2. The local authority will pursue repayment of monies owed in the normal manner. Where a suitable repayment arrangement is unable to be reached, legal action will be taken to ensure monies are repaid.
  3. Where money owed is agreed to be repaid in 30 annual instalments, the Council must issue a notice confirming that recovery is by way of a Repayment Charge, which must be registered in the appropriate land register.
  4. Owners have the right to appeal against a notice demanding the recovery of expenses incurred following enforced works.
  5. When the full amount has been settled, the Council will discharge the repayment charge.

Certification of Completion:

* 1. Where work detailed within a Works Notice has been completed and appropriate officers are satisfied with the standard of the work, a certificate of completion will be issued if requested.
  2. Such a certificate will only be issued where any outstanding costs associated with the works have been settled.
  3. Owners have the right to appeal to the Sheriff where the Council refuses to issue such a certificate.

Other obligations:

* 1. Falkirk Council has an obligation to inform owners how it intends to secure the implementation of the HRA as well as providing updates on the progress made. A timetable of actions in connection with HRA designations will be drafted and published. Updates will be provided as appropriate to owners.

Appeals:

* 1. Owners have the Right of Appeal against certain decisions which the local authority can make in relation to works and demolition notices:
* to serve a notice,
* to carry out additional work when enforcing a notice, unless not necessary (e.g.: urgent situations),
* to recover expenses following enforcement of notices, or
* to refuse to grant a certificate to confirm that a work notice has been completed.
  1. Diagram 2 on the following page outlines the process attached to the appeals process.

Diagram 2: Summary of appeal process – work and demolition notices

Local authority decides to:

* serve work notice;
* serve demolition notice;
* include additional works when carrying out a notice;
* recover expenses after carrying out a notice;
* refuse to grant certificate of completion of works;

LA serves notice

Recipient of notice lodges appeal by summary application within 21 days

Sheriff rules on appeal - confirm, quash or other. Can include costs

LA and individual accept decision

Sheriff principal’s decision is final



Extracted from Scottish Government Advisory Guidance:

Volume 2, Housing Renewal Areas and Repair,

Improvement and Demolition, Page 79

# Level of Assistance: Scheme of Assistance

* 1. The Scheme of Assistance and in particular the Statement of Assistance (s.72) outlines the assistance available to residents, by Falkirk Council, to maintain and repair their properties. The statement specifically outlines the type of assistance which will be offered for each work type. This statement will include specific assistance details for HRA’s. The Statement can be updated by Falkirk Council from time to time.
  2. As the work to be carried out on individual properties requires to be investigated prior to the decision to commence the process, the true reflection of the potential scale of works will be unknown. Consideration will be required around the size of the designation as well as the possible need to have a rolling programme of designations depending on the financial resources available and the scale of issues to be addressed.
  3. Mandatory assistance is required where a local authority serves a work notice although this does not have to be financial assistance. All other relevant assistance is at the discretion of the local authority.
  4. Given that the issues and works from one designation to another are likely to differ there may be instances where it is deemed appropriate to provide discretionary assistance.
  5. Details of all assistance (mandatory and proposed discretionary) will be detailed within both the draft designation and published Statement of Assistance.

# Conclusion

* 1. This Housing Renewal Area Policy concentrates on the promotion of voluntary engagement with owners. Only where a positive outcome is not achieved voluntarily and all other available options have been considered and ruled out would steps be commenced towards a possible HRA designation.
  2. The reliance on the professional judgement of officers involved in the case is consistent with the approach contained within Scottish Government guidance relating to the interpretation of the Tolerable Standard.
  3. The Housing Renewal Area Policy is a new local authority power across Scotland. The management process contained within this policy is intended to cover the LHS period of 2011–16, however, this policy may alter within this timescale, with appropriate approvals, in line with the overarching LHS as well as the developing knowledge, experience and recognised best practice being collected across Scotland.

Appendix A

REFERENCE DOCUMENTS

**1. Scottish Government, Stewardship and Responsibility, March 2003,** <http://www.scotland.gov.uk/Resource/Doc/47034/0028741.pdf>

**2. Scottish Government, Housing (Scotland) Act 2006,** <http://www.opsi.gov.uk/legislation/scotland/acts2006/asp_20060001_en_1>

**3. Implementing the Housing (Scotland) Act 2006, Parts 1 and 2:**

Volume 1: Preparing and Delivering: <http://www.scotland.gov.uk/Resource/Doc/265360/0079486.pdf>

Volume 2: Housing Renewal Areas and Repair,

Improvement and Demolition <http://www.scotland.gov.uk/Resource/Doc/265425/0079492.pdf>

Volume 3: Maintenance <http://www.scotland.gov.uk/Resource/Doc/265388/0079489.pdf>

Volume 4: Tolerable Standard <http://www.scotland.gov.uk/Resource/Doc/265403/0079491.pdf>

Volume 5: Scheme of Assistance <http://www.scotland.gov.uk/Resource/Doc/265347/0079485.pdf>

Volume 6: Work to Meet the Needs of Disabled People<http://www.scotland.gov.uk/Resource/Doc/265371/0079487.pdf>

Appendix B

LOCAL AUTHORITY POWERS: CONDITIONS OF HOUSING AND NEIGHBOURHOOD

**Contained within the Housing (Scotland) Act 2006**

**Work Notice:** Can be issued on a sub-standard house, whether or not it is in an HRA

Can be issued on a house which an HRA Action Plan identifies:

• as sub-standard;

• the appearance or repair adversely affecting amenity of area; or

• is adjacent or associated with a house falling into either of the above two categories.

Can be issued on any non-residential premises only where it forms part of or adjoins a building containing housing which is either sub-standard or affecting the amenity of the area **and** the work is needed to deal with that housing.

A work notice must be registered in the Building Standards Register.

**Demolition Notice:** Where an HRA Action Plan has identified a house as being in a state of

serious disrepair and ought to be demolished.

Can be issued on any non-residential premises only where it forms part of or adjoins a building containing housing which is either sub-standard or affecting the amenity of the area **and** the demolition is needed to deal with that housing.

A demolition notice must be registered in the Building Standards Register.

**Acquisition of houses to** S.40 permits a local authority to acquire a house and site (by agreement or

**be demolished/ for the**  compulsorily) prior to demolition, as authorised under s.35. S.41 permits

**purposes of improving** the sale of materials from the demolition.

**the amenity of an area**

S.95 (1)(d) permits a local authority to acquire land or premises (by agreement or compulsorily) for the purposes of improving the amenity of a predominantly residential locality.

**Maintenance Order:** Requires the owner(s) to prepare and submit a plan, for approval, to the

local authority outlining the maintenance of the house(s) to a reasonable

standard. The plan must cover a period of 5 years. In respect of

maintenance of common parts, owners can be required to appoint a

property manager and open maintenance accounts. Local Authorities can

enforce the order if owners do not comply with it.

**Powers contained within other Legislation:**

**Dangerous Building Notice:** Under s. 29 of the Building (Scotland) Act 2003 Local

Authorities must take steps (including where necessary

demolition) to protect the public if the condition of a building

places the public or other buildings at risk. S.30 contains

provisions for Dangerous Buildings Notices.

**Closing Order:** Under Part 6, Housing (Scotland) Act 1987, a local authority

may, in certain circumstances, including BTS housing, make

a closing order prohibiting the use of a house for human

habitation.

**Demolition Order:** Under Part 6, Housing (Scotland) Act 1987, a local authority

may, in certain circumstances, issue a Demolition Order on

a property.

**Abatement Notice:** Under the Environmental Protection Act 1990 s.79 (as

amended) an Abatement Notice can be served by Local

Authorities if any premises are in a state classed as

prejudicial to health or a nuisance.

**Flats - Management & Maintenance**  Tenement (Scotland) Act 2004

**of Common Parts** Where title deeds are silent or unworkable, this Act governs

any decisions about maintenance and appointing a ‘factor’ or property manager. It involves majority decisions although there is also a positive duty to maintain the shelter and structure, with a power to carry out works necessary to comply with the duty without agreement where necessary. There are also provisions for appeals and registering a Notice of Potential Liability for Costs to help ensure owners repay outstanding debts to other owners before selling their flat. The Title Conditions (Scotland) Act 2003 contains further provisions about factors.

Advice can be provided to owners about how this legislation may be used by them to help them properly manage and maintain common parts but can not provide legal advice or representation.

**Property in Disrepair – Defective**  Building (Scotland) Act 2003

**Building Notice** Under s. 28, Local Authorities can issue a Defective Building

Notice if it has defects requiring rectification to bring it into a reasonable state of repair. Includes provisions for Local Authorities to carry out and recharge for works if not complied with.

**Notice Requiring Proper Maintenance** Town and Country Planning (Scotland) Act 1997:

**of Land** S.179 - If it appears to a local planning authority that the

amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under s.179, requiring steps are taken to resolve it. It also contains provisions for appeal and enforcement with right of Planning Authority to carry out and recharge for work, if the s.179 Notice is not complied with.

Civic Government (Scotland) Act 1982:

**Buildings in Need of Repair** S.87 (3) - in the interests of health and safety or to prevent

damage to property the local authority can effect immediate

repairs without prior notice and recover expenses.

**Fire Precautions – Common Areas** S.93 – allows an officer of a fire authority to take appropriate

action where any combustible material or anything obstructs

access/ egress from a property during a fire.

**Common Stairwells, Back Courts**  S.90 - 92 – the Local Authority can introduce byelaws

**and Close Lights** covering the cleaning and painting of common stairwells/

back courts and enable fines to be issued to owners. It sets

out duties of owners and powers of Local Authorities in

respect of close lighting.

**Maintenance of Privately Owned** S.95 – relates to the duty owners have to maintain private

**Open Spaces** open space. Local Authorities have the right to recharge

work if not complied with.

**Local Authority Powers to gain entry**  The power of the Local Authority to enter, execute and

**carry out work and recharge costs.** recharge works associated with powers within the Civic

Government (Scotland) Act 1982 are contained within s.99

and s.100.

Appendix C

Enforcement Panel Flowchart



Appendix D

Part 9 – Rights of Entry

(a) **Overview:**

The following groups have been given rights of entry, whilst conducting the following tasks:

Any person authorised by

a **Local Authority [[1]](#footnote-1)** Has the right to enter:

* (either land or property) in relation to the designation of an HRA;
* (a property) in relation to Works Notices or Demolition Notices;
* (a property) to enable decisions in surrounding Maintenance Orders & Plans;
* (living accommodation) to enable decisions in surrounding HMO;

Any member or Has the right to enter properties in connection with fulfilling their powers

person authorised and duties.

by the **Private**

**Rented Housing**

**Committee [[2]](#footnote-2)**

**Owners** or anyone Is entitled to enter the property in relation to carrying out work required

authorised by by a Work Notice, Demolition Notice, HMO amenity Notice or to

the owner implement a Maintenance Plan.

**Landlord** or anyone Is entitled to enter the property to view its condition in order to determine

authorised by whether it meets the repairing standard, or to carry out work to comply

the landlord with a Repairing Standard Enforcement Order.

**Police** Can enter a property, to gather evidence or enforce a warrant, where it is

reasonable to suspect that an offence is being committed, or has been

committed in relation to:

* Repairing Standard;
* Unlawful Occupation;
* HMO licensing.

In most cases, at least 24 hours notice must be given to the occupants of the land or premises to gain entry, however, where the situation is urgent or it is deemed that giving notice will defeat the object of the entry, this is not required.

Appendix E

The Tolerable Standard, as amended by the Housing (Scotland) Act 2006

A house meets the tolerable standard if it:

* is structurally stable;
* is substantially free from rising or penetrating damp;
* has satisfactory provision for natural and artificial lighting, for ventilation and for heating;
* has satisfactory thermal insulation;
* has an adequate piped supply of wholesome water available within the house;
* has a sink provided with a satisfactory supply of both hot and cold water within the house;
* has a water closet or waterless closet available for the exclusive use of the occupants of the house and suitably located within the house;
* has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;
* has an effective system for the drainage and disposal of foul and surface water;
* in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installations for the purposes of that supply;
* “the electrical installation” is the electrical wiring and associated components and fittings, but excludes equipment and appliances;
* “the relevant requirements” are that the electrical installation is adequate and safe to use
* has satisfactory facilities for the cooking of food within the house; and
* has satisfactory access to all external doors and outbuildings.

Appendix F

Scottish Housing Quality Standard definition of Serious Disrepair

|  |  |  |
| --- | --- | --- |
| **Primary Building Elements** | * Wall structures * Internal floor structures * Foundations * Roof structure | Single Primary Element Failure.  An element fails where it requires repair or replacement of more than 20% |
| **Secondary Building**  **Elements** | * Roof covering * Chimney stacks * Flashings * Rainwater goods * External wall finishes * Access decks/ balustrades * Common access stairs / * landings, pathways within the curtilage of the dwelling * Individual dwelling * balconies / verandas * Individual dwelling, * attached garages, internal stairs * Damp Proof Course * Windows/ doors * Common windows/ roof * lights * Underground drainage | Failure by two or more elements.  An element fails where it requires repair or replacement of more than 20%. |

Extracted from <http://www.scotland.gov.uk/consultations/housing/msshletter.pdf>

1. A sheriff or Justice of the Peace can issue a warrant granting entry in certain circumstances. [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)