EXECUTIVE NOTE TO

DRAFT : THE HOUSING (SCOTLAND) ACT 2006 (SCHEME OF ASSISTANCE) REGULATIONS 2008

1. The above instrument was made in exercise of the powers conferred by sections 73, 77 and 79 of the Housing (Scotland) Act 2006 ("the Act"). The instrument is subject to affirmative resolution procedure.

Policy Objectives

2. Sections 73, 77 and 79 of the Act give Ministers powers to make regulations for financial assistance by local authorities as part of the Scheme of Assistance approach brought in by the Act and, in particular, for changing the system of financial assistance with adaptations for disabled people.

3. The key policy aim of the regulations is for the first time to put assistance with disability adaptations on a separate footing from assistance with the owner's responsibility for the condition of the property.

4. The consultation paper "Housing (Scotland) Act 2006: Volume 5 – Scheme of Assistance", published on 9 April this year, proposed new arrangements for financial assistance from local authorities with the cost of adaptations and was accompanied by a draft of the regulations to give those arrangements effect.

5. The current arrangement is that essential work to provide bathroom or toilet facilities for a disabled person attracts mandatory grant. Other works such as adaptations to facilitate access to the property do not attract mandatory grant, although councils can give grant at their discretion. The minimum grant for adaptations is 50%, with entitlement beyond this determined by a test of resources defined in regulations. Many local authorities impose a £20,000 upper limit on the cost of works eligible for grant.

6. The new arrangements proposed in the draft regulations are summarised below. The first three changes relate specifically to financial assistance with adaptations. The last also covers financial assistance with repairs and improvements:

   - Removal of the prescribed test of resources, with a minimum of 80% grant for adaptation works, or 100% where the applicant receives certain benefits. It leaves the amount of any top-up beyond 80% (for those not entitled to 100%) to the discretion of the local authority

   - Widening the scope of mandatory grant to include most essential structural adaptations. Adaptation work to extend property to provide additional living accommodation is excluded from mandatory grant, mainly on the grounds of the cost to local authorities, but authorities have the power to fund such works

   - Placing a duty on councils to ensure that where essential adaptation work is not being covered by grant, owners receive proper advice on funding the work

- Abolition of the prescribed test of resources and delegation to local authorities of the power to assess an applicant's contribution (subject to the provisions on minimum percentage grant for adaptations).

7. The changes are intended to create a simpler and fairer and system of financial assistance with adaptations across Scotland. It will be simpler because of the removal of the test of resources and the award of minimum percentage grant. It will be fairer because it covers a much greater range of essential adaptations and because financial assistance is based on the full cost of the work rather than up to an arbitrary limit.

Consultation

8. In developing draft regulations for consultation, officials worked closely with representatives of local authorities, disability organisations, Care and Repair projects and other key stakeholders. Draft regulations were prepared, and these were issued for consultation between April and July 2008.

9. Responses to the consultation included 29 from local authorities and 25 from disability bodies and Care and Repair projects. Four major consultation events were held across Scotland in May, aimed primarily at local authorities and other key stakeholders. A focus group session with disabled homeowners was held in June, and officials ran a workshop session on the proposals at a major Inclusion Scotland conference, also in June.

10. The consultation showed strong support for the draft regulations from all quarters, including key disability organisations such as Ownership Options and Capability Scotland, with whom officials worked closely in developing the proposals. There was particularly strong support for abolition of the test of resources and minimum grant of 80% (100% for people on very low incomes).

11. Some disability organisations indicated their belief that house extensions should not be excluded from mandatory grant, but others recognised that this was fair given that such extensions would normally boost the property value.

12. Most local authorities indicated that the proposals were broadly in line with their existing practice. This suggests, for example, that most authorities use their discretion to give grant for a wider range of adaptations than those covered by the current provisions on mandatory grant. Also, most authorities indicated that after application of the test of resources, grant awards for people carrying out adaptation work is generally high, usually averaging 80% or more.

13. The support was tempered in the case of a small minority of local authorities by worries about the possible additional pressure the new system may put on their limited funding. It is possible that some of the authorities that have expressed these concerns may not fully appreciate the flexibility they have to manage the impact of the regulations through judgements on necessity and priority. This flexibility is reflected in the wording of the draft regulations and the point will be further clarified in statutory guidance.

Financial Implications

14. As referred to above, indications from most local authorities are that the changes reflect existing levels of grant awards after application of the test of resources, so it is expected that the financial implications for local authorities should be manageable within existing resources. The removal of the test of resources will benefit local authorities by freeing up staff resources to focus on other aspects of delivering the Scheme of Assistance.

15. Costs are expected to be broadly in line with recent years' expenditure on adaptations within overall Private Sector Housing Grant: in 2008/09 it is expected that around £20m of the total PSHG allocation of £67.3m will be spent on adaptations.

16. Revised guidance will seek to address any local authority concerns by emphasising:

    - the flexibility each local authority has to determine the system by which assessed need is prioritised

    - the need for a corporate approach and, in particular, the need to work closely with social work services in identifying resources to meet the needs of disabled people under housing and welfare legislation

    - how expenditure on adaptations can lead to more effective outcomes for people while at the same time providing savings in other local authority budgets such as care at home or residential care and in NHS budgets

    - the likelihood that, over time, less grant will be given for repairs and improvements as alternative sources of funding (such as owners' own resources and specialised loan products via the proposed National Lending Unit) are maximised.

17. A full Regulatory Impact Assessment for the regulations has been prepared and is attached.

Equalities Impact Assessment

18. An equalities impact assessment for the regulations has been prepared and can be viewed on the Scottish Government website.

Housing & Regeneration
October 2008

The Housing (Scotland) Act 2006 (Scheme of Assistance) Regulations 2008

Regulatory Impact Assessment

TITLE OF PROPOSAL

1. This Regulatory Impact Assessment (RIA) relates specifically to the Housing (Scotland) Act 2006 (Scheme of Assistance) Regulations 2008. It follows a partial RIA which was prepared for consultation guidance on implementing Parts I and II of the Housing (Scotland) Act 2006. The partial RIA also covered draft regulations which were consulted on in the same exercise. When the guidance is revised and finalised towards the end of 2008 a full RIA and separate Equalities Impact Assessment for the guidance will be prepared.

2. An Equalities Impact Assessment for the Regulations has been separately produced.

PURPOSE AND INTENDED EFFECT

3. The main purpose of the regulations is to create a simpler and fairer system of financial assistance for homeowners seeking to adapt their homes because of a disability. A key secondary purpose of the regulations relates to the proposed abolition of the prescribed test of resources (introduced by regulations in 2003) for calculating an individual's contribution to the cost of works funded by grant from the local authority: this aspect of the regulations applies both to grant for adaptations and grant for repairs and improvements. The 2003 regulations prescribing the test of resources will be repealed when the 2006 Act provisions are fully implemented.

4. In summary, the main changes introduced within the regulations are:

    - Widening the scope of mandatory grant to cover all essential structural adaptations, excluding house extensions to provide additional living accommodation

- Placing a duty on local authorities to ensure that where some adaptations work is not covered by grant (eg house extensions), the individual is referred to professional advice on options for funding the work

- A minimum grant award of 80% for work covered by mandatory grant, rising to 100% for people in receipt of specified income replacement benefits

- Delegation to local authorities of the power to assess an applicant's contribution to the cost of works covered by grant (for works not covered by the provisions on adaptations).

Background

5. Reflecting the recommendations of the Housing Improvement Task Force, the Housing (Scotland) Act 2006 puts owners' responsibility for their homes at its centre. In seeking to reduce expectations of grant for repairs and improvements, the Act also paved the way for separate treatment of applications for assistance with adaptations for disabled people. It did this primarily by giving Ministers the power to prescribe particular forms of assistance in relation to adaptations for disabled people. The policy basis for this approach was that it was no longer considered appropriate for people requiring essential adaptations to be queuing alongside applicants for grant for repairs and improvements.

Current System

6. The proposed changes can be seen in the context of the following key features of the existing system of financial assistance with adaptations:

    - Mandatory grant covers work to provide bathroom and toilet facilities but not other essential structural adaptations such as work to facilitate access to the property

    - The imposition by many councils of an arbitrary £20,000 ceiling on the cost of eligible works, with no assistance normally offered where works costs exceed this

    - Minimum grant of 50% and a prescribed test of resources to assess entitlement beyond this, up to 100%.

Detail of Proposed Changes

<u>Widening the scope of mandatory grant</u>

7. Current system Only work to provide adequate bathroom and toilet facilities for a disabled person attracts mandatory grant, but not other adaptations such as constructing a ramp to give access to the property or altering the kitchen layout to

make it possible for the disabled person to prepare food. House extensions attract mandatory grant only where the purpose is to provide bathroom or toilet facilities, although discretionary grant can be given in such cases. Most councils impose a £20,000 cap on the cost of works which can attract grant.

8. Proposed regulations Any essential adaptation needed to the structure of the house will attract mandatory grant, excepting situations where the house is extended to provide additional living accommodation. This will, for example, put work to facilitate access to the property on a par with work to provide suitable bathroom and toilet facilities.

9. House extensions will (as now) attract mandatory grant only where the purpose is to provide bathroom or toilet facilities. So while excluding from mandatory grant house extensions for other purposes is partly on cost grounds, it also reflects the fact that extensions normally add to the property value whereas most other adaptations (such as ramps etc.) do not. Furthermore, the Act and its accompanying statutory guidance clarify local authorities' power to help someone move to a more suitable property where the assessment concludes that this is the best way of meeting a disabled person's needs.

10. The cost of extension work can be funded by grant at the council's discretion, and assistance may also be available from social work services. But where such discretion is not used and the owner is responsible for funding the work, the draft regulations impose a duty on councils to provide advice on funding the work, as covered below.

Duty to provide advice and information on funding work not eligible for grant

11. Current system Under housing legislation, beyond the provisions on mandatory grant there are no duties to assist where grant does not cover the full cost of the work. Under welfare legislation there are duties to meet assessed need but these duties are not always acted upon.

12. Proposed regulations The draft regulations place a duty on councils to ensure that people facing a shortfall – most likely as a result of grant not covering house extension work – receive proper advice on the funding options open to them. In practice this is likely to mean routing people for advice to the Lending Advisory Service which the Scottish Government is proposing to set up as a key element of the Scheme of Assistance. This in turn could lead to people being referred to the proposed National Lending Unit if there is no suitable loan product available for them on the commercial market. Assistance may also be available from social work services where this is the best way to meet assessed needs that are eligible for assistance.

Minimum percentage grant

13. Current system The minimum grant for adaptation work is 50%, with applicants then subject to a financial test of resources to assess entitlement beyond this, up to 100%. There is a £20,000 limit (the "approved expense limit") on the cost of eligible works: councils can award grant where the works cost exceeds this but only with the consent of Ministers. This applies to all grant, i.e. grant for adaptations and for repairs and

improvements. In practice, many local authorities choose not to seek such consent and instead impose a £20,000 limit on the cost of eligible work, and calculate any grant award as a percentage of this.

14. Proposed regulations The draft regulations abolish the prescribed test of resources and set a minimum percentage grant of 80% for adaptation work, rising to 100% for people in receipt of certain income replacement benefits. This is in recognition of the fact that the average grant award (for adaptation work) after applying the test of resources is 84%. We believe it is excessive to apply a rigorous and time-consuming test of resources when the outcome for most disabled applicants is in any event a relatively high level of grant. The regulations do not set any approved expense limit as it is important for local authorities to take account of the full cost of the work in deciding how to meet their duties to provide financial assistance.

<u>Abolition of the prescribed test of resources and delegation to local authorities of the power to assess an applicant's contribution</u>

15. Current system The minimum grant for adaptation work is 50%, with a prescribed test of resources to assess entitlement beyond this, up to 100%. The prescribed test of resources also applies to grant for repair and improvement work, for which there is no minimum grant except where work is the subject of a repairs notice from the local authority, in which case the minimum grant is 50%.

16. Proposed regulations The existing prescribed test of resources will be abolished by repealing the secondary legislation introduced in 2003 under the 1987 Act provisions. The abolition affects all grant applications, i.e. grant for adaptations and for repairs and improvements, but grant for adaptations is subject to the provisions in these regulations.

17. The abolition of the existing prescribed test of resources makes it necessary for the power to assess an applicant's contribution to be delegated to local authorities, as allowed for in the 2006 Act. The regulations do this. In practice, this power will relate mainly to applications for grant for repair and improvement work: applications for grant for adaptation work will require to be considered in accordance with the statutory provisions within these regulations.

CONSULTATION

Consultation process

18. In developing draft regulations for consultation, officials worked closely with representatives of local authorities, disability organisations, Care and Repair projects

and other key stakeholders. Draft regulations were issued for consultation between April and July 2008.

19. Responses to the consultation included 29 from local authorities and 25 from disability bodies and Care and Repair projects. Four major consultation events were held across Scotland in May, aimed primarily at local authorities and other key stakeholders. A focus group session with disabled homeowners was held in June, and officials ran a workshop session on the proposals at a major Inclusion Scotland conference, also in June.

Consultation reaction

20. The consultation showed strong support for the draft regulations from all quarters, including key disability organisations such as Ownership Options and Capability Scotland, with whom officials worked closely in developing the proposals. There was particularly strong support for abolition of the test of resources and minimum grant of 80% (100% for people on very low incomes).

21. Some disability organisations indicated their belief that house extensions should not be excluded from mandatory grant, but others recognised that this was fair given that such extensions would normally boost the property value.

22. Most local authorities indicated that the proposals were broadly in line with their existing practice. This suggests, for example, that most authorities use their discretion to give grant for a wider range of adaptations than those covered by the current provisions on mandatory grant. Also, most authorities indicated that after application of the test of resources, grant awards for people carrying out adaptation work is generally high, usually averaging 80% or more.

23. The support was tempered in the case of a small minority of local authorities by worries about the possible additional pressure the new system may put on their limited funding. It is possible that some of the authorities that have expressed these concerns may not fully appreciate the flexibility they have to manage the impact of the regulations through judgements on necessity and priority. This flexibility is reflected in the wording of the draft regulations and the point will be further clarified in statutory guidance.

SECTORS AND GROUPS AFFECTED

24. The main sectors and groups affected by the draft regulations are:

    - Disabled home owners and their carers
    - Home owners seeking to repair and improve their home
    - Local authorities.

Disabled home owners and their carers

25. The regulations seek to introduce a simpler and fairer system of financial assistance with the cost of essential adaptations, with the aim of maximising independence and enabling disabled people and their carers to live with dignity.

Home owners seeking to repair and improve their home

26. The abolition of the prescribed test of resources, taken together with the availability of wider forms of financial assistance under the Scheme of Assistance provisions of the 2006 Act, mean that those applying for help with repairs and improvements will be likely to find that there is a different way of assessing entitlement to financial assistance. For example, property equity – not covered by the existing test of resources – is likely to feature in future assessments.

Local authorities

27. The regulations place new duties on local authorities in relation to dealing with applications for financial assistance with essential structural adaptations, although many authorities have indicated that most of the new provisions reflect existing practice. The cost of complying with the new duties is expected to be met from within existing resources – most notably Private Sector Housing Grant which the Scottish Government allocates to local authorities.

COSTS AND BENEFITS

28. This section analyses the main costs and benefits of the options considered under three headings:

    - Widening the scope of mandatory grant for adaptations
    - Minimum percentage grant for adaptation work
    - Abolition of the prescribed test of resources and delegation to local authorities of the power to assess an applicant's contribution.

(i) Widening the scope of mandatory grant for adaptations

29. The following options were considered

    (a) Status quo – mandatory grant to cover only the provision of bathroom and toilet facilities for a disabled person

    (b) Extend the scope of mandatory grant to include all other essential structural adaptations

    (c).Extend the scope of mandatory grant to include most essential structural adaptations but excluding house extensions to provide additional living accommodation; instead place duty on authorities to ensure financial advice is available to those facing a shortfall as a result of work being excluded from mandatory grant: <u>this is the chosen option</u>.

<u>Analysis of options</u>

Option (a) Status quo – mandatory grant to cover only the provision of bathroom and toilet facilities for a disabled person

30. Approaches to disability issues have moved on since the first UK grants legislation in 1974, and there is clearer understanding that other aspects of house layout apart from access to bathroom and toilet facilities can have crucial significance for a disabled person's independence and quality of life. Other UK nations have no such restriction in their grants systems and there seems no clear justification for continuing with it in Scotland. Maintaining the status quo would disadvantage disabled homeowners in Scotland. There would be no additional cost implications of maintaining the status quo.

Option (b) Extend the scope of mandatory grant to include all other essential structural adaptations

31. This option would address the obvious shortcomings of option (a) and would greatly benefit disabled homeowners in two ways. Firstly, there may currently be a few areas where the local authority does not use its discretion to give grant for adaptations other than bathroom and toilet facilities. This option brings all other structural adaptations into the scope of mandatory grant and would therefore lead to particular benefits for disabled owners in these areas. Secondly, many authorities currently do not give grant for any part of the works exceeding £20,000, meaning that no assistance is given for certain more costly adaptations.

32. However, the costs to local authorities of implementing this option could be substantial. No approved expense limits will be set by Ministers under the 2006 Act provisions, so local authorities will not be able to limit the cost of works on which grant entitlement is based. The inclusion in mandatory grant of house extensions to provide additional living accommodation would be likely to place a significant financial burden on local authorities, particularly when considered alongside the proposal to provide grant at a minimum rate of 80% (see para 38 below). Some larger adaptations works involving house extensions can cost in the region of £50,000-£60,000 or more.

Option (c) Extend the scope of mandatory grant to include most essential structural adaptations but exclude house extensions to provide additional living accommodation; instead place duty on authorities to ensure financial advice is available to those facing a shortfall as a result of work being excluded from mandatory grant: this is the chosen option.

33. This option achieves a reasonable compromise between options (a) and (b), in that it extends the scope of mandatory grant to cover most essential structural adaptations but does not place unreasonable burdens on local authorities to fund the particularly high costs of house extensions to provide additional bedroom space.

34. Despite the exclusion of house extensions from mandatory grant, this option ensures that councils consider the full cost of the work when assessing what financial assistance can be offered. This is being achieved by placing a duty on councils to

ensure that where such work is not being covered by grant, owners receive proper advice on funding the work. Taken with the new availability of home appreciation loans through the proposed National Lending Unit, and the potential availability of Income Support to cover loan interest for certain applicants, this new duty means that in most cases funding packages can be put together to cover the full cost of the work rather than covering costs up to an arbitrary limit.

(ii) Minimum percentage grant for adaptation work

35. The following options were considered.

Option (a) Status quo – minimum grant of 50%, means test to assess entitlement beyond this

Option (b) Single flat rate of minimum percentage grant such as 85% for all grant applicants

Option (c) Differential minimum percentage grant – 80% for all applicants except those on specified income replacement benefits, who will receive 100% grant: this is the chosen option.

Analysis of options

Option (a) Status quo – minimum grant of 50%, means test to assess entitlement beyond this

36. It is difficult to justify retention of a prescribed test of resources for assessing grant entitlement for adaptation work. Returns to the Scottish Government from local authorities show that the average grant award (for adaptation work) after applying the test of resources is 84%. It is excessive to apply a rigorous and time-consuming test of resources when the outcome for most disabled applicants is in any event a relatively high level of grant. Also, the test of resources is generally unpopular with disabled people: this can deter people from applying, which in turn frustrates the Scottish Government's policy aims of facilitating independent living.

Option (b) Single flat rate of minimum percentage grant such as 85% for all grant applicants

37. A single rate of minimum percentage grant has the advantage of clarity and simplicity, both for disabled people and local authorities. A rate of 85% is very near the current average grant award after application of the test of resources. However, a single flat rate such as this would mean that those on the lowest incomes, who currently receive up to 100% grant, would be worse off.

Option (c) Differential minimum percentage grant – 80% for all applicants except those on specified income replacement benefits, who will receive 100% grant: this is the chosen option

38. This option awards a high rate of grant across the board but also means that households on very low incomes would not have to make a contribution to the cost of the adaptations. The main benefit of this approach for disabled owners is the speeding up of the process of assessing levels of financial assistance, removal of the stigma some people experience around means testing, and the clarity and simplicity of

fixed grant percentages. Indications from most local authorities are that such grant levels equate to the level of current awards after application of the test of resources, so the financial implications for local authorities should be manageable within existing resources. The removal of the test of resources will also benefit local authorities and free up staff resources to focus on other aspects of delivering the Scheme of Assistance.

39. Overall costs to local authorities of implementing the new provisions are expected to be broadly in line with recent years' expenditure on adaptations within overall Private Sector Housing Grant: in 2008/09 it is expected that around £20m of the total PSHG allocation of £67.3m will be spent on adaptations.

(iii) Abolition of the prescribed test of resources and delegation to local authorities of the power to assess an applicant's contribution (this relates to grant for adaptations and grant for repairs and improvements).

40. The following options were considered.

    Option (a) Retain the prescribed test of resources

    Option (b) Abolish the test of resources and replace with minimum percentage grant for adaptations and alternative assessment approaches for financial assistance with repairs and improvements: this is the chosen option.

Analysis of options

Option (a) Retain the prescribed test of resources

41. Retention of the existing prescribed test of resources would have been inconsistent with the wider aims of the Act in two ways. Firstly, simplification of the system of financial assistance for disabled owners would not be achievable if the test of resources had been retained, due to the complexity of the test and the time taken to carry it out.

42. Secondly, the principle that owners should be responsible for maintaining their property suggests that all possible ways in which owners can fund repair and improvement work (as opposed to adaptation work) without relying on grant should be encouraged and facilitated. A key element of such an approach has been to place greater emphasis on the use – where possible – of equity in the property. This means that a test of resources covering only household income is no longer appropriate.

Option (b) Abolish the test of resources and replace with minimum percentage grant for adaptations and alternative assessment approaches for financial assistance with repairs and improvements: this is the chosen option

43. The approach being taken to financial assistance with adaptations is explained in para 38 above.

44. In relation to financial assistance with repairs and improvements, in place of the test of resources, the regulations delegate to local authorities the power to assess an

applicant's contribution to the cost of work, as allowed for in the 2006 Act. Statutory guidance will encourage local authorities to route owners to advice on any lending options which may be available to them. These options may be available commercially or through the proposed National Lending Unit likely to be developed by the Scottish Government as part of its implementation of the Scheme of Assistance under the 2006 Act. It will still be an option for local authorities to award grant for repairs and improvements, but in many cases such awards are likely to be made after – rather than before – assessing whether any use can be made of equity in the property. This will help ensure that use of existing local authority budgets is maximised.

45. Some applicants currently waiting to see if they can get a grant for repairs and improvements are likely to be advised by their local authority that the system for assessing financial assistance is changing. As such, some existing applicants may feel aggrieved, but in practice, many applicants would receive nothing under the current system as the demand for grant far outweighs the available resources.

SMALL FIRMS IMPACT TEST

46. It is likely that many smaller contractors will benefit not only from the greater amounts of adaptation work likely to be carried out in some areas but also from the more streamlined way in which applications for assistance are processed. The abolition of the test of resources will speed up the entire process for grant-aided adaptations work and should lead to contractors being paid more quickly, promoting sustainability for the sector.

LEGAL AID IMPACT TEST

47. The regulations are envisaged as having no impact on the Scottish Legal Aid Fund.

"TEST RUN" OF BUSINESS FORMS

48. The regulations do not involve any new business forms.

COMPETITION ASSESSMENT

49. The regulations relate to actions by local authorities which are not commercial activities and which therefore do not give rise to competition issues.

ENFORCEMENT, SANCTIONS AND MONITORING

50. The regulations relate to assistance rather than enforcement provisions within the Housing (Scotland) Act 2006, and enforcement action would be an issue only in the event of grant or loan conditions being breached.

51. The regulations have the force of law and any breach can be challenged through the courts.

52. Monitoring the impact of the new provisions will be done in a number of ways. Statistical returns from local authorities to the Scottish Government will, as now, provide information on basic trends, particularly on levels of expenditure on adaptations.

53. Regular feedback received by the Scottish Government from disabled households and from disability organisations will provide indications from across Scotland on how the new provisions are being implemented.

54. Within three years of the provisions coming into force, the Scottish Government will review the provisions and will work closely with disability organisations and local authorities in carrying out the review.

DECLARATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed: …….

Date: …….

Stewart Maxwell
Minister for Communities and Sport

Contact:

David Blair
Private Housing Quality Team
Housing Markets and Supply Division
Housing and Regeneration
Scottish Government
Victoria Quay
Edinburgh EH6 6QQ
Telephone: 0131 244 7055
Email: david.blair@scotland.gsi.gov.uk