



Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

PART 8

HOUSING: REGISTRATION OF CERTAIN LANDLORDS

Registration

82 Registers

- (1) Each local authority shall prepare and maintain a register for the purposes of this Part.
- (2) Each local authority shall make its register available for public inspection at all reasonable times.

83 Application for registration

- (1) An application by a relevant person to a local authority for entry in the register maintained by it under section 82(1) shall specify—
 - (a) the name and address of the relevant person;
 - (b) the address of each house (if any) within the area of the authority which the relevant person owns and which is subject to—
 - (i) a lease; or
 - (ii) an occupancy arrangement,
by virtue of which an unconnected person may use the house as a dwelling;
 - (c) if the relevant person has a person who acts for the person in relation to the lease or occupancy arrangement to which any house specified under paragraph (b) is subject, the name and address of the person; and
 - (d) such other information as the Scottish Ministers may by regulations prescribe.
- (2) Subject to subsection (3), the application shall be accompanied by such fee as the local authority may determine.

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- (3) The Scottish Ministers may by regulations prescribe for the purposes of subsection (2) —
- (a) fees;
 - (b) how fees are to be arrived at;
 - (c) cases in which no fee shall be payable.
- (4) A person who, in an application under this section—
- (a) specifies information which the person knows is false in a material particular; or
 - (b) knowingly fails to specify information required by subsection (1),
- shall be guilty of an offence.
- (5) A person guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) For the purposes of subsection (1)(b), the use of a house as a dwelling shall be disregarded if—
- (a) the house is being used for the provision of—
 - (i) a care home service (as defined in subsection (3) of section 2 of the Regulation of Care (Scotland) Act 2001 (asp 8));
 - (ii) a school care accommodation service (as defined in subsection (4) of that section);
 - (iii) an independent health care service (as defined in subsection (5) of that section); or
 - (iv) a secure accommodation service (as defined in subsection (9) of that section);
 - (b) the house is being used by a religious order the principal occupation of which is prayer, contemplation, education or the relief of suffering;
 - (c) a control order under section 178 of the Housing (Scotland) Act 1987 (c. 26) is in force in respect of the house; or
 - (d) the house is being used for holiday purposes.
- (7) The Scottish Ministers may by order modify subsection (6).
- (8) In this Part—
- “relevant person” means a person who is not—
 - (a) a local authority;
 - (b) a registered social landlord; or
 - (c) Scottish Homes; and
 - “unconnected person”, in relation to a relevant person, means a person who is not a member of the family of the relevant person.

84 Registration

- (1) This section applies where a relevant person makes an application to a local authority in accordance with section 83.
- (2) Where, having considered the application—
- (a) the local authority is satisfied that subsection (3) or (4) applies, the authority shall enter the relevant person in the register maintained by the authority under section 82(1);

- (b) the authority is not satisfied that either of those subsections applies, the authority shall refuse to enter the relevant person in the register.
- (3) This subsection applies where—
 - (a) under paragraph (b) of section 83(1), the application—
 - (i) does not specify a house; or
 - (ii) specifies a house (or two or more houses);
 - (b) under paragraph (c) of that section, the application does not specify the name and address of a person; and
 - (c) the relevant person is a fit and proper person to act as landlord under—
 - (i) a lease; or
 - (ii) an occupancy arrangement,by virtue of which an unconnected person may use a house as a dwelling.
- (4) This subsection applies where—
 - (a) under paragraph (b) of section 83(1), the application specifies at least one house;
 - (b) under paragraph (c) of that section, the application specifies the name and address of a person;
 - (c) subsection (3)(c) applies; and
 - (d) the person is a fit and proper person to act for a landlord such as is mentioned in that subsection in relation to the lease or, as the case may be, arrangement.
- (5) An entry in a register under subsection (2)(a) shall state, in relation to the relevant person, the information specified by virtue of paragraphs (a) to (c) of section 83(1) in the application made by the relevant person.
- (6) Subject to sections 88(8) and 89(1), where a local authority makes an entry in a register under subsection (2)(a), the authority shall remove the entry from the register on the expiry of the period of 3 years beginning with the day on which the entry is made.

85 Section 84: considerations

- (1) In deciding for the purposes of section 84(3) or (4) whether the relevant person or, as the case may be, the person is a fit and proper person, the local authority shall have regard (among other things) to any material falling within subsections (2) to (4).
- (2) Material falls within this subsection if it shows that the relevant person or, as the case may be, the person has—
 - (a) committed any offence involving—
 - (i) fraud or other dishonesty;
 - (ii) violence; or
 - (iii) drugs;
 - (b) practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business; or
 - (c) contravened any provision of—
 - (i) the law relating to housing; or
 - (ii) landlord and tenant law.

- (3) Material falls within this subsection if it relates to any actings of the relevant person or, as the case may be, the person as respects antisocial behaviour affecting a house—
 - (a) subject to a lease or occupancy arrangement such as is mentioned in section 84(3)(c); and
 - (b) in relation to which the relevant person was (or is) the landlord under the lease or arrangement or, as the case may be, the person was (or is) acting for the landlord in relation to the lease or arrangement.
- (4) Material falls within this subsection if it appears to the authority that the material is relevant to the question of whether the relevant person or, as the case may be, the person is a fit and proper person.
- (5) In subsection (3), “actings” includes failure to act.

86 Notification of registration or refusal to register

- (1) Where a local authority—
 - (a) enters a person in its register under paragraph (a) of section 84(2); or
 - (b) refuses to enter a person in its register under paragraph (b) of that section,
 the authority shall, as soon as practicable after doing so, give notice of the fact to the person.
- (2) Where a local authority refuses to enter a person in its register under section 84(2)(b), the authority shall, as soon as practicable after doing so, send notice of the fact to—
 - (a) each address specified by virtue of paragraph (b) of section 83(1) in the application for registration; and
 - (b) if, by virtue of paragraph (c) of section 83(1), the application specified the name and address of a person, that person.

87 Duty of registered person to provide information to local authority

- (1) This section applies where a person is registered by a local authority.
- (2) If in consequence of a change in circumstances any information provided by the person to the local authority by virtue of section 83(1) or, as the case may be, this subsection, becomes inaccurate, the person shall, as soon as practicable after the inaccuracy arises, give notice in writing to the authority of the change that has occurred.
- (3) Subject to subsection (4), any notice given under subsection (2) shall be accompanied by such fee as the local authority may determine.
- (4) The Scottish Ministers may by regulations prescribe for the purposes of subsection (3) —
 - (a) fees;
 - (b) how fees are to be arrived at;
 - (c) cases in which no fee shall be payable.
- (5) A person who, without reasonable excuse, fails to comply with subsection (2) shall be guilty of an offence.
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

88 Registered person: appointment of agent

- (1) Subsection (2) applies where—
 - (a) a person is registered by a local authority (the “registered person”); and
 - (b) the registered person appoints a person to act for the person in relation to—
 - (i) a lease; or
 - (ii) occupancy arrangement,by virtue of which an unconnected person may use as a dwelling a house within the area of the authority which the registered person owns.
- (2) The registered person shall, as soon as practicable after appointing the person, give notice in writing to the local authority of the appointment.
- (3) The local authority shall, as soon as practicable after being given notice under subsection (2), determine whether the condition in subsection (4) is satisfied in relation to the person appointed.
- (4) The condition is that the person is a fit and proper person to act for the registered person in relation to a lease or occupancy arrangement such as is mentioned in subsection (1) (b).
- (5) Subsections (2) to (5) of section 85 shall apply for the purposes of subsection (4) as those subsections apply for the purposes of subsection (1) of that section.
- (6) If the local authority determines that the condition in subsection (4) is satisfied—
 - (a) the registered person shall be deemed, with effect from the date of the determination, to be registered by virtue of subsection (4) of section 84; and
 - (b) the local authority shall give the registered person notice in writing of that fact.
- (7) Subsection (6)(a) shall not affect the calculation of the period mentioned in section 84(6).
- (8) If the local authority determines that the condition in subsection (4) is not satisfied, the authority shall remove the registered person from the register.

89 Removal from register

- (1) Where—
 - (a) a person is registered by a local authority; and
 - (b) subsection (2) or (3) applies,the authority shall remove the person from its register.
- (2) This subsection applies where—
 - (a) the person was registered by virtue of section 84(3); and
 - (b) paragraph (c) of that section no longer applies.
- (3) This subsection applies where—
 - (a) the person was registered by virtue of section 84(4); and
 - (b) paragraph (c) or (d) of that section no longer applies.

90 Notification of removal from register: registered person

- (1) Subsection (2) applies where under section 88(8) or 89(1) a local authority removes a person from the register maintained by it under section 82(1).
- (2) As soon as practicable after the removal, the local authority shall give the person notice in writing of—
 - (a) the removal; and
 - (b) the date of the removal.
- (3) Notice under subsection (2) shall be given to the person at the address which, immediately before the removal, was specified as being the address of the person in the entry for the person in the register.
- (4) For the purposes of subsection (2), notice is given by being sent by the recorded delivery service.

91 Notification of removal from register: other persons

- (1) Subsection (2) applies where under section 88(8) or 89(1) a local authority removes a person from the register maintained by it under section 82(1).
- (2) As soon as practicable after the removal, the local authority shall give notice of the removal and the date of the removal to—
 - (a) the address of each house that, immediately before the removal, was entered in the person's entry in the register; and
 - (b) if the authority is aware of the name and address of a person who acts for the person whose name was removed from the register in relation to a lease or occupancy arrangement such as is mentioned in section 88(1)(b), that person.

92 Appeal against refusal to register or removal from register

- (1) Subsection (2) applies where—
 - (a) under section 84(2)(b) a local authority refuses to enter a person in the register maintained by it under section 82(1); or
 - (b) under section 88(8) or 89(1) an authority removes a person from the register.
- (2) The sheriff may, on the application of the person, make an order—
 - (a) requiring the authority to enter the person in the register; and
 - (b) specifying whether the entry shall be deemed to be made by virtue of subsection (3) or (4) of section 84.
- (3) Where by virtue of subsection (2) a local authority enters a person in the register maintained by it under section 82(1), the entry shall be deemed to have been made under subsection (2)(a) of section 84 by virtue of the subsection specified in the order.
- (4) An application such as is mentioned in subsection (2) shall be made by summary application.
- (5) An appeal against the decision of a sheriff granting or refusing an application under subsection (2) shall be made to the sheriff principal and shall be made within the period of 21 days beginning with the day on which the decision appealed against was made.
- (6) The decision of the sheriff principal on an appeal under this section shall be final.

Enforcement

93 Offences

- (1) Where—
- (a) a relevant person owns a house within the area of a local authority which is subject to—
 - (i) a lease; or
 - (ii) an occupancy arrangement,by virtue of which an unconnected person may use the house as a dwelling; and
 - (b) the relevant person is not registered by that authority,
- the relevant person shall be guilty of an offence.
- (2) Where—
- (a) a relevant person is not registered by a local authority; and
 - (b) in relation to a house that the relevant person owns in the area of the authority, the relevant person communicates with another person with a view to entering into a lease or an occupancy arrangement such as is mentioned in subsection (1)(a),
- the relevant person shall be guilty of an offence.
- (3) Where subsection (5) applies, nothing in subsection (1) makes it an offence for a relevant person to own a house which is subject to a lease or, as the case may be, occupancy arrangement such as is mentioned in subsection (1).
- (4) Where subsection (5) applies, nothing in subsection (2) makes it an offence for a relevant person to communicate with another person with a view to entering into a lease or, as the case may be, occupancy arrangement such as is mentioned in subsection (2).
- (5) This subsection applies where—
- (a) the relevant person has made an application under section 83 to the local authority within whose area the house is situated; but
 - (b) the application has not been determined under section 84 by the authority.
- (6) It shall be a defence for a person charged with an offence under subsection (1) or (2) to show that there was a reasonable excuse for acting in the way charged.
- (7) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

94 Circumstances in which no rent to be payable

- (1) Where a local authority is satisfied that the conditions in subsection (2) are met in relation to a house within its area, the authority may serve a notice under this section on the persons mentioned in subsection (5).
- (2) Those conditions are—
- (a) that the owner of the house is a relevant person;
 - (b) that the house is subject to—
 - (i) a lease; or

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- (ii) an occupancy arrangement,
by virtue of which an unconnected person may use the house as a dwelling;
 - (c) that the relevant person is not registered by the local authority; and
 - (d) that, having regard to all the circumstances relating to the relevant person, it is appropriate for a notice to be served under this section.
- (3) Where a notice is served under this section, during the relevant period—
 - (a) no rent shall be payable under any lease or occupancy arrangement in respect of the house to which the notice relates;
 - (b) no other consideration shall be payable or exigible under any such lease or occupancy arrangement.
- (4) A notice served under this section shall specify—
 - (a) the name of the relevant person to whom it relates;
 - (b) the address of the house to which it relates;
 - (c) the effect of subsection (3); and
 - (d) the date on which it takes effect (which must not be earlier than the day after the day on which it is served).
- (5) Those persons are—
 - (a) the relevant person;
 - (b) if the local authority is aware of the name and address of a person who has, by virtue of a lease or an occupancy arrangement such as is mentioned in subsection (2)(b), the use of the house to which the notice relates, that person; and
 - (c) if the local authority is aware of the name and address of a person who acts for the relevant person in relation to such a lease or an occupancy arrangement, that person.
- (6) If—
 - (a) the local authority is unable to identify the relevant person, it may serve the notice under this section by publishing it in two or more newspapers (of which one shall, if practicable, be a local newspaper) circulating in the locality of the house to which the notice relates;
 - (b) the local authority is aware of the relevant person's identity but is unable to ascertain the relevant person's current address, it may serve the notice under this section by serving it on the landlord—
 - (i) at the house to which the notice relates; and
 - (ii) if it is aware of a previous address of the relevant person, at that address.
- (7) The condition mentioned in subsection (2)(c) shall not be taken to be met where—
 - (a) the relevant person has made an application under section 83 to the local authority in whose area the house is situated; but
 - (b) the application has not been determined under section 84 by the authority.
- (8) Except as provided in subsection (3), nothing in this Part affects the validity of any lease or occupancy arrangement under which an unconnected person has the use as a dwelling of a house during the relevant period.

- (9) Where a local authority is aware of the name and address of a person mentioned in paragraph (b) or, as the case may be, (c) of subsection (5), failure to serve a notice on the person shall not affect the validity of the notice.
- (10) In this section, “relevant period” means the period beginning with the date specified in the notice and ending with the earlier of—
 - (a) the revocation of the notice under section 95(2); or
 - (b) where the effect of the decision made on an appeal under section 97 is that rent or, as the case may be, other consideration is payable or exigible, that decision.

95 Notices under section 94: revocation

- (1) Subsection (2) applies where a local authority serves a notice under section 94 in relation to a house.
- (2) If (whether on the application of a person having an interest in the case or otherwise) the local authority which served the notice is satisfied that the conditions mentioned in section 94(2) are no longer met in relation to the house, the authority shall, with effect from such day as it may specify, revoke the notice.
- (3) The revocation of a notice under subsection (2) shall not operate so as to make a person liable to pay any rent or other consideration in respect of the period during which the notice was in force.

96 Notification of revocation of notice

- (1) Subsection (2) applies where a local authority revokes a notice under section 95 in relation to a house.
- (2) As soon as practicable after revoking the notice, the local authority shall give notice of the fact to—
 - (a) the relevant person;
 - (b) if the local authority is aware of the name and address of a person who has, by virtue of a lease or an occupancy arrangement such as is mentioned in section 94(2)(b), the use of the house to which the notice relates, that person; and
 - (c) if the local authority is aware of the name and address of a person who acts for the relevant person in relation to such a lease or an occupancy arrangement, that person.
- (3) Where a local authority is aware of the name and address of a person mentioned in paragraph (b) or, as the case may be, (c) of subsection (2), failure to serve a notice on the person may not be founded on in any proceedings.

97 Appeals

- (1) A relevant person on whom a notice under section 94 is served may, before the expiry of the period of 21 days beginning with the date specified by virtue of subsection (4) (d) of that section in the notice, appeal to the sheriff against the decision of the local authority to serve the notice.
- (2) Where, on the application of a person having an interest, a local authority makes a decision refusing to revoke a notice under section 95(2), the person may, before the

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expiry of the period of 21 days beginning with the day on which the decision is made, appeal to the sheriff against the decision.

- (3) Subsection (4) applies where a person appeals against a decision such as is mentioned in subsection (1) or (2).
- (4) The person shall (in addition to complying with any other requirements as to notification imposed by virtue of any enactment) give notice to the person who has the use as a dwelling of the house to which the notice relates (the “tenant”) of such matters as may be prescribed by the Scottish Ministers by regulations.
- (5) Regulations under subsection (4) may include provision for or in connection with—
 - (a) the form of the notice;
 - (b) the manner and timing of service of the notice.
- (6) If a person fails to comply with subsection (4), the court hearing the appeal may not require the tenant to pay any sums that, but for the making of the order, would have been due by the tenant.
- (7) The Scottish Ministers may by regulations make provision for or in connection with specifying other circumstances in which the sheriff principal shall not require a tenant to pay any sums that, but for the making of the order, would have been due by the tenant.
- (8) Regulations under subsection (7) may in particular include provision—
 - (a) specifying procedures;
 - (b) imposing obligations on landlords.

Grants

98 Grants to local authorities

- (1) The Scottish Ministers may make a grant to a local authority in respect of costs incurred by the authority by virtue of this Part.
- (2) The payment of a grant under subsection (1) may be made subject to such conditions (including conditions as to repayment) as the Scottish Ministers may determine.

Regulations

99 Regulations about advice and assistance: Part 8

For the purposes of this Part, the Scottish Ministers may by regulations make provision requiring local authorities to provide advice and assistance of such description as may be specified in the regulations to persons of such description as may be so specified.

Amendment of Housing (Scotland) Act 1988

100 Amendment of Housing (Scotland) Act 1988

In subsection (6)(a) of section 18 of the Housing (Scotland) Act 1988 (c. 43) (orders for possession)—

- (a) the word “or”, where it thirdly occurs, shall be repealed; and
- (b) after “10” there shall be inserted “, Ground 15”.

Interpretation

101 Interpretation of Part 8

(1) In this Part—

“house” means, subject to subsection (2), a building or part of a building occupied or intended to be occupied as a dwelling;

“landlord”, in relation to an occupancy arrangement, means the person who under the arrangement permits another to occupy the building or, as the case may be, the part of the building;

“occupancy arrangement” means any arrangement under which a person having the lawful right to occupy a house permits another, by way of contract or otherwise, to occupy the house or, as the case may be, part of it; but does not include a lease;

“registered”, in relation to a relevant person and a local authority, means entered by virtue of section 84(2)(a) in the register maintained by the authority under section 82(1); and cognate expressions shall be construed accordingly;

“relevant person” has the meaning given by section 83(8);

“unconnected person” has the meaning given by section 83(8); and

“use as a dwelling” shall be construed in accordance with section 83(6).

(2) If two or more dwellings within a building share the same toilet, washing or cooking facilities, then those dwellings shall be deemed to be a single house for the purposes of this Part.

(3) For the purposes of this Part, any reference to a person’s being a member of another’s family shall be construed in accordance with section 108(1) and (2) of the Housing (Scotland) Act 2001 ([asp 10](#)).

(4) For the purposes of this Part, a person engages in antisocial behaviour if the person—

- (a) acts in a manner that causes or is likely to cause alarm, distress, nuisance or annoyance; or
- (b) pursues a course of conduct that causes or is likely to cause alarm, distress, nuisance or annoyance,

to a person residing in, visiting or otherwise engaging in lawful activity at, or in the locality of, a house; and “antisocial behaviour” shall be construed accordingly.