



Housing (Scotland) Act 2006

2006 asp 1

PART 5

LICENSING OF HOUSES IN MULTIPLE OCCUPATION

Enforcement by local authority

144 Suspension of rent etc.

- (1) The local authority may, if satisfied—
 - (a) that an HMO which requires to be licensed under this Part is not so licensed, or
 - (b) that any condition included in an HMO licence has been breached (regardless of whether the local authority has taken any other action, or of whether criminal proceedings have been commenced, in respect of that breach),by order provide that no rent or other sums for occupation are to be payable under any tenancy or occupancy arrangement by virtue of which any person occupies the living accommodation concerned.
- (2) A notice under section 158 giving notice of the decision to make an order under subsection (1) must specify—
 - (a) the name of the owner of the living accommodation concerned (where the local authority is aware of it),
 - (b) the address of the living accommodation concerned,
 - (c) the effect of the order, and
 - (d) the date on which it is take effect (which must not be earlier than the date on which the notice is served on the owner).
- (3) Where the local authority is aware of the name and address of a person who acts for the owner on whom that notice is served the local authority must serve a copy of the notice (accompanied by a copy of the order) on that person.
- (4) The local authority must revoke an order under subsection (1) if—
 - (a) in the case of an order made in pursuance of paragraph (a) of that subsection, the local authority—
 - (i) subsequently grants an HMO licence to the owner of the living accommodation concerned, or

Status: This is the original version (as it was originally enacted).

- (ii) is subsequently satisfied, on the application of any person with an interest or otherwise, that the living accommodation concerned is no longer an HMO, or
- (b) in the case of an order made in pursuance of paragraph (b) of that subsection, the local authority is subsequently satisfied, on the application of any person with an interest or otherwise—
 - (i) that the condition is no longer being breached, or
 - (ii) that the living accommodation concerned is no longer an HMO.
- (5) The local authority must serve notice of any such revocation, as soon as practicable after doing so, on—
 - (a) the owner of the living accommodation concerned,
 - (b) the occupiers of the living accommodation concerned, and
 - (c) where the local authority is aware of the name and address of a person who acts for the owner, that person,
 and the revocation is to have effect from the day on which notice is served under paragraph (a).
- (6) An order under subsection (1) does not affect the terms or validity of the tenancy or occupancy arrangement to which it relates (otherwise than by suspending the rent or other sums payable for occupation under that tenancy or occupancy arrangement).
- (7) Revocation of an order under subsection (1) does not make any person liable to pay any rent or sums which that person would, but for the order, have been liable to pay under the tenancy or occupancy arrangement concerned while the order had effect.
- (8) Failure to comply with—
 - (a) section 158(6)(b), or
 - (b) subsection (3) or (5)(b) or (c),
 does not invalidate the order or, as the case may be, the revocation concerned.

145 Power to require rectification of breach of HMO licence

- (1) This section applies where the local authority considers that any condition included in an HMO licence has been, or is likely to be, breached (regardless of whether the local authority has taken any other action, or of whether criminal proceedings have been commenced, in respect of that breach).
- (2) Where this section applies the local authority may require the licence holder to take such action as the local authority considers necessary for the purposes of rectifying or, as the case may be, preventing the breach.
- (3) A requirement under subsection (2) has effect from the date on which notice of the decision to make the requirement is served on the licence holder under section 158.
- (4) That notice must specify—
 - (a) the action required, and
 - (b) the period within which that action must be undertaken.
- (5) The period so specified must be the period within which the local authority reasonably considers that that action can be undertaken.

- (6) The local authority may revoke a requirement under subsection (2) by serving notice to that effect on the licence holder; and the local authority must do so if satisfied that the licence holder has complied with the requirement.

146 HMO amenity notices

- (1) This section applies to any living accommodation—
- (a) which is, or which the local authority believes to be, an HMO which requires to be licensed under this Part (whether or not so licensed), and
 - (b) which the local authority considers is not reasonably fit for occupation by the number of persons whom the authority knows or believes to be occupying it.
- (2) The local authority may require the owner of any living accommodation to which this section applies to carry out work in the living accommodation for the purposes of making it reasonably fit for occupation by—
- (a) the number of persons whom the authority knows or believes to be occupying it, or
 - (b) such smaller number of persons which the authority considers could be reasonably accommodated in it if the work is carried out.
- (3) A requirement under subsection (2) must be made by serving a notice (an “HMO amenity notice”) in accordance with section 158.
- (4) The notice must specify, in addition to the matters specified in section 158(12)(a) and (b)—
- (a) the work which requires to be carried out, and
 - (b) the period within which the work must be completed.
- (5) The period so specified must be a period of not less than 21 days from the date on which the notice takes effect within which the local authority reasonably considers that the work can be completed.
- (6) The HMO amenity notice may also specify particular steps which the local authority requires to be taken in carrying out the work required.
- (7) An HMO amenity notice may not require the owner to take any fire safety measures within the meaning of the Fire (Scotland) Act 2005 (asp 5).

147 HMO amenity notices: relevant matters

- (1) In reaching a decision for the purposes of section 146(1)(b) in relation to any living accommodation, the local authority must have regard to—
- (a) the extent (if any) to which the living accommodation falls short of the provisions of building regulations, and
 - (b) any defects with respect to any of the matters mentioned in subsection (2).
- (2) Those matters are—
- (a) natural and artificial lighting,
 - (b) ventilation,
 - (c) installations for the supply of water, gas and electricity and for sanitation, space heating and heating water,
 - (d) personal washing facilities, and

- (e) facilities for the storage, preparation and provision of food.

148 HMO amenity notices: revocation

- (1) The local authority may revoke an HMO amenity notice if—
 - (a) the living accommodation to which it relates is demolished, or
 - (b) it considers that the work required by the notice is no longer necessary for the purpose for which the notice was served.
- (2) The local authority must give notice of any such revocation in accordance with section 158.

149 HMO amenity notices: extension of period for completion of work

- (1) The local authority may, at any time, extend the period within which any work required by an HMO amenity notice must be completed by such period as it considers reasonable.
- (2) But such a period may be extended only where the local authority—
 - (a) considers that satisfactory progress has been made in carrying out the work, or
 - (b) has received a written undertaking from the owner stating that the work will be completed by a later date which the authority considers satisfactory.
- (3) The local authority must give notice of any extension in accordance with section 158.

150 HMO amenity notices: further provision

Schedule 5 makes further provision about HMO amenity notices.

151 Power of local authority to carry out or arrange work

A local authority may carry out, or arrange for the carrying out of, any work which any other person is required under section 145(2) or 146(2) to carry out (but only by agreement with, and at the expense of, that other person).

152 Effect of person moving from living accommodation

- (1) Where—
 - (a) a person moves from any living accommodation for the purposes of enabling any person to carry out any work required under section 145(2) or 146(2) (whether in pursuance of a requirement under paragraph 2(1) of schedule 5 or a warrant under paragraph 3(4) of that schedule or otherwise), and
 - (b) that person resides in the living accommodation under a tenancy or occupancy arrangement,the tenancy or occupancy arrangement, if that person so chooses, is to be taken not to have terminated, varied or altered by reason of that person moving.
- (2) If a person who has so moved resumes lawful occupation, the same terms apply (except so far as otherwise agreed) in respect of that occupation as applied in respect of the previous occupation.

- (3) In this section “lawful occupation” means occupation which is not an offence under paragraph 4 of schedule 5.

153 Obstructions etc.

- (1) This section applies if, after receiving notice of the intended action, any person prevents or obstructs any other person from doing anything which that other person is by or under section 145(2), 146(2) or 151 or schedule 5 required, authorised or entitled to do.
- (2) Where this section applies, the sheriff may order the person who prevented or obstructed another person to permit that other person to do all things which the other person reasonably requires to do for the purposes of—
- (a) complying with any requirement imposed under section 145(2) or 146(2) or schedule 5, or
 - (b) doing anything which that other person is by or under section 145(2), 146(2) or 151 or schedule 5 authorised or entitled to do.
- (3) Any person who fails to comply with such an order is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) This section does not apply in relation to rights conferred by Part 9.