

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 - Housing: Antisocial Behaviour Notices

Section 68 – Antisocial behaviour notices

184. **Section 68** permits a local authority to serve an antisocial behaviour notice on the landlord of a relevant house if any person who occupies the house under a tenancy or occupancy agreement or visits the house is engaging in antisocial behaviour which causes or is likely to cause alarm, distress, nuisance or annoyance at or in the locality of the house. The relevant house must be in the local authority's area but the interpretation section (section 81) excludes houses which are owned by a local authority, a registered social landlord or Scottish Homes; which are in specified categories regulated by the Scottish Commission for the Regulation of Care under the Regulation of Care (Scotland) Act 2001; which are used by a religious order; or which are the subject of a local authority control order in terms of section 178 of the Housing (Scotland) Act 1987.
185. Under subsection (3) of section 68 the antisocial behaviour notice must describe the antisocial behaviour which has led to the serving of the notice and require the landlord to take specified action within a specified period. The subsection requires the notice to state the consequences of a failure to take the action, and to inform the landlord of the right to request a review.
186. Subsection (4) requires the local authority to send a copy of the notice to any known agent of the landlord. Subsection (5) provides for the local authority to publish the notice where it cannot identify the landlord. Where it can identify the landlord but does not have a current address it may serve the notice on the landlord by sending it to the landlord at the house and at the landlord's last known address if known.
187. Subsection (6) allows the Scottish Ministers to modify Part 7 of the Act by order in such ways as they consider to be necessary or expedient in order to apply the powers to houses which are used for holiday purposes. There is the potential for antisocial behaviour in holiday accommodation but the short-term nature of the occupation may make it difficult to implement the antisocial behaviour notice procedure effectively. This subsection allows the provisions to be modified to suit the circumstances of holiday lets should this prove necessary. The order making power is subject to affirmative resolution procedure.

Section 69 – Review of antisocial behaviour notices

188. **Section 69** gives the landlord a right for the notice to be reviewed by the local authority provided the landlord applies for a review within 21 days of the service of the notice or such longer period as the local authority may allow.

Section 70 – Internal procedure on review

189. **Section 70** sets out the arrangements for ensuring that the local authority's internal review is carried out independently of the initial decision. It provides that the review must be conducted by a person who was not involved in the decision to serve the notice and who is senior to the person who made that decision. The reviewer may confirm, vary or revoke the notice and may suspend the notice pending completion of the review. The local authority must give the landlord reasons for the decision taken on review.

Section 71 – Failure to comply with notice: order as to rental income

190. **Section 71** provides that the sheriff may make an order that no rent or other consideration shall be payable or exigible for occupation of the house if the local authority applies for such an order and the sheriff is satisfied both that the landlord has failed to comply with the antisocial behaviour notice and that it would not have been unreasonable for the landlord to have done so. The sheriff can also make incidental orders if necessary.
191. Subsections (3) and (4) require the local authority to give a copy of the order to any tenant and any agent, provided the local authority is aware of their name and address. Subsection (5) provides that apart from the effect of the order no other aspect of the lease is affected by the operation of Part 7. This means that, for example, the landlord is still able to take action under the lease to deal with a tenant's antisocial behaviour, and that the tenant retains all obligations (other than rent liability) and protections under any lease or occupancy agreement.

Section 72 – Appeals against orders under section 71

192. **Section 72** provides that an appeal against a decision by a sheriff on an application for an order as to rental income shall be made to the sheriff principal within 21 days, and that the sheriff principal's decision is final. Where a landlord appeals against a decision to make an order, the landlord must give notice to the tenant of any matters which are prescribed by the Scottish Ministers in regulations. If the landlord does not give such notice, or in other circumstances which may be specified by the Scottish Ministers in regulations, the sheriff principal must not require the tenant to pay any sums which would have been due but for the making of the order. The regulations may include provisions as to procedures and may also impose obligations on landlords. These regulations are subject to negative resolution procedure.

Section 73 – Orders under section 71: revocation and suspension

193. **Section 73** allows the sheriff to revoke or suspend an order as to rental income made under section 71 on application by the local authority or the landlord, if the sheriff is satisfied either that the action specified in the antisocial behaviour notice has been taken or that it is otherwise unreasonable for the order to continue. Subsection (3) provides that the revocation or suspension does not have retrospective effect, and subsection (4) requires the local authority to give a copy of the order revoking or suspending the order as to rental income to any tenant and any agent, provided the local authority is aware of their name and address..

Section 74 – Failure to comply with notice: management control order

194. **Section 74** provides for the sheriff to make, in like manner as for an order as to rental income under section 71, a management control order which transfers to the local authority for a period not exceeding 12 months the rights and obligations of the landlord under the tenancy or occupancy arrangements existing at the time of the order. Subsection (4) allows the local authority to recover from the landlord any sums that should have been paid to it in terms of the management control order but were instead paid to the landlord. The section also provides for the sheriff to make incidental orders, and gives effect to schedule 3.

Schedule 3 – Management control orders

195. **Schedule 3** makes detailed provision for management control orders in connection with the effect on tenants and occupants, the keeping of accounts by the local authority, the making of regulations to govern expenditure recoverable by the local authority from the landlord, the recovery of rent arrears from the tenant, the delegation by the local authority of management functions to third parties and the requirement for the landlord to obtain the local authority's approval to re-let part of shared accommodation while it is subject to an order. These regulations are subject to negative resolution procedure.

Section 75 – Management control order: notification

196. **Section 75** requires the local authority to inform both the landlord if practicable and the tenant, or the occupant under an occupancy arrangement, of the making of the order and to give a copy to any known agent.

Section 76 – Management control order: revocation

197. **Section 75** allows the sheriff to revoke a management control order in like manner as for the revocation of an order as to rental income under section 73 if either the action specified in the antisocial behaviour notice has been carried out by the landlord or the local authority or it would in all the circumstances be unreasonable for the notice to continue to have effect.

Section 77 – Management control order: notification of revocation

198. **Section 77** requires that when a management control order is revoked, the party which applied for the revocation (which could be the local authority or the landlord) notifies the other party and the occupiers as soon as practicable after the revocation.

Section 78 – Failure to comply with notice: action by authority at landlord's expense

199. This section provides that where a landlord fails to comply with an antisocial behaviour notice the local authority may take steps that it feels are necessary to deal with the antisocial behaviour described in the notice. It also provides that and the landlord shall be liable for the local authority's expenditure of a description and in circumstances prescribed by the Scottish Ministers in regulations. The regulations may also provide for the notification and collection of such expenditure and for the settling of related disputes. These regulations are subject to negative resolution procedure.

Section 79– Failure to comply with notice: offence

200. **Section 79** provides that a landlord who has failed without reasonable excuse to comply with an antisocial behaviour notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

Section 80 – Regulations about advice and assistance: Part 7

201. **Section 80** gives the Scottish Ministers powers to make regulations requiring local authorities to provide advice and assistance in connection with Part 7 of the Act. These regulations are subject to negative resolution procedure.

Section 81 – Interpretation of Part 7

202. **Section 81** defines landlord, occupancy arrangement and relevant house so that the provisions in this Part relate to houses which are the subject of formal tenancies and the full range of formal and informal occupancy arrangements including shared accommodation. However, as indicated in the introductory paragraph it excludes houses which are owned by a local authority, a registered social landlord or Scottish

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Act 2004 (asp 8) which received Royal Assent on 26 July 2004*

Homes; which are in specified categories regulated by the Scottish Commission for the Regulation of Care under the Regulation of Care (Scotland) Act 2001; which are used by a religious order; or which are the subject of a local authority control order in terms of section 178 of the Housing (Scotland) Act 1987. It also sets out what is meant by engaging in antisocial behaviour for the purposes of this Part of the Act.