



# Housing (Scotland) Act 2006

## 2006 asp 1

### PART 10

#### GENERAL AND SUPPLEMENTARY

#### **185 Equal opportunities**

- (1) The Scottish Ministers and local authorities must perform the functions given to them by this Act in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) “Equal opportunities” and “equal opportunity requirements” have the same meanings in this section as they have in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46).

#### **186 Power to obtain information etc.**

- (1) A local authority may, for the purpose of enabling or assisting it to exercise any function conferred on it by this Act in relation to any land or premises, serve notice on any person who appears to it to be a person falling within subsection (3) requiring the person to—
  - (a) state in writing to the local authority—
    - (i) the nature of that person’s interest in the land or premises, and
    - (ii) the name and address of any other person known to that person as having an interest in the land or premises, and
  - (b) provide the local authority with any other information about the land or premises that it may reasonably request.
- (2) Where a notice under subsection (1) is served on a person who appears to the local authority to be occupying land or premises for the purpose of enabling or assisting the local authority to decide whether there is any living accommodation on the land or premises which is an HMO which requires to be licensed under Part 5, the notice may also require the person to disclose the relationship (if any) between that person and any other occupants.
- (3) A person falls within this subsection if the person—
  - (a) owns or occupies the land or premises concerned, or

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- (b) receives rent, directly or indirectly, in respect of that land or those premises.
- (4) Any person who, having been required by a notice under subsection (1) to give information to a local authority—
  - (a) without reasonable excuse, refuses or fails to give that information, or
  - (b) knowingly or recklessly makes any statement in respect of that information which is false or misleading in a material particular,
 is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (5) Nothing in this section authorises a local authority to require the disclosure of any information if such disclosure would make the person holding it susceptible under any enactment or rule of law to any sanction or other remedy.

## **187      Formal communications**

- (1) A “formal communication” means any—
  - (a) notice,
  - (b) notification,
  - (c) direction,
  - (d) consent,
  - (e) confirmation,
  - (f) requirement,
  - (g) request,
  - (h) order,
  - (i) application (other than an application to a court),
  - (j) licence,
  - (k) acknowledgment, or
  - (l) decision,
 used under or for the purposes of this Act.
- (2) A formal communication must be in writing.
- (3) A formal communication is served on or, as the case may be, submitted, given, made or issued to, a person if it is—
  - (a) delivered to the person at the place mentioned in subsection (4),
  - (b) sent, by post in a prepaid registered letter or by the recorded delivery service, to the person at that place, or
  - (c) sent to the person in some other manner (including by electronic means) which the sender reasonably considers likely to cause it to be delivered to the person on the same or next day.
- (4) The place referred to in subsection (3) is—
  - (a) where the person is an individual, to the person at that person’s place of business or usual or last known place of abode,
  - (b) where the person is an incorporated company or body, to the secretary, chief clerk or chief executive of the company or body at its registered or principal office, or
  - (c) where the person is a public office-holder, to the office-holder at the office-holder’s principal office.

- (5) Where the person to which a formal communication is to be delivered or sent is an incorporated company or body, the sender complies with subsection (3) by delivering or sending it to the secretary, chief clerk or chief executive of the company or body.
- (6) A formal communication which is sent by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (7) A formal communication sent under subsection (3)(c) is, unless the contrary is proved, to be treated as having been delivered on the next working day after the day on which it was sent.
- (8) In subsection (7), “working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971 (c. 80), is a bank holiday in Scotland.
- (9) Subsection (10) applies where a person is unable to deliver or send a formal communication to the owner or occupier of any house or other premises or other living accommodation because that person is not (having made reasonable inquiries) aware of the name or address of that owner or occupier.
- (10) Where this subsection applies, the formal communication may be served on or, as the case may be, submitted, given, made or issued to the owner or occupier concerned by addressing a copy of it to “The Owner” or, as the case may be, “The Occupier” of the house or other premises or other living accommodation (describing it or them) and causing a copy of it to be displayed on or near the house or other premises or other living accommodation.

## **188 Forms**

- (1) The Scottish Ministers may by regulations make provision as to the form and content of any formal communication authorised or required to be used under or for the purposes of this Act.
- (2) Any formal communication in respect of which provision is made by such regulations must be used in the form provided for, or in a form as close to it as circumstances permit.

## **189 Offences by bodies corporate etc.**

- (1) Where an offence under this Act committed—
  - (a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a director, manager or secretary of the body corporate, or
    - (ii) purports to act in any such capacity,
  - (b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
    - (i) is a partner, or
    - (ii) purports to act in that capacity,
  - (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

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(i) is concerned in the management or control of the association, or  
(ii) purports to act in the capacity of a person so concerned,  
the individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

### **190 Ancillary provision**

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.
- (2) An order under subsection (1) may modify any enactment, instrument or document.

### **191 Orders and regulations**

- (1) Any power of the Scottish Ministers under this Act to make orders or regulations is exercisable by statutory instrument.
- (2) Any such power includes power to make—
- (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) different provision for different purposes.
- (3) Unless contrary provision is made in subsections (4) to (6), a statutory instrument containing an order or regulations under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) No order—
- (a) under section 126(2) or 127(1), or
  - (b) under section 190(1) containing provisions which add to, replace or omit any part of the text of an Act,
- is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.
- (5) Regulations under section 73(3), 77(1), 79(6), 91(5), 99(2), 104(1), 105, 111(4) or 121(1) are not to be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.
- (6) Subsection (3) does not apply to any statutory instrument containing an order under section 195(3) (commencement orders).

### **192 Modification, revocation and repeal of enactments**

- (1) Schedule 6 contains modifications and revocations of enactments in consequence of the provisions of this Act.

- (2) The repeals of the enactments specified in column 1 of schedule 7 have effect to the extent specified in column 2.

### **193 Crown application**

- (1) This Act binds the Crown.
- (2) But subordinate legislation made under this Act need not bind the Crown.
- (3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Despite subsection (3), the provisions made by and under this Act apply to persons in the public service of the Crown as they apply to other persons.
- (5) In the application of this Act to the Crown, “owner”—
- (a) in the case of land or premises belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
  - (b) in the case of any other land or premises belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, the government department having the management of the land or premises,
  - (c) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.
- (6) It is for the Scottish Ministers to determine any question which arises as to who is, for the purposes of this Act, the owner of land or premises falling within paragraphs (a) to (c) of subsection (5); and their decision is final.

### **194 Interpretation**

- (1) In this Act, unless the context indicates otherwise—
- “the 1987 Act” means the Housing (Scotland) Act 1987 (c. 26),
  - “building regulations” means any enactments, byelaws, rules or regulations or other provisions under whatever authority made, relating to the construction of new buildings or the laying out of and construction of new roads which are for the time being in force in relation to the land or premises concerned,
  - “chief officer of the fire and rescue authority”, when referred to in relation to any living accommodation, means the chief officer of the relevant authority (as defined by section 6 of the Fire (Scotland) Act 2005 (asp 5)) for the area in which the living accommodation is situated,
  - “demolition notice” means a notice served under section 33(2),
  - “disabled person” has the same meaning as in the Disability Discrimination Act 1995 (c. 50),
  - “formal communication” has the meaning given in section 187,
  - “HMO”, which is an acronym for “house in multiple occupation”, has the meaning given in section 125(1),

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“HMO amenity notice” has the meaning given in section 146(2),

“HMO licence” has the meaning given in section 124(2),

“HRA” is used as an acronym for “housing renewal area”,

“HRA action plan” has the meaning given in section 3,

“HRA designation order” means an order made under section 1,

“house”—

(a) means any living accommodation which is, or which is capable of being, occupied as a separate dwelling (other than a mobile home or any other living accommodation which is not a building), and

(b) includes—

(i) any part of the living accommodation (including its structure and exterior) which is, and any common facilities relating to it which are, owned in common with others, and

(ii) any yard, garden, garage, out-house or other area or structure which is, or which is capable of being, occupied or enjoyed together with the living accommodation (solely or in common with others),

“land” means any land (including any structure or erection on the land) other than land which consists of or on which there are any premises,

“landlord” means any person who lets a house under a tenancy, and includes the landlord’s successors in title,

“living accommodation” means any place which is, or which is capable of being, occupied for the purposes of human habitation,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39); and references to a local authority in relation to any land or premises are to the authority for the area in which the land is or, as the case may be, the premises are situated,

“maintenance” includes repairs and replacement, cleaning, painting and other routine work, gardening, and the reinstatement of part (but not most) of premises (but does not include demolition, alteration or improvement, or any internal decoration of any part of premises which are not owned in common, unless reasonably incidental to any such repairs etc.); and “maintain”, “maintaining” and other cognate words are to be construed accordingly,

“maintenance account” means a bank or building society account opened for the purpose of holding money to be used to pay costs incurred in connection with any work carried out for the purpose of maintaining premises consisting of two or more houses,

“maintenance order” has the meaning given in section 42,

“maintenance plan” has the meaning given in section 43,

“occupancy arrangement” means an arrangement other than a lease under which a person is entitled, by way of contract or otherwise, to occupy any land or premises,

“occupier” includes any person entitled to occupy any land or premises under a tenancy or an occupancy arrangement (and “occupy”, “occupied” and “occupant” are to be construed accordingly),

“premises”—

(a) means any building which is, or which is capable of being, occupied (separately or otherwise) for any purpose, and

(b) includes—

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- (i) any part of the building (including its structure and exterior) which is, and any common facilities relating to it which are, owned in common with others, and
  - (ii) any yard, garden, garage, out-house or other area or structure which is, or which is capable of being, occupied or enjoyed together with the building or any part of it,
- “private rented housing committee” and “private rented housing panel” are to be construed in accordance with section 21,  
“rent relief order” has the meaning given in section 27(1),  
“repairing standard” has the meaning given in section 13,  
“repairing standard enforcement order” means an order made under section 24(2),  
“temporary exemption order” has the meaning given in section 142(1),  
“tenancy” includes—
- (a) a sub-tenancy,
  - (b) any occupation of living accommodation by a person under that person’s terms of employment,
- but does not otherwise include any occupation under an occupancy arrangement,  
“tenant” means a tenant under a tenancy,  
“tolerable standard” has the meaning given in section 86 of the 1987 Act,  
“work” includes maintenance, repair and improvement but does not include demolition,  
“work notice” means a notice served under section 30(2).
- (2) References in this Act to land or premises may, where the context permits, be construed as including reference to any part of that land or those premises which is, or which is capable of being, occupied separately.
  - (3) References in this Act to work in any premises include references to work—
    - (a) on any part of them which is a building, and
    - (b) in or on any part of them which is not a building.
  - (4) References in this Act to the demolition of any premises include references to such reconstruction of them as the local authority may approve.
  - (5) References in this Act to a private rented housing committee which is determining a tenant’s application or which has made a repairing standard enforcement order include references to any successor private rented housing committee constituted under Schedule 4 of the Rent (Scotland) Act 1984 (c. 58).
  - (6) References in this Act to the registering of a document in the appropriate land register are to be treated as references to the recording of the document in the General Register of Sasines or the registering of the information contained in the document in the Land Register of Scotland as appropriate.
  - (7) This Act does not apply in relation to houses or other living accommodation outwith Scotland.

## **195 Short title and commencement**

- (1) This Act may be cited as the Housing (Scotland) Act 2006.

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- (2) Sections 190 and 191 and this section come into force on Royal Assent.
- (3) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.