



# Housing (Scotland) Act 2006

## 2006 asp 1

### PART 6

#### MOBILE HOMES

#### 167 Particulars of site agreements to be given in advance

For section 1 (particulars of agreements between site owners and occupiers of mobile homes) of the Mobile Homes Act 1983 (c. 34) (“the 1983 Act”) substitute—

##### “1 Particulars of agreements: Scotland

- (1) This Act applies to any agreement under which a person (“the occupier”) is entitled—
  - (a) to station a mobile home on land forming part of a protected site; and
  - (b) to occupy the mobile home as the person’s only or main residence.
- (2) Before making an agreement to which this Act applies, the owner of the protected site (“the owner”) must give to the proposed occupier under the agreement a written statement which—
  - (a) specifies the names and addresses of the parties;
  - (b) includes particulars of the land on which the proposed occupier is to be entitled to station the mobile home that are sufficient to identify that land;
  - (c) sets out the express terms to be contained in the agreement;
  - (d) sets out the terms to be implied by section 2(1) below; and
  - (e) complies with such other requirements as may be prescribed by regulations made by the Scottish Ministers.
- (3) Where the owner is selling the mobile home to the proposed occupier, the written statement required by subsection (2) above must be given not later than 28 days before the earlier of—
  - (a) the date on which the agreement to which this Act applies is made; and
  - (b) the date on which any agreement for the sale of the mobile home to the proposed occupier is made.

- (4) In any other case, the written statement required by subsection (2) above must be given not later than 28 days before the date on which the agreement to which this Act applies is made.
- (5) But if the proposed occupier consents in writing to the written statement required by subsection (2) above being given by a date which is later than the date by which subsection (3) or (4) above would otherwise require it to be given, the statement must be given not later than that later date.
- (6) If any express term—
- (a) is contained in an agreement to which this Act applies; but
  - (b) was not set out in a written statement given to the proposed occupier in accordance with subsections (2) to (5) above,
- the term is unenforceable by the owner or any person within section 3(1) below.
- This subsection is subject to any order made by the court under section 2(3) below.
- (7) If the owner has failed to give the occupier a written statement in accordance with subsections (2) to (5) above, the occupier may, at any time after the making of the agreement, apply to the court for an order requiring the owner—
- (a) to give the occupier a written statement which complies with paragraphs (a) to (e) of subsection (2) above (read with any modifications necessary to reflect the fact that the agreement has been made); and
  - (b) to do so not later than such date as is specified in the order.
- (8) A statement required to be given to a person under this section may be either delivered to the person personally or sent to the person by post.
- (9) Any reference in this section to the making of an agreement to which this Act applies includes a reference to any variation of an agreement by virtue of which the agreement becomes one to which this Act applies.
- (10) Regulations under this section—
- (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament; and
  - (b) may make different provision with respect to different cases or descriptions of case.”.

## 168 Variation of site agreements

Section 2 of the 1983 Act (terms of agreements) is amended as follows—

- (a) in subsection (2), for “six months of the giving of the statement under section 1(2) above” substitute “the relevant period”, and
- (b) for subsection (3) substitute—

“(3) The court may, on the application of either party made within the relevant period, make an order—

- (a) varying or deleting any express term of the agreement;
- (b) in the case of any express term to which section 1(6) above applies, provide for the term to have full effect or to have such effect subject to any variation specified in the order.

- (3A) In subsections (2) and (3) above “the relevant period” means the period beginning with the date on which the agreement is made and ending—
- (a) six months after that date; or
  - (b) where a written statement relating to the agreement is given to the occupier after that date (whether or not in compliance with an order under section 1(7) above), six months after the date on which the statement is given;
- and section 1(9) above applies for the purposes of this subsection as it applies for the purposes of section 1.”.

## **169 Implied terms relating to termination of agreements or disposal of mobile homes**

- (1) Part 1 of Schedule 1 (terms implied in site agreements) to the 1983 Act is amended as follows.
- (2) In paragraph 6 (termination by owner on ground of detrimental effect resulting from age and condition of mobile home)—
- (a) the words “age and” are repealed,
  - (b) after sub-paragraph (2) insert—
- “(3) Sub-paragraphs (4) and (5) below apply if, on an application under sub-paragraph (1) above—
- (a) the court considers that—
    - (i) having regard to the present condition of the mobile home, paragraph (a) or (b) of that sub-paragraph applies to it; but
    - (ii) it would be reasonably practicable for particular repairs to be carried out on the mobile home that would result in neither of those paragraphs applying to it; and
  - (b) the occupier indicates an intention to carry out those repairs.
- (4) In such a case the court may make an order setting out the repairs and adjourning proceedings on the application for such period specified in the order as the court considers reasonable to allow the repairs to be carried out.
- (5) If the court makes such an order, the application is not to be further proceeded with unless the court is satisfied that the specified period has expired without the repairs having been carried out.”.
- (3) In paragraph 8 (sale of mobile home to person approved by owner)—
- (a) after sub-paragraph (1) insert—
- “(1A) The occupier may serve on the owner a request for the owner to approve a person for the purposes of sub-paragraph (1) above.
- (1B) The owner must, within 28 days of receipt of the request—
- (a) approve the person, unless it is reasonable for the owner not to do so; and

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- (b) serve on the occupier notice of the decision whether or not to approve the person.
- (1C) An approval may be made subject to conditions.
- (1D) But any such conditions must be—
- (a) reasonable, and
  - (b) capable of being satisfied without varying or deleting any express term of the agreement.
- (1E) A notice under sub-paragraph (1B) above must specify—
- (a) if the approval is given subject to conditions, the conditions;
  - (b) if the approval is withheld, the reasons for withholding it.
- (1F) The occupier may appeal to the court if—
- (a) the owner fails to notify the occupier as required by sub-paragraphs (1B) and (1E) above;
  - (b) the owner decides not to approve the person; or
  - (c) the occupier is aggrieved by any condition imposed in an approval.
- (1G) The court may determine such an appeal by—
- (a) making an order declaring that the person is approved (subject to such conditions, if any, as may be specified in the order), or
  - (b) making such other order as it thinks fit.
- (1H) It is for the owner—
- (a) if the owner served a notice under sub-paragraph (1B) above and the question arises whether the notice was served within the required period of 28 days, to show that it was;
  - (b) if the owner gave approval subject to any condition and the question arises whether the condition falls within sub-paragraph (1D) above, to show that it does;
  - (c) if the owner withheld approval and the question arises whether it was reasonable for the owner to do so, to show that it was.
- (1I) A request or notice under this paragraph—
- (a) must be in writing; and
  - (b) may be either delivered personally or sent by post.”,
- (b) in sub-paragraph (2) for “Secretary of State” substitute “Scottish Ministers”.
- (4) After the existing provisions of paragraph 9 (gift of mobile home to person approved by owner), which become sub-paragraph (1), insert—
- “(2) Sub-paragraphs (1A) to (1I) of paragraph 8 above shall apply in relation to the approval of a person for the purposes of sub-paragraph (1) above as they apply in relation to the approval of a person for the purposes of sub-paragraph (1) of that paragraph.”.

- (5) The amendments made by this section apply in relation to an agreement to which the 1983 Act applies that was made before the day on which this section comes into force as well as in relation to one made on or after that day.
- (6) However—
- (a) the amendments made by subsection (2) do not apply in relation to any application for the purposes of paragraph 6 of schedule 1 to the 1983 Act which is made before the date on which this section comes into force, and
  - (b) the amendments made by subsections (3)(a) or (4) do not apply in relation to any request for approval for the purposes of paragraph 8 or, as the case may be, 9 of that schedule which is made before that date.

## **170 Power to amend terms implied in site agreements**

- (1) After section 2A of the 1983 Act insert—

### **“2B Power to amend implied terms: Scotland**

- (1) The Scottish Ministers may by order make such amendments of Part 1 or 2 of Schedule 1 to this Act as they consider appropriate.
- (2) An order under this section—
- (a) shall be made by statutory instrument;
  - (b) may make different provision with respect to different cases or descriptions of case;
  - (c) may contain such incidental, supplementary, consequential, transitional or saving provisions as the Scottish Ministers consider appropriate.
- (3) Without prejudice to the generality of subsections (1) and (2), an order under this section may—
- (a) make provision for or in connection with the determination by the court of such questions, or the making by the court of such orders, as are specified in the order;
  - (b) make such amendments of any provision of this Act as the Scottish Ministers consider appropriate in consequence of any amendment made by the order in Part 1 or 2 of Schedule 1.
- (4) The first order made under this section may provide for all or any of its provisions to apply in relation to agreements to which this Act applies that were made at any time before the day on which the order comes into force (as well as in relation to such agreements made on or after that day).
- (5) No order may be made under this section unless the Scottish Ministers have consulted—
- (a) such organisations as appear to them to be representative of interests substantially affected by the order; and
  - (b) such other persons as they consider appropriate.
- (6) No order may be made under this section unless a draft of the order has been laid before, and approved by a resolution of, the Scottish Parliament.”

- (2) For the purposes of subsection (5) of the section 2B inserted by this section, consultation undertaken before the date on which this section comes into force (including any undertaken before the Bill for this Act received Royal Assent) constitutes as effective compliance with that subsection as if it had been undertaken on or after that date.

## 171 Amendments: harassment and eviction of occupiers of mobile homes

- (1) The Caravan Sites Act 1968 (c. 52) is amended as follows—
- (a) in section 1(2) (meaning of “protected site”), for “or 11A of Schedule 1 to that Act (exemption of gypsy and other” substitute “of Schedule 1 to that Act (exemption of”,
- (b) in section 3 (protection of occupiers against eviction and harassment)—
- (i) for paragraph (c) of subsection (1) substitute—
- “(c) if, whether during the subsistence or after the expiration or determination of a residential contract, the person—
- (i) does anything likely to interfere with the peace or comfort of the occupier or persons residing with the occupier; or
- (ii) persistently withdraws or withholds services or facilities reasonably required for the occupation of the caravan as a residence on the site,
- and (in either case) knows, or has reasonable cause to believe, that that conduct is likely to cause the occupier to abandon the occupation of the caravan or remove it from the site or to refrain from exercising any right or pursuing any remedy in relation to the caravan.”,
- (ii) subsections (1A) and (1B) are repealed,
- (iii) in subsection (3) (penalties for offences), for the words from “liable” to the end substitute “liable on summary conviction—
- (a) in the case of a first offence, to a fine not exceeding the statutory maximum;
- (b) in the case of a second or subsequent offence, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 6 months, or to both.”,
- (iv) for subsection (4A), substitute—
- “(4A) In proceedings for an offence under subsection (1)(c) of this section it shall be a defence to prove that the accused had reasonable grounds for doing the acts or withdrawing or withholding the services or facilities in question.”,
- (c) in section 4(6) (restriction on suspension of eviction orders), for the words from “if” to the end of paragraph (b) substitute “if—
- (a) no site licence under Part 1 of the Caravan Sites and Control of Development Act 1960 (c. 62) is in force in respect of the site; and

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- (b) paragraph 11 of Schedule 1 to that Act does not apply;”.
- (2) The amendments made by subsections (1)(a) and (b) do not apply in relation to conduct occurring before the day on which those provisions comes into force.
- (3) The amendment made by subsection (1)(c) does not apply in relation to proceedings begun before the day on which that provision comes into force.