



Private Rented Housing (Scotland) Act 2011

2011 asp 14

PART 1

REGISTRATION OF PRIVATE LANDLORDS

1 Fit and proper person: considerations

(1) In section 85 of the 2004 Act (section 84: considerations)—

(a) in subsection (2)—

(i) in paragraph (a), after sub-paragraph (i) insert—

“(ia) firearms (within the meaning of section 57(1) of the Firearms Act 1968 (c. 27));”,

(ii) after that paragraph, insert—

“(aa) committed a sexual offence (within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c. 46));”,

(b) after subsection (5) insert—

“(6) Examples of material which falls within subsection (2) (as mentioned in paragraph (c)(i) or (ii)) are (without prejudice to the generality of that provision)—

(a) an offence or disqualification under—

(i) this Part;

(ii) Part 5 of the Housing (Scotland) Act 2006 (asp 1);

(b) a repairing standard enforcement order made under section 24(2) of that Act.

(7) Examples of material which falls within subsection (3) are (without prejudice to the generality of that provision)—

(a) an antisocial behaviour order (or any interim order) within the meaning of Part 2;

(b) an antisocial behaviour notice within the meaning of Part 7.

Status: This is the original version (as it was originally enacted).

(8) Examples of material which falls within subsection (4) are (without prejudice to the generality of that provision)—

- (a) complaints and other information which come to the attention of the local authority concerning the relevant person or, as the case may be the person, in relation to the fulfilment of any financial obligation in respect of any house which is included in the application;
- (b) concerns and other information which come to the attention of the local authority in the exercise of any of its functions in connection with any house which is included in the application;
- (c) where section 85A(3)(b) applies, the relevant person fails to provide the certificate within the period the local authority directs.

(9) The Scottish Ministers may by order modify subsection (2).”.

(2) In section 141(4)(a) of that Act (orders and regulations), after “83(7),” insert “85(9),”.

2 **Fit and proper person: criminal record certificate**

After section 85 of the 2004 Act insert—

“85A Fit and proper person: criminal record certificate

- (1) A local authority may, in deciding for the purposes of section 84(3) or (4) whether a relevant person is, or is no longer, a fit and proper person, require the relevant person to provide the local authority with a criminal record certificate (within the meaning of section 113A of the Police Act 1997 (c. 50)).
- (2) A local authority may require a criminal record certificate to be provided under subsection (1) only if it has reasonable grounds to suspect that the information provided with an application for entry in the register maintained under section 82(1) in relation to material falling within subsection (2), (3) or (4) of section 85 is, or has become, inaccurate.
- (3) Where a local authority has required a criminal record certificate to be provided under subsection (1)—
 - (a) in the case of an application for entry in the register maintained under section 82(1), a relevant person may not be entered in the register until the certificate has been received by the local authority;
 - (b) in the case of a relevant person entered in the register, the relevant person must provide the certificate within such reasonable period as the local authority directs.”.

3 **Landlord registration number**

(1) In section 84 of the 2004 Act (registration), after subsection (5) insert—

“(5A) An entry in a register under subsection (2)(a) shall state, in relation to the relevant person, a registration number (to be known as the “landlord registration number”).”.

(2) In section 86 of that Act (notification of registration or refusal to register), after subsection (1) insert—

“(1A) Where a local authority gives notice of the fact of registration under subsection (1)(a) it must, in doing so, give notice of the landlord registration number.”.

(3) In section 101 of that Act (interpretation of Part 8), after the definition of “landlord” insert—

““landlord registration number” has the meaning given by section 84(5A);”.

4 Appointment of agents

In section 88 of the 2004 Act (registered person: appointment of agent)—

(a) after subsection (2) insert—

“(2A) Subject to subsections (2B) and (2C), the notice shall be accompanied by such fee as the local authority may determine.

(2B) No fee shall be payable under subsection (2A) if, when the notice is given—

- (a) the person appointed is entered in the register as a relevant person; or
- (b) another relevant person’s entry in the register states that the person appointed acts for the other relevant person.

(2C) The Scottish Ministers may by regulations prescribe for the purposes of subsection (2A)—

- (a) fees;
- (b) how fees are to be arrived at;
- (c) other cases in which no fee shall be payable.”.

(b) after subsection (8) insert—

“(9) A registered person is guilty of an offence who, without reasonable excuse—

- (a) in giving notice under subsection (2), specifies information which is false in a material particular; or
- (b) fails to comply with subsection (2).

(10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

5 Access to register: additional information

(1) In section 88A(1) of the 2004 Act (access to register)—

(a) in paragraph (a), before sub-paragraph (i) insert—

“(zi) confirmation of whether any application relating to the house has been made in accordance with section 83 but has not yet been determined;”.

(b) in paragraph (a)(i), for “the owner” substitute “any owner of the house”.

(c) in paragraph (b)—

(i) after “applicant” insert “—

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

- (i)”,
 - (ii) after “register” insert “; and
 - (ii) whether its register includes a note under section 92ZA of a decision to refuse that other person’s entry in, or to remove that other person from, the register.”.
- (2) After section 92 of the 2004 Act insert—

“92ZA Duty to note refusals and removals

- (1) Subsection (4) applies where—
 - (a) a local authority decides to—
 - (i) refuse to enter a person in its register under section 84(2)(b) or (7); or
 - (ii) remove a person from its register under section 88(8) or 89(1) or (4); and
 - (b) either—
 - (i) the period for making an application to the sheriff in relation to the decision for the purposes of section 92(2) expires without an application being made; or
 - (ii) such application is refused by the sheriff and—
 - (A) the period for appealing against the sheriff’s decision expires without an appeal being made; or
 - (B) such an appeal is refused by the sheriff principal.
- (2) Subsection (4) applies where—
 - (a) a local authority decides to refuse to enter a person in its register under section 84(8); and
 - (b) either—
 - (i) the period for making an application to the sheriff in relation to the decision for the purposes of section 92(2) expires without an application being made; or
 - (ii) such application is refused by the sheriff and—
 - (A) the period for appealing against the sheriff’s decision expires without an appeal being made; or
 - (B) such an appeal is refused by the sheriff principal.
- (3) Subsection (4) applies where a local authority removes a person from its register under section 89(5).
- (4) Where this subsection applies, the local authority must note the fact in its register that the person has been refused entry to, or removed from, its register.
- (5) Where a fact is noted by virtue of subsection (1) it must, subject to subsection (6)—
 - (a) remain on the register for 12 months from the date on which the local authority is required to note it in its register; and
 - (b) be removed from the register at the end of that period.

- (6) Where a person in respect of whom a local authority notes a fact in its register by virtue of subsection (1) is subsequently entered in the register before the end of the period mentioned in subsection (5)(a), the local authority must remove the fact from the register when the person is so registered.
- (7) Where a fact is noted by virtue of subsection (2) or (3) it must—
 - (a) remain on the register for the period of disqualification specified in the order made under section 93A(2); and
 - (b) be removed from the register at the end of that period.”.

6 Duty to include certain information in advertisements

After section 92A of the 2004 Act insert—

“92B Duty of certain persons to include landlord registration number in advertisements

- (1) Where—
 - (a) a person who is registered by a local authority (“the registered person”), in relation to a house that the person owns in the area of the authority, communicates with another person with a view to entering into a lease or an occupancy arrangement such as is mentioned in section 93(1)(a); and
 - (b) the communication is by way of an advertisement in writing,the registered person must ensure the advertisement includes the landlord registration number given by the authority.
- (2) Where the house is owned jointly by two or more persons registered by the local authority, the duty in subsection (1) is complied with if the advertisement includes the landlord registration number given by the authority in relation to one of the persons.
- (3) Where—
 - (a) subsections (2) and (5) of section 93 apply; and
 - (b) the communication referred to in subsection (2)(b) of that section is by way of an advertisement in writing,the relevant person must ensure the advertisement includes the words “landlord registration pending”.
- (4) Subsection (5) applies where the house is owned jointly by—
 - (a) one or more persons who are registered by the local authority (“the registered persons”), and
 - (b) one or more relevant persons in relation to whom subsections (2) and (5) of section 93 apply.
- (5) The duties in subsections (1) and (3) are complied with if the advertisement includes either—
 - (a) the landlord registration number given by the local authority in relation to one of the registered persons, or
 - (b) the words “landlord registration pending”.
- (6) In this section, “advertisement”—

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

- (a) includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons; but
- (b) does not include a notice board at or near the house concerned.”.

7 **Penalty for acting as unregistered landlord etc.**

In section 93(7) of the 2004 Act (offences), for “level 5 on the standard scale” substitute “£50,000”.

8 **Disqualification orders for unregistered landlords**

After section 93 of the 2004 Act insert—

“93A Disqualification orders etc.

- (1) This section applies where a court convicts a person of an offence under section 93(1) or (2).
- (2) The court may, in addition to imposing a penalty under section 93(7), by order disqualify the convicted person (and, where the person is not an individual, any director, partner or other person concerned in the management of the person) from being registered by any local authority for such period not exceeding 5 years as may be specified in the order.
- (3) A person may appeal against an order under subsection (2) in the same manner as the convicted person may appeal against sentence.
- (4) The court may suspend the effect of an order made under subsection (2) pending such an appeal.
- (5) The court may, on summary application by a person disqualified by an order under subsection (2), revoke the order with effect from such date as the court may specify.
- (6) But no such revocation may be made unless the court is satisfied that there has been a change of circumstances which justifies the revocation of the order.
- (7) No application may be made for the purposes of subsection (5) during the first year of a disqualification.
- (8) The court may order the applicant to pay the whole or part of the expenses arising from an application made for the purposes of subsection (5).
- (9) Within 6 days of the court—
 - (a) disqualifying a person under subsection (2); or
 - (b) revoking an order under subsection (5),
 the clerk of court must provide an extract of the disqualification or, as the case may be, the revocation to the local authority for the area in which the house concerned is situated.”.

9 **Power to obtain information**

After section 97 of the 2004 Act insert—

“Information

97A Power to obtain information

- (1) A local authority may, for the purpose of enabling or assisting it to exercise any function under this Part, require any person appearing to it to fall within subsection (2) to provide the local authority with, in relation to any house within the local authority’s area—
 - (a) confirmation of the nature of that person’s interest in the house;
 - (b) the name and address of, and information about that person’s relationship with, any other person whom that person knows to—
 - (i) own, occupy or have any other interest in the house;
 - (ii) act in relation to a lease or occupancy arrangement to which that house is subject; or
 - (iii) act for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to that house;
 - (c) such other information relating to the house, or such other person, as the local authority may reasonably request.
- (2) A person falls within this subsection if the person—
 - (a) owns, occupies or has any other interest in the house concerned;
 - (b) acts in relation to a lease or occupancy arrangement to which that house is subject; or
 - (c) acts for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to that house.
- (3) A local authority may, for the purpose of enabling or assisting it to exercise any function under this Part, require any person appearing to it to fall within subsection (4) to provide the local authority with—
 - (a) confirmation of the nature of that person’s interest in any house within the local authority’s area in relation to which the person acts;
 - (b) the address of any such house;
 - (c) the name and address of, and information about that person’s relationship with, any other person whom that person knows to own any such house;
 - (d) such other information relating to any such house, or such other person, as the local authority may reasonably request.
- (4) A person falls within this subsection if the person—
 - (a) acts in relation to a lease or occupancy arrangement to which any house within the local authority’s area is subject; or
 - (b) acts for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to such a house.
- (5) A requirement under subsection (1) or (3) is to be made by serving it on the person concerned in accordance with section 97B.
- (6) It is an offence for a person—

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

- (a) without reasonable excuse, to fail to comply with a requirement made under this section; or
 - (b) knowingly or recklessly to provide information which is false or misleading in a material respect to a local authority or any other person—
 - (i) in purported compliance with a requirement made under this section; or
 - (ii) otherwise if the person knows, or could reasonably be expected to know, that the information may be used by, or provided to, a local authority in connection with its functions under this Part.
- (7) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

97B Power to obtain information: service of requirement

- (1) A requirement under section 97A(1) or (3) must be in writing.
- (2) A requirement under section 97A(1) or (3) is served on a person if it is—
 - (a) delivered to the person at the place mentioned in subsection (3);
 - (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 local authority reasonably considers likely to cause it to be delivered to the person on the same or next day.
- (3) The place referred to in subsection (2) is—
 - (a) where the person is an individual, that person’s place of business or usual or last known place of abode;
 - (b) where the person is an incorporated company or body, its registered or principal office.
- (4) Subsection (5) applies where service of a requirement by one of the methods described in subsection (2) has been attempted and failed.
- (5) Where this subsection applies, a requirement under section 97A(1) or (3) may be served on the person by—
 - (a) where the person is an individual, leaving a copy of the requirement 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, leaving a copy of the requirement at the person’s registered or principal office.
- (6) Subsection (7) applies where the local authority is unable to deliver or send a requirement under section 97A(1) or (3) to the owner or occupier of any house or other premises because the local authority is not (having made reasonable enquiries) aware of the name or address of that owner or occupier.
- (7) Where this subsection applies, a requirement under section 97A(1) or (3) may be served by addressing a copy of it to “The Owner” or, as the case may be, “The Occupier” of the house and leaving it at the house or other premises.

- (8) A requirement 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.”.

10 Part 8 of the 2004 Act: guidance

After section 99 of the 2004 Act, insert—

“Guidance

99A Guidance

- (1) A local authority must have regard to any guidance issued by the Scottish Ministers about—
- (a) the discharge of its functions under this Part; and
 - (b) matters arising in connection with the discharge of those functions.
- (2) Before issuing any such guidance the Scottish Ministers must consult—
- (a) local authorities; and
 - (b) such other persons as they think fit.”.

11 Information to be given to local authority

After section 22 of the 2006 Act insert—

“22A Information to be given to local authority

- (1) On receipt of an application under section 22(1), the private rented housing panel must provide the information mentioned in subsection (2) to the local authority for the area in which the house concerned is situated for the purpose of the local authority maintaining the register under section 82(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).
- (2) The information is—
- (a) the address of the house concerned,
 - (b) the name of the landlord of the house (if known),
 - (c) the landlord’s address (if known),
 - (d) the landlord registration number of the landlord (if known), and
 - (e) the name and address (if known) of any person who acts as agent for the landlord.”.

12 Minor and consequential amendments

The schedule to this Act (which makes minor modifications and modifications consequential on this Part) has effect.