



# Housing (Scotland) Act 2014

## 2014 asp 14

### PART 5

#### MOBILE HOME SITES WITH PERMANENT RESIDENTS

##### *Local authority enforcement at relevant permanent sites*

#### 75 Improvement notices

After section 32T of the 1960 Act (inserted by section 74), insert—

*“Local authority enforcement at relevant permanent sites*

#### **32U Breach of licence condition: improvement notice**

- (1) If it appears to a local authority which issued a Part 1A site licence that the licence holder is failing or has failed to comply with a condition of the Part 1A site licence, the authority may serve an improvement notice on the licence holder.
- (2) An improvement notice is a notice which—
  - (a) sets out the condition in question and details of the failure to comply with it,
  - (b) requires the licence holder to take such steps as the local authority considers appropriate and as are specified in the notice in order to ensure that that condition is complied with,
  - (c) specifies the period within which those steps must be taken,
  - (d) explains the right of appeal conferred by subsection (3).
- (3) The holder of a Part 1A site licence who has been served with an improvement notice may by summary application appeal to the sheriff against—
  - (a) the issue of that notice,
  - (b) the terms of that notice.
- (4) The period specified in an improvement notice under subsection (2)(c) must begin on the later of—

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- (a) the day on which the period during which the person may make an appeal under subsection (3) expires, or
  - (b) where such an appeal is made, the day on which the appeal is finally determined or abandoned.
- (5) A local authority may—
- (a) suspend an improvement notice,
  - (b) revoke an improvement notice,
  - (c) vary an improvement notice by extending the period specified in the notice under subsection (2)(c).
- (6) The power to suspend, revoke or vary an improvement notice is exercisable by the local authority—
- (a) on an application made by the licence holder, or
  - (b) on the authority's own initiative.
- (7) Where a local authority suspends, revokes or varies an improvement notice, the authority must notify the licence holder to whom the notice relates of the decision as soon as is reasonably practicable.

### **32V Improvement notice: offence**

- (1) It is an offence for a licence holder who has been served with an improvement notice to fail to take the steps specified in the notice within the period so specified.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £10,000.
- (3) In proceedings against a licence holder for an offence under subsection (1), it is a defence that the licence holder had a reasonable excuse for failing to take the steps referred to in subsection (1) within the period referred to in that subsection.

### **32W Local authority power to carry out steps in an improvement notice**

- (1) This section applies where—
  - (a) an improvement notice has been served in relation to a relevant permanent site, and
  - (b) the licence holder fails to take the steps specified in the notice within the period so specified.
- (2) The local authority which issued the improvement notice may—
  - (a) take any steps required by the improvement notice to be taken by the occupier, but which have not been so taken, and
  - (b) take such further action as the authority considers appropriate for ensuring that the condition specified in the improvement notice is complied with.
- (3) Where a local authority proposes to take action under subsection (2), the authority must serve on the occupier of the relevant permanent site a notice which—
  - (a) identifies the land and the improvement notice to which it relates,

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- (b) states that the authority intends to enter onto the land,
  - (c) describes the action the authority intends to take on the land,
  - (d) if the person whom the authority proposes to authorise to take the action on its behalf is not an officer of the authority, states the name of that person, and
  - (e) sets out the dates and times on which it is intended that the action will be taken (in particular, when the authority intends to start taking the action and when it expects the action to be completed).
- (4) The notice must be served sufficiently in advance of when the local authority intends to enter onto the land as to give the occupier of the relevant permanent site reasonable notice of the intended entry.”.

## 76 Penalty notices

After section 32W of the 1960 Act (inserted by section 75), insert—

### “32X Penalty notice where no licence or breach of licence

- (1) A local authority may serve a penalty notice on the occupier of a relevant permanent site if it appears to the local authority that the occupier—
- (a) has caused or permitted the relevant permanent site to be used as a caravan site without being the holder of a Part 1A site licence in relation to the site, or
  - (b) has been served with an improvement notice and has failed to take the steps specified in the notice within the period so specified.
- (2) A penalty notice is a notice which—
- (a) sets out the condition in question and details of the failure to comply with it,
  - (b) explains the effect of subsection (3),
  - (c) specifies the period within which the penalty applies,
  - (d) explains the right of appeal conferred by subsection (7).
- (3) Where a penalty notice is served under this section—
- (a) no amount which a person is required to pay to the occupier of the relevant permanent site in respect of—
    - (i) the right to station a caravan on the site,
    - (ii) rent for the occupation of a caravan on the site, or
    - (iii) the use of the common areas of the site and their maintenance,is payable for the period specified in the notice under subsection (2)(c), and
  - (b) no commission on sale payable in accordance with paragraph 8 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (c.34) is payable to the occupier of the relevant permanent site in respect of a caravan on the site for the period specified in the notice under subsection (2)(c).
- (4) The period specified in a penalty notice under subsection (2)(c) must begin on the later of—
- (a) the day on which the period during which the person may make an appeal under subsection (7) expires, or

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- (b) where such an appeal is made, the day on which the appeal is finally determined or abandoned.
- (5) The local authority must, as soon as practicable after serving a notice under this section and in such manner as it thinks fit, notify the occupiers of caravans on the site of the existence of the notice.
- (6) The ways in which a notification under subsection (5) may be carried out include by fixing a notice in a prominent place at or near the main entrance to the relevant permanent site.
- (7) The occupier of a relevant permanent site in respect of which a local authority has served a penalty notice may, within the period of 28 days beginning with the day on which the notice was served, by summary application appeal to the sheriff against the decision.”.

## 77 Appointment of interim manager

After section 32X of the 1960 Act (inserted by section 76), insert—

### “32Y Power to appoint interim manager

- (1) A local authority which has issued a Part 1A site licence may apply to the sheriff for an order appointing an interim manager of the site.
- (2) An order may be granted by the sheriff if—
  - (a) the authority has refused to renew a Part 1A site licence under section 32D,
  - (b) the authority has revoked a Part 1A site licence under section 32L, or
  - (c) the sheriff is satisfied that—
    - (i) the licence holder is failing or has failed, either seriously or repeatedly, to comply with a condition of the Part 1A site licence,
    - (ii) the site is not being managed by a person who is a fit and proper person to manage the site, or
    - (iii) there is no one managing the site.
- (3) The appointment of an interim manager is to be on terms (including as to remuneration and expenses) specified in, or determined in accordance with, the appointment.
- (4) The interim manager has—
  - (a) any power specified in the appointment, and
  - (b) any other power in relation to the management of the site required by the interim manager for the purposes specified in the appointment (including the power to enter into agreements and take other action on behalf of the occupier of the site).
- (5) The Scottish Ministers may by regulations subject to the negative procedure make further provision about the appointment of an interim manager.
- (6) Regulations under subsection (5) may, in particular, make provision in relation to—

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- (a) the procedure to be followed in making an application,
- (b) the powers of an interim manager,
- (c) property which vests in the interim manager on the interim manager's appointment,
- (d) the qualifications that must be held by any person appointed as interim manager,
- (e) the actions that must be carried out by an interim manager during and after the manager's appointment,
- (f) the payment and recovery of the remuneration and expenses of the interim manager,
- (g) the assistance to be provided to the interim manager by the licence holder and other persons,
- (h) powers of entry to the relevant permanent site,
- (i) criminal offences which are to apply to failures to comply with the regulations,
- (j) the procedure for and consequences of the termination of the interim manager's appointment."

## **78      Emergency action**

After section 32Y of the 1960 Act (inserted by section 77), insert—

### **“32Z Power to take emergency action**

- (1) A local authority which has issued a Part 1A site licence may take emergency action in relation to the site concerned if it appears to the authority that—
  - (a) the licence holder is failing or has failed to comply with a condition for the time being attached to the Part 1A site licence, and
  - (b) as a result of that failure there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.
- (2) A local authority in whose area land is being used as a relevant permanent site may take emergency action in relation to the land concerned if it appears to the authority that—
  - (a) the occupier does not hold a Part 1A site licence in relation to the land, and
  - (b) there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.
- (3) The emergency action a local authority may take is such action as appears to the authority to be necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b) or, as the case may be, subsection (2)(b).
- (4) Where a local authority proposes to take emergency action, the authority must serve on the licence holder or, as the case may be, the occupier of the relevant permanent site an emergency action notice.
- (5) An emergency action notice is a notice which—
  - (a) identifies the land to which it relates,
  - (b) states that the authority intends to enter onto the land,
  - (c) describes the emergency action the authority intends to take on the land,

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- (d) if the person whom the authority proposes to authorise to take the action on its behalf is not an officer of the authority, states the name of that person, and
  - (e) specifies the powers under this section and section 26 as the powers under which the authority intends to enter onto the land.
- (6) An emergency action notice may state that, if entry onto the land were to be refused, the authority would propose to apply for a warrant under section 26(2).
- (7) The local authority must serve on the licence holder or, as the case may be, the occupier of the relevant permanent site an emergency action report within the period of 7 days beginning with the date when the authority starts taking the emergency action.
- (8) An emergency action report is a notice which—
- (a) describes the imminent risk of serious harm to the health or safety of persons who are or may be on the land,
  - (b) describes the emergency action which has been, and any emergency action which is to be, taken by the authority on the land,
  - (c) sets out when the authority started taking the emergency action and when the authority expects it to be completed,
  - (d) if the person whom the authority has authorised to take the action on its behalf is not an officer of the authority, states the name of that person, and
  - (e) explains the right of appeal conferred by subsection (10).
- (9) The ways in which an emergency action notice and an emergency action report may be served include by fixing it in a prominent place at or near the main entrance to the relevant permanent site.
- (10) A licence holder or, as the case may be, an occupier of land in respect of which a local authority has taken or is taking emergency action may by summary application appeal to the sheriff against the taking of the action by the authority.
- (11) The grounds on which the appeal may be brought are—
- (a) that there was no imminent risk of serious harm as mentioned in subsection (1)(b) or, as the case may be, subsection (2)(b) (or, where the action is still being taken, that there is no such risk),
  - (b) that the action the authority has taken was not necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b) or, as the case may be, subsection (2)(b) (or, where the action is still being taken, that it is not necessary to remove the risk)."

## 79 Powers of entry

After section 32Z of the 1960 Act (inserted by section 78), insert—

### **“32Z1 Powers of entry in relation to relevant permanent site**

- (1) Section 26 (as modified by section 32) applies in relation to a relevant permanent site—
- (a) as if after every reference to “this Part” there were inserted “or Part 1A”,

- (b) as if after paragraph (a) of subsection (1) there were inserted—
    - “(aa) for the purpose of inspecting a relevant permanent site,” and
  - (c) subject to the further modifications in this section.
- (2) If, under an improvement notice or an emergency action notice, a local authority authorises a person other than an officer of the authority to take the action on its behalf, the reference in section 26(1) to an authorised officer of the local authority is to be read as including that person.
- (3) In its application to an improvement notice, the requirement in section 26(1) to give 24 hours’ notice of the intended entry applies only in relation to the day on which the local authority intends to start taking the action on the relevant permanent site.
- (4) In its application to an emergency action notice, section 26(1) has effect as if—
- (a) the words “at all reasonable hours” were omitted, and
  - (b) the words from “Provided that” to the end were omitted.”.

## **80 Recovery of inspection and enforcement expenses**

After section 32Z1 of the 1960 Act (inserted by section 79), insert—

### **“32Z2 Expenses of issuing notices**

- (1) This section applies where a local authority has served—
- (a) an improvement notice,
  - (b) a penalty notice,
  - (c) an emergency action notice, or
  - (d) an emergency action report.
- (2) The local authority may recover from the licence holder or, as the case may be, the occupier of the relevant permanent site—
- (a) expenses incurred by the authority in deciding whether to serve the notice or report,
  - (b) expenses incurred by the authority in preparing and serving the notice or report, and
  - (c) interest, at such reasonable rate as the authority may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.
- (3) The expenses referred to in subsection (2) include in particular the costs of obtaining expert advice (including legal advice).

### **32Z3 Expenses of taking action under improvement notice or emergency action notice**

- (1) A local authority which has taken action in accordance with an improvement notice or an emergency action notice may recover from the licence holder or, as the case may be, the occupier of the relevant permanent site—
- (a) expenses incurred by the authority in deciding whether to take the action,

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- (b) expenses incurred by the authority in taking the action, and
  - (c) interest, at such reasonable rate as the authority may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.
- (2) The expenses referred to in subsection (1) include in particular the costs of obtaining expert advice (including legal advice).

### **32Z4 Expenses of local authority in relation to Part 1A licences**

The local authority which issued a Part 1A site licence may require the licence holder to pay the amount of any expenses incurred by the authority in relation to—

- (a) inspecting a relevant permanent site for the purpose of ascertaining whether there is, or has been, any contravention of the provisions of this Act,
- (b) assessing or investigating compliance by the licence holder with the provisions of this Act following an inspection.”.