



# Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

## PART 7

### HOUSING: ANTISOCIAL BEHAVIOUR NOTICES

#### *Failure to comply with notice: sanctions*

#### **71 Failure to comply with notice: order as to rental income**

- (1) If, on the application of the local authority that served an antisocial behaviour notice on a landlord under section 68(1) [<sup>F1</sup> or (1A)], the sheriff is satisfied as to the matters mentioned in subsection (2), the sheriff may—
- (a) make an order that, with effect from the making of the order—
    - (i) no rent be payable by any person who occupies the relevant house; and
    - (ii) no other consideration be payable or exigible for occupation of the relevant house; and
  - (b) make such incidental order as the sheriff considers necessary.
- (2) Those matters are—
- (a) that the landlord has not taken the action specified in the antisocial behaviour notice within the time so specified; and
  - (b) that, having regard to all the circumstances relating to the relevant house, it would be reasonable for the landlord to take that action.
- (3) Where an order is made under subsection (1), the local authority shall give a copy of the order to the persons mentioned in subsection (4).
- (4) Those persons are—
- (a) if the local authority is aware of the name and address of a person who by virtue of a tenancy or an occupancy arrangement occupies the house to which the order relates, that person; and

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- (b) if the local authority is aware of the name and address of a person who acts for the landlord as respects the tenancy or occupancy arrangement relating to the relevant house, that person.
- (5) Except as provided in an order under subsection (1), nothing in this Part affects the validity of any lease or occupancy arrangement by virtue of which a person has the use of a relevant house during the period when the order is in force.

**Annotations:**

**Amendments (Textual)**

- F1** Words in s. 71(1) inserted (12.3.2011) by [The Antisocial Behaviour Notices \(Houses Used for Holiday Purposes\) \(Scotland\) Order 2011 \(S.S.I. 2011/201\)](#), arts. 1, 5

**72 Appeals against orders under section 71**

- (1) An appeal against the decision of a sheriff making or refusing to make an order under section 71(1) shall be made to the sheriff principal and shall be made within the period of 21 days beginning with the day on which the decision appealed against was made.
- (2) Subsection (3) applies where a person appeals against the decision of a sheriff making an order under section 71(1)(a).
- (3) The person shall (in addition to complying with any other requirements as to notification imposed by virtue of any enactment) give notice to the person who has the use of the house to which the order relates (the “tenant”) of such matters as may be prescribed by the Scottish Ministers by regulations.
- (4) Regulations under subsection (3) may include provision for or in connection with—
  - (a) the form of the notice;
  - (b) the manner and timing of service of the notice.
- (5) If a person fails to comply with subsection (3), the sheriff principal shall not require the tenant to pay any sums that, but for the making of the order, would have been due by the tenant.
- (6) The Scottish Ministers may by regulations make provision for or in connection with specifying other circumstances in which the [F2Sheriff Appeal Court] shall not require a tenant to pay any sums that, but for the making of the order, would have been due by the tenant.
- (7) Regulations under subsection (6) may in particular include provision—
  - (a) specifying procedures;
  - (b) imposing obligations on landlords.
- (8) The decision of the sheriff principal on an appeal under this section shall be final.

**Annotations:**

**Amendments (Textual)**

- F2** Words in s. 72(6) substituted (28.11.2016) by [The Courts Reform \(Scotland\) Act 2014 \(Relevant Officer and Consequential Provisions\) Order 2016 \(S.S.I. 2016/387\)](#), art. 1, **sch. 3 para. 4** (with art. 4(2))

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#### **Commencement Information**

- II** S. 72 wholly in force at 30.4.2006; s. 72 not in force at Royal Assent see s. 145(2); s. 72 in force for specified purposes at 28.10.2004 and 9.11.2005 and for all other purposes at 30.4.2006 by [S.S.I. 2004/420](#), [arts. 2, 3](#), [Schs. 1, 6](#) (as amended by [S.S.I. 2005/553](#), [art. 2](#), [Sch.](#) and [S.S.I. 2006/104](#), [art. 2](#))

### **73 Orders under section 71: revocation and suspension**

- (1) This section applies where an order is made under section 71.
- (2) On the application of the local authority specified in the order or the landlord of the relevant house which is subject to the order, the sheriff may, if satisfied that—
  - (a) the landlord has taken the action specified in the antisocial behaviour notice; or
  - (b) having regard to all the circumstances relating to the relevant house, it would be unreasonable for the order to continue to have effect,revoke or, for such period as may be specified, suspend the order.
- (3) The revocation or suspension of an order under subsection (2) shall not operate so as to make a person liable to pay any rent or other consideration in respect of the period during which the order was in force.
- (4) Where an order is revoked or suspended under subsection (2), the local authority shall give a copy of the order revoking or, as the case may be, suspending the order to the persons mentioned in section 71(4).

### **74 Failure to comply with notice: management control order**

- (1) If, on the application of the local authority that served an antisocial behaviour notice on a landlord under section 68(1) [<sup>F3</sup>or (1A)], the sheriff is satisfied as to the matters mentioned in subsection (2), the sheriff may make a management control order in respect of the house to which the notice relates.
- (2) Those matters are—
  - (a) that the landlord has not taken the action specified in the antisocial behaviour notice within the time so specified;
  - (b) that, having regard to all the circumstances relating to the relevant house, it would be reasonable for the landlord to take that action; and
  - (c) that, to enable the antisocial behaviour described in the notice to be dealt with, it is necessary to make the order.
- (3) A management control order is an order which—
  - (a) transfers, for such period not exceeding 12 months as may be specified in the order, to the local authority which made the application the rights and obligations of the landlord under the tenancy or occupancy arrangement under which the house is occupied;
  - (b) if during that period a tenancy is granted or an occupancy arrangement made for the occupation of the house, transfers for that period to the local authority the rights and obligations of the landlord under that tenancy or arrangement;
  - (c) makes for that period such incidental provision as the sheriff considers necessary.

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- (4) Where the local authority on whose application a management control order is made is satisfied that—
- (a) sums in respect of rent or other consideration for occupation have been paid to the landlord under the tenancy or occupancy arrangement under which the house is occupied; and
  - (b) those sums have been paid in respect of a period during which the order is in force,
- the authority may recover those sums from the landlord.
- (5) Schedule 3 (which makes further provision in relation to management control orders) shall have effect.

**Annotations:**

**Amendments (Textual)**

- F3** Words in s. 74(1) inserted (12.3.2011) by [The Antisocial Behaviour Notices \(Houses Used for Holiday Purposes\) \(Scotland\) Order 2011 \(S.S.I. 2011/201\)](#), arts. 1, 6

**Commencement Information**

- I2** S. 74 wholly in force at 30.4.2006; s. 74 not in force at Royal Assent see s. 145(2); s. 74 in force for specified purposes at 28.10.2004 and 9.11.2005 and for all other purposes at 30.4.2006 by [S.S.I. 2004/420](#), arts. 2, 3, Schs. 1, 6 (as amended by [S.S.I. 2005/553](#), art. 2, [Sch.](#) and [S.S.I. 2006/104](#), art. 2)

**75 Management control order: notification**

- (1) Subsection (2) applies where a management control order is made under section 74.
- (2) As soon as practicable after the order is made, the local authority on whose application the order was made shall—
- (a) inform—
    - (i) the person who, immediately before the order was made, was the landlord of the house to which the order relates; and
    - (ii) if the authority is aware of the name and address of a person occupying the house by virtue of a tenancy or occupancy arrangement, that person,

of the making of the order; and
  - (b) if the authority is aware of the name and address of a person who acts for the person mentioned in paragraph (a)(i) as respects a tenancy or occupancy arrangement in respect of the house, give a copy of the order to that person.
- (3) If it is impracticable for the local authority to comply with the requirement in subsection (2)(a)(i), the authority need not do so.

**76 Management control order: revocation**

- (1) On the application of—
- (a) the local authority specified in a management control order (“the local authority”); or
  - (b) the person who, immediately before the order was made, was the landlord of the relevant house to which the order relates (“the landlord”),

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the sheriff may, if satisfied that subsection (2) or (3) applies, revoke the management control order.

- (2) This subsection applies if—
- (a) the local authority; or
  - (b) the landlord,
- has taken the action specified in the antisocial behaviour notice.
- (3) This subsection applies if, having regard to all the circumstances relating to the relevant house, it would be unreasonable for the order to continue to have effect.

## **77 Management control order: notification of revocation**

- (1) Subsection (2) applies where a management control order is revoked under section 76(1) on the application of the local authority specified in the order.
- (2) As soon as practicable after the order is revoked, the local authority shall—
- (a) inform—
    - (i) the person who, immediately before the management control order was made, was the landlord of the house to which the order related; and
    - (ii) if the authority is aware of the name and address of a person occupying the house by virtue of a tenancy or occupancy arrangement, that person,of the revocation of the order; and
  - (b) if the authority is aware of the name and address of a person who acts for the person mentioned in paragraph (a)(i) as respects a tenancy or occupancy arrangement in respect of the house, give a copy of the order to that person.
- (3) If it is impracticable for the local authority to comply with the requirement in subsection (2)(a)(i), the authority need not do so.
- (4) Subsection (5) applies where a management control order is revoked under section 76(1) on the application of the person who, immediately before the order was made, was the landlord of the house to which the order related.
- (5) As soon as practicable after the order is revoked, the person shall—
- (a) inform the local authority specified in the order; and
  - (b) any person occupying the house by virtue of a tenancy or occupancy arrangement,
- of the revocation of the order.

## **78 Failure to comply with notice: action by authority at landlord's expense**

- (1) Subsections (2) and (3) apply where—
- (a) a local authority serves an antisocial behaviour notice on a landlord under section 68(1) [F<sup>4</sup> or (1A)] ;
  - (b) the landlord fails to take the action specified in the notice within the time so specified; and
  - (c) in consequence of that failure, it appears to the authority that it is necessary for it to take steps to deal with the antisocial behaviour described in the notice

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- [<sup>F5</sup>under section 68(1) or, as the case may be, future antisocial behaviour in respect of which action was specified in a notice under section 68(1A)].
- (2) The local authority may take such steps as it considers necessary to deal with the antisocial behaviour described in the notice [<sup>F6</sup>under section 68(1) or, as the case may be, future antisocial behaviour in respect of which action was specified in a notice under section 68(1A)].
  - (3) In such circumstances as the Scottish Ministers may by regulations prescribe, the landlord shall be liable for expenditure—
    - (a) incurred, by virtue of subsection (2), by the local authority; and
    - (b) of such description as may be so prescribed.
  - (4) Regulations under subsection (3) may include provision for or in connection with—
    - (a) imposing requirements on local authorities and landlords as respects arrangements for the notification and collection of expenditure of a description prescribed in the regulations;
    - (b) specifying arrangements for the settling of disputes arising by virtue of subsection (3).

**Annotations:**

**Amendments (Textual)**

- F4** Words in s. 78(1)(a) inserted (12.3.2011) by [The Antisocial Behaviour Notices \(Houses Used for Holiday Purposes\) \(Scotland\) Order 2011 \(S.S.I. 2011/201\)](#), arts. 1, **7(a)**
- F5** Words in s. 78(1)(c) inserted (12.3.2011) by [The Antisocial Behaviour Notices \(Houses Used for Holiday Purposes\) \(Scotland\) Order 2011 \(S.S.I. 2011/201\)](#), arts. 1, **7(b)**
- F6** Words in s. 78(2) inserted (12.3.2011) by [The Antisocial Behaviour Notices \(Houses Used for Holiday Purposes\) \(Scotland\) Order 2011 \(S.S.I. 2011/201\)](#), arts. 1, **7(c)**

**Commencement Information**

- I3** S. 78 wholly in force at 30.4.2006; s. 78 not in force at Royal Assent see s. 145(2); s. 78 in force for specified purposes at 28.10.2004 and 9.11.2005 and for all other purposes at 30.4.2006 by [S.S.I. 2004/420](#), arts. 2, 3, [Schs. 1, 6](#) (as amended by [S.S.I. 2005/553](#), art. 2, [Sch.](#) and [S.S.I. 2006/104](#), art. 2)

**79 Failure to comply with notice: offence**

- (1) Where—
  - (a) a local authority serves an antisocial behaviour notice on a landlord under section 68(1) [<sup>F7</sup>or (1A)]; and
  - (b) the landlord fails to take the action specified in the notice within the time so specified,
 the landlord shall be guilty of an offence.
- (2) A landlord guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) It shall be a defence for a landlord charged with an offence under subsection (1) to show that there was a reasonable excuse for the failure in question.

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**Annotations:**

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**Amendments (Textual)**

- F7** Words in s. 79(1) inserted (12.3.2011) by [The Antisocial Behaviour Notices \(Houses Used for Holiday Purposes\) \(Scotland\) Order 2011 \(S.S.I. 2011/201\)](#), arts. 1, **8**

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 85B inserted by [2014 asp 14 s. 21\(1\)](#)