

# **ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 8 - Housing: Registration of Certain Landlords**

##### ***Section 82 – Registers***

203. [Section 82](#) requires each local authority to prepare and maintain a register for the purposes of Part 8 and to make it available for public inspection at all reasonable times.

##### ***Section 83 – Application for registration***

204. [Section 83](#) requires that an application for registration must specify the applicant's name and address, the address of any house in the local authority's area that the applicant lets other than to members of his family, the name and address of any agent for such houses and any further information that the Scottish Ministers may prescribe by regulations, which are subject to negative resolution procedure. Subsections (2) and (3) provide for the application to be accompanied by a fee but give the Scottish Ministers power to prescribe fees, how they are to be arrived at and in what cases no fee is payable. This means that Scottish Ministers will be able, for example, to set maximum fees or methods for their calculation to ensure that reasonable fees are charged. The regulations under subsection (3) are subject to negative resolution procedure. Subsections (4) and (5) make it an offence punishable by a fine up to level 3 on the standard scale (currently £1,000) to omit information or provide false information in an application.
205. Subsection (6) excludes from the requirement to be included in the application any house which is: regulated by the Scottish Commission for the Regulation of Care under the Regulation of Care (Scotland) Act 2001; used by a religious order for defined purposes; the subject of a local authority control order in terms of section 178 of the Housing (Scotland) Act 1987; or used for holiday purposes. Subsection (7) allows the Scottish Ministers to modify subsection (6), by order subject to affirmative resolution procedure. Subsection (8) provides that Part 8 does not apply to local authorities, registered social landlords or Scottish Homes and that the letting of houses only to family members is disregarded.

##### ***Section 84 – Registration***

206. [Section 84](#) requires the local authority to enter the applicant in the register for a period of three years if it is satisfied that the applicant is a fit and proper person to act as landlord under a lease or occupancy arrangement (whether the applicant is currently acting in that capacity or not) and that any agent specified in the application is a fit and proper person to act for the landlord. The local authority is also required to enter the details required by section 83 (but not further information required by regulations under that section) in the public register.

***Section 85 – Section 84: considerations***

207. **Section 85** specifies material to which the local authority shall have regard (in addition to other things it may consider) when deciding whether an applicant or an applicant's agent is a fit and proper person for the purposes of section 84. The material specified is: whether the person has committed certain types of offence, practised unlawful discrimination or contravened housing law or landlord and tenant law; actions or failures to act in relation to antisocial behaviour affecting a house let by the applicant or for which the applicant was an agent; and other material considered by the local authority to be relevant.

***Section 86 – Notification of registration or refusal to register***

208. **Section 86** requires the local authority as soon as practicable after a decision on an application for registration is made, to notify the applicant of the outcome of his or her application and, where the application is refused, to send notice of the refusal to the address of any house and any agent specified in the application.

***Section 87 - Duty of registered person to provide information to local authority***

209. **Section 87** requires a registered person to give the local authority written notification of any change in the information supplied in terms of section 83 (or any information supplied in terms of this section) as soon as practicable after that change. Subsections (3) and (4) provide for a fee to be payable and give the Scottish Ministers power to prescribe fees, how they are to be arrived at, or instances where no fee is to be paid. The regulations under subsection (4) are subject to negative resolution procedure. Subsections (5) and (6) make it an offence punishable by a fine up to level 3 on the standard scale (currently £1,000) to fail to give notice of relevant information changes without reasonable excuse.

***Section 88 – Registered person: appointment of agent***

210. **Section 88** requires a registered landlord who appoints an agent to notify the local authority in writing and for the local authority to consider whether the agent is a fit and proper person to act for the landlord. If the local authority is satisfied that the agent is fit and proper it must confirm the landlord's registration in writing. The existing registration period continues, and does not start again. If the local authority considers that the agent is not a fit and proper person it must remove the landlord from the register.

***Section 89 – Removal from register***

211. **Section 89** requires the local authority to remove a person from the register if it is satisfied that the person, or the person's agent where applicable, is no longer fit and proper in terms of section 84.

***Section 90 – Notification of removal from register: registered person***

212. **Section 90** provides that if a local authority removes a person from the register under section 88 or 89 it must notify that person by recorded delivery to that person's address as it appears on the register as soon as practicable.

***Section 91 – Notification of removal from register: other persons***

213. **Section 91** provides that when a local authority removes a person from the register it must give notice of the removal to the address of each house registered in relation to that person and to any known agent of that person.

***Section 92– Appeal against refusal to register or removal from register***

214. **Section 92** provides for a person whose application for registration is refused or who is removed from the register to appeal to the sheriff, who can require the local authority to enter the person in the register. Any appeal against the sheriff's decision has to be made to the sheriff principal within 21 days of the decision, and the sheriff principal's decision is final.

***Section 93– Offences***

215. **Section 93** provides that a person who is not registered and who lets a house or takes active steps to do so while not registered is committing an offence which is punishable by a fine up to level 5 on the standard scale (currently £5,000). It is a defence to show reasonable excuse. An offence is not committed if the person has applied for registration and the application has not been determined.

***Section 94 – Circumstances in which no rent to be payable***

216. **Section 94** permits a local authority to serve a notice on the landlord, tenant and any agent if the landlord is not registered and is letting or allowing occupation of a house and it is appropriate to serve a notice in all the circumstances. The effect of the notice is that no rent or other payment is payable under the tenant's lease or occupancy arrangement from a specified date. No other aspect of the lease or occupancy arrangement is affected. A notice cannot be served if the person has applied for registration and the application has not been determined. The section also provides for notification arrangements where the landlord's identity or current address is unknown.

***Section 95 – Notices under section 94: revocation***

217. **Section 95** requires the local authority to revoke a notice under section 94 where the landlord registers, stops letting or the notice is no longer appropriate. Subsection (3) makes it clear that revocation does not have retrospective effect with regard to liability for rent during the period in which the revoked notice was in force.

***Section 96 – Notification of revocation of notice***

218. **Section 96** makes provision for the notification by the local authority to the landlord, tenant and any agent of the revocation of a notice under section 94 that no rent or other consideration is payable.

***Section 97 – Appeals***

219. **Section 97** allows a person who has been served with a notice that no rent is payable under section 94 or whose application for the revocation of such a notice has been refused to appeal to the sheriff within 21 days. The appellant must give notice to the tenant of any matters which the Scottish Ministers may prescribe by regulations. If the appellant does not give such notice, or in other circumstances which may be specified by the Scottish Ministers in regulations, the court which hears the appeal must not require the tenant to pay any sums which would have been due but for the making of the order. The regulations may include provisions as to procedures and may also impose obligations on landlords. All the regulations under section 97 are subject to negative resolution procedure.

***Section 98 – Grants to local authorities***

220. **Section 98** gives the Scottish Ministers powers to pay grant, with such conditions that they may determine (including conditions in which repayment may be required), to local authorities in connection with their costs incurred in connection with Part 8 of the Act.

***Section 99 – Regulations about advice and assistance: Part 8***

221. **Section 99** gives the Scottish Ministers powers to make regulations requiring local authorities to provide advice and assistance in connection with Part 8 of the Act. These regulations are subject to negative resolution procedure.

***Section 100 – Amendment of Housing (Scotland) Act 1988***

222. **Section 100** ensures that landlords can seek possession of houses let under assured tenancies on the grounds of antisocial behaviour whether or not the terms of the tenancy allow for it to be brought to an end on that ground.

***Section 101 – Interpretation of Part 8***

223. **Section 101** defines house. In a house in which there are dwellings which share toilet, washing or cooking facilities, those dwellings are taken to form a single house. It defines occupancy arrangements so that this Part relates to formal tenancies and the full range of formal and informal occupancy arrangements including shared accommodation. It also defines family and defines antisocial behaviour as, for the purposes of this Part, affecting persons at or in the locality of the relevant house. Anti social behaviour is construed for the purposes of Part 8, as it is for Part 7, as behaviour which causes or is likely to cause alarm, distress, nuisance or annoyance at or in the locality of the house.