



# Housing (Scotland) Act 1987

## 1987 CHAPTER 26

### PART VI

#### CLOSING AND DEMOLITION ORDERS

##### *Powers of local authority*

#### 114 Closing order

- (1) Where a local authority, on consideration of an official representation or a report by the proper officer or other information in their possession, are satisfied that any house does not meet the tolerable standard and that it ought to be demolished and—
  - (a) the house forms only part of a building, and
  - (b) the building does not comprise only houses which do not meet the tolerable standard,the local authority may make a closing order prohibiting the use of the house for human habitation.
- (2) A closing order shall have effect from such date as may be specified in the order, not being less than 28 days from the date on which it comes into operation.
- (3) In this section, "house" includes any room habitually used as a sleeping place, the surface of the floor of which is more than 3 feet below the surface of the part of the street adjoining or nearest to the room (an "underground room").
- (4) An underground room does not meet the tolerable standard for the purpose of this section if—
  - (a) it is not an average of 7 feet in height from floor to ceiling, or
  - (b) it does not comply with such regulations as the local authority may make for securing the proper ventilation and lighting of such rooms and the protection thereof against dampness, effluvia or exhalation.
- (5) If a local authority, after being required to do so by the Secretary of State, fail to make regulations under subsection (4)(b), the Secretary of State may himself make

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regulations which shall effect as if they had been made by the authority under that subsection.

### **115 Demolition order**

Where a local authority, on consideration of an official representation or a report by the proper officer or other information in their possession, are satisfied that any building comprises only a house which does not meet, or houses which do not meet, the tolerable standard and that the house or, as the case may be, houses, ought to be demolished, they may, subject to section 119, make a demolition order requiring—

- (a) that the building shall be vacated within such period as may be specified in the order, not being less than 28 days from the date on which the order comes into operation, and
- (b) that the building shall be demolished within 6 weeks after the expiration of that period or, if the building is not vacated before the expiration of the period, within 6 weeks after the date on which it is vacated.

### **116 Revocation of closing and demolition order**

If in the case of a house in respect of which a closing order has been made or a building in respect of which a demolition order has been made the local authority are satisfied, on an application made by any owner of the house or building, or any person appearing to the authority to have reasonable cause for making the application, that the house has, or, as the case may be, the house or houses comprised in the building have, been brought up to the tolerable standard, they shall make an order revoking the closing order or, as the case may be, the demolition order.

### **117 Undertakings to bring up to tolerable standard and suspension order**

- (1) Where a closing order or a demolition order has been made in respect of a house or building and not revoked, any owner of the house or building, or any person holding a heritable security over it, may give to the local authority, within a period of 21 days from the date of service of the order or such longer period therefrom as the authority may, either during or after the expiry of the 21 days, determine to be appropriate, an undertaking in writing—
  - (a) that he will within a specified period carry out such works as will, in the opinion of the local authority, bring the house or, as the case may be, all the houses in the building, up to the tolerable standard; or
  - (b) in the case of a building in respect of which a demolition order has been made, that no house in the building will be used for human habitation (unless at any time all the houses therein are brought up to the tolerable standard and the local authority agree that they have been so brought).
- (2) If an undertaking is so given the local authority shall as soon as may be either—
  - (a) accept the undertaking and make in respect of it a suspension order suspending the closing order or, as the case may be, the demolition order, or
  - (b) reject the undertaking and serve on the person who gave the undertaking notice that they have done so.
- (3) A suspension order shall cease to have effect on the expiry of one year from the date of its making unless renewed, at the discretion of the local authority, at the expiry of that

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year; and this subsection shall apply to any suspension order so renewed as it applies to the original order.

- (4) A suspension order made or renewed by a local authority may be revoked by them at any time by order if they have reasonable cause to believe that there has been a breach of the undertaking in respect of which it was made or renewed.
- (5) Any period—
- (a) between the service of the closing order or demolition order and the service of a suspension order or a notice of rejection under subsection (2), and
  - (b) while a suspension order is in force,
- shall be left out of account in reckoning in relation to the closing order or demolition order in question the period of 21 days referred to in sections 129(1) and 130.

## **118 Service**

- (1) Any order made or notice issued under sections 114 to 117 in respect of a house or building shall be served—
- (a) upon the person having control of the house or, as the case may be, the house or houses comprised in the building;
  - (b) upon any other person who is an owner of the house or, as the case may be, any of those houses;
  - (c) upon any person holding a heritable security over the house or, as the case may be, any of those houses, unless it appears to the local authority, after exercising their powers under section 325, that there is no such person; and
  - (d) where an application has been made in relation to the house, or, as the case may be, those houses, under section 116, by a person upon whom the order or notice is not required to be served apart from this paragraph, upon that person.
- (2) In subsection (1), references to an owner of, and to any person holding a heritable security over, a building shall be construed as including respectively references to an owner of, and to any person holding a heritable security over, any part of the building.

## **119 Listed buildings and houses subject to building preservation orders**

- (1) Where apart from this section a local authority would be empowered to make a demolition order under this Part with respect to a building—
- (a) in relation to which a building preservation notice served under section 56 of the Town and Country Planning (Scotland) Act 1972 is in force, or
  - (b) which is a listed building within the meaning of section 52(7) of that Act,
- they shall not make a demolition order but instead may make a closing order or closing orders under this section in respect of the house or houses comprised in the building.
- (2) Where a building to which a demolition order made under this Part by a local authority applies (whether or not that order has become operative) becomes—
- (a) subject to a building preservation notice served under the said section 56, or
  - (b) a listed building within the meaning of the said section 52(7),
- the local authority shall revoke the demolition order and may make a closing order or closing orders in respect of the house or houses comprised in the building.

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- (3) The provisions of sections 114(1), 116, 117 and 118 shall, subject to any necessary modifications, have effect in relation to a closing order made under this section as they have effect in relation to a closing order made under those sections.

**120 Powers of local authority in relation to building consisting wholly of closed houses**

- (1) Where a building consists wholly of houses with respect to which closing orders have become operative and none of those orders has been revoked or is subject to a suspension order, then—
- (a) the local authority may revoke the closing orders and make a demolition order under section 115 in respect of the whole building, but section 117 shall not apply to the order; or
  - (b) the local authority may purchase the land by agreement or may, subject to the provisions of this section, be authorised by the Secretary of State to purchase it compulsorily.
- (2) The provisions of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to the compulsory purchase of land under subsection (1) (b) as if that subsection had been in force immediately before the commencement of that Act.
- (3) The compensation to be paid for land purchased compulsorily under this section shall be assessed by the Lands Tribunal in accordance with Land Compensation (Scotland) Act 1963 subject, however, to the provisions of subsections (4) and (5).
- (4) The compensation payable under this section shall not (except by virtue of paragraph 3 of Schedule 2 to the said Act of 1963) exceed the value, at the time when the valuation is made, of the site as a cleared site available for development in accordance with the requirements of the building regulations for the time being in force in the district.
- (5) The references in subsections (3) and (4) to compensation are references to the compensation payable in respect of the purchase exclusive of any compensation for disturbance or for severance or for injurious affection.
- (6) Where a local authority acquire land by virtue of this section, the provisions of paragraph 8(b) of Schedule 8 shall apply as if the land were in a housing action area and had been purchased for the purpose of demolishing the buildings thereon.

**121 Local authority may acquire and repair house or building liable to closing or demolition order**

- (1) If, in relation to any house or building to which this section applies, it appears to a local authority that having regard to—
- (a) its existing condition;
  - (b) the needs of the area for the provision of further housing accommodation;
- the house or building must remain in use as housing accommodation, they may purchase it.
- (2) This section applies to any house or building in respect of which the local authority may make—
- (a) a closing order under section 114; or
  - (b) a demolition order under section 115 or 120(1).

- (3) Where a local authority determine to purchase a house or building under subsection (1), they shall serve notice of the determination on every person on whom they would be required under section 118(1) to serve a closing order or a demolition order made in respect of the house or building, and at any time after that notice comes into operation the local authority may purchase the house or building by agreement or may be authorised by the Secretary of State to purchase it compulsorily.
- (4) The provisions of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to the compulsory purchase of a house or building under this section as if this section had been in force immediately before the commencement of that Act.
- (5) The compensation to be paid for any house or building purchased compulsorily under this section shall be assessed by the Lands Tribunal in accordance with the Land Compensation (Scotland) Act 1963 subject, however, to the provisions of subsections (6) and (7).
- (6) The compensation payable under this section shall not (except by virtue of paragraph 3 of Schedule 2 to the said Act of 1963) exceed the value, at the time when the valuation is made, of the site as a cleared site available for development in accordance with the requirements of the building regulations for the time being in force in the area.
- (7) The references in subsections (5) and (6) to compensation are references to the compensation payable in respect of the purchase exclusive of any compensation for disturbance or for severance or for injurious affection.
- (8) A local authority by whom a house or building is purchased under this section shall carry out such works as may in the opinion of the authority from time to time be required for rendering or keeping it capable of being continued in use as housing accommodation.
- (9) In respect of any house purchased by a local authority under this section, the authority shall have the like powers and duties as they have in respect of houses provided under Part I.

### *Offences*

## **122 Penalty for use of premises in contravention of closing order or of undertaking**

- (1) If any person—
  - (a) knowing that a closing order made under section 114 or section 119 has become operative and applies to any premises, uses those premises or permits those premises to be used for human habitation without having obtained the consent of the local authority to the use of the premises for that purpose; or
  - (b) knowing that an undertaking that any premises shall not be used for human habitation has been accepted by the local authority under this Part, uses those premises for human habitation or permits them to be so used,he shall be guilty of an offence.
- (2) Any person guilty of an offence under subsection (1) shall be liable on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment; and

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- (b) in the case of a continuing offence, to a further fine of £5 for every day or part of a day on which he so uses those premises, or permits them to be so used, after conviction.

*Powers of local authority following demolition order*

**123 Procedure where demolition order made**

- (1) When a demolition order has become operative, the owner of the building to which it applies shall demolish the building within the time limited in that behalf by the order; and, if the building is not demolished within that time, the local authority may enter and demolish the building and sell the material thereof.
- (2) Any expenses incurred by a local authority under subsection (1), after giving credit for any amount realised by the sale of materials, may be recovered by them from the owner of the building, and any surplus in the hands of the authority shall be paid by them to the owner of the building.
- (3) In the application of this section to a demolition order made in respect of a building comprising two or more parts separately owned—
  - (a) any reference to the owner of the building shall be construed as a reference to the owners of the several parts comprised in the building;
  - (b) without prejudice to the powers of the local authority under subsection (1), the duty imposed by that subsection on the owners of the several parts comprised in the building to demolish the building shall be regarded as a duty to arrange jointly for the demolition of the building; and
  - (c) subsection (2) shall have effect subject to the proviso that any sum recoverable or payable by the local authority under that subsection shall be recoverable from or payable to the several owners in such proportions as the owners may agree or, failing agreement, as shall be determined by an arbiter, nominated by the owners or, failing such nomination, nominated on the application of the authority or any of the owners, by the sheriff.

**124 Power of local authority to purchase site of demolished building where expense of demolition cannot be recovered**

- (1) Where a local authority have demolished a building in exercise of the powers conferred on them by section 123 and the expenses thereby incurred by them cannot be recovered by reason of the fact that the owner of the building cannot be found, the authority may be authorised by the Secretary of State to purchase compulsorily the site of the building, including the area of any yard, garden or pertinent belonging to the building or usually enjoyed therewith.
- (2) The provisions of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to a compulsory purchase of land under subsection (1) as if that subsection had been in force immediately before the commencement of that Act.
- (3) A local authority shall be entitled to deduct from the compensation payable on the compulsory purchase of the site of a building under this section the amount of the expenses referred to in subsection (1) so far as not otherwise recovered.

- (4) A local authority shall deal with any land purchased by them under this section by sale, letting or appropriation in accordance with the provisions of paragraph 8 of Schedule 8.

### *Demolition of obstructive buildings*

#### **125 Local authority may by resolution require demolition of obstructive building**

- (1) A local authority may serve upon the owner or owners of a building which appears to the authority to be an obstructive building notice of the time (being some time not less than one month after the service of the notice) and place at which the question of demolishing the building will be considered by the authority.
- (2) Where a local authority serve a notice under subsection (1) on an owner of a building, they shall at the same time require him to furnish within two weeks thereafter a written statement specifying the name and address of the superior of whom such owner holds, and of any person holding a heritable security over the owner's interest in the building, and the authority shall as soon as may be after receipt of such statement serve on any person whose name is included therein, notice of the time and place at which the question of demolishing the building will be considered.
- (3) Any person on whom a notice is served under subsection (1) or (2) shall be entitled to be heard when the question of demolishing the building to which the notice relates is taken into consideration.
- (4) If after so taking the matter into consideration the local authority are satisfied that the building is an obstructive building and that the building or any part thereof ought to be demolished, they may pass a resolution that the building or that part thereof shall be demolished and may, by such resolution, require that the building, or such part thereof as is required to be vacated for the purposes of the demolition, shall be vacated within two months from the date on which the resolution becomes operative, and, if they do so, shall serve a copy of the resolution upon the owner or owners of the building.
- (5) If any person fails to give to the local authority any information required by them under subsection (2) or knowingly makes any misstatement with reference thereto, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (6) In this section, the expression "obstructive building" means a building which, by reason only of its contact with, or proximity to, other buildings, is injurious or dangerous to health.
- (7) This section shall not apply to a building which is the property of public undertakers, unless it is used for the purposes of a dwelling, showroom or office, or which is the property of a local authority.

#### **126 Effect of resolution for demolition of obstructive building**

- (1) Subject to the provisions of this section, where a local authority have made a resolution and required a building to be vacated under section 125(4), they shall be bound to purchase the building if the owner offers to sell it to them.
- (2) On purchasing a building under this section, the local authority shall demolish it as soon as possible after they obtain possession of it.

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- (3) A local authority shall only be bound to purchase the building if—
  - (a) the offer is made before the expiry of the period within which the resolution requires it to be vacated; and
  - (b) the acquisition of the owner's interest would, apart from section 125, enable them to demolish the building.
- (4) The offer to sell shall be at a price to be assessed by the Lands Tribunal in accordance with the Land Compensation (Scotland) Act 1963, as modified by Schedule 1, as if it were compensation for compulsory purchase.
- (5) If no such offer as is mentioned in subsection (1) is made before the expiry of the said period, the local authority shall, as soon as may be thereafter, carry out the demolition and shall have the like right to sell the materials rendered available thereby as if they had purchased the building.
- (6) Where the demolition of a building is carried out under subsection (5), compensation shall be paid by the local authority to the owner in respect of loss arising from the demolition, and that compensation shall, notwithstanding that no land is acquired compulsorily by the authority, be assessed by the Lands Tribunal in accordance with the said Act of 1963, as modified by Schedule 1, except that paragraphs (2) to (6) of section 12 of the said Act of 1963 shall not apply and that paragraph (1) of the said section 12 shall have effect with the substitution, for the reference to acquisition, of a reference to demolition.

### *Possession*

#### **127 Recovery of possession of building or house subject to closing order, etc.**

- (1) Where a closing order, a demolition order, or a resolution passed under section 125 has become operative, the local authority shall serve on the occupier of any building or house or any part thereof to which the order or resolution relates a notice—
  - (a) stating the effect of the order or resolution, and
  - (b) specifying the date by which the order or resolution requires the building or house to be vacated, and
  - (c) requiring the occupier to remove from the building or house before the said date or before the expiration of 28 days from the service of the notice, whichever may be the later.
- (2) If at any time after the date on which a notice under subsection (1) requires a building or house to be vacated, any person is in occupation of the building or house or of any part of it, the local authority or any owner of the building or house may make a summary application for removal and ejection to the sheriff.
- (3) The sheriff may, after requiring service of such additional notice (if any) as he thinks fit, grant warrant for ejection giving vacant possession of the building or house or of the part of it in question to the authority or owner, as the case may be, within such period, not being less than 2 weeks nor more than 4 weeks, as the sheriff may determine.
- (4) Subject to subsection (5), any expenses incurred by a local authority under this section in obtaining possession of any building or house or part thereof may be recovered by them from the owner of the building or house.



- (5) Subsection (4) does not apply to expenses incurred in obtaining possession of—
- (a) premises to which a resolution passed under section 125 applies; or
  - (b) any other premises unless the owner has failed to make within a reasonable time a summary application for removal and ejection to the sheriff or, having made such an application, has failed to take all steps necessary to have the application disposed of within a reasonable time.
- (6) Any person who, knowing that a demolition order or a resolution passed under section 125 has become operative and applies to any building or house, enters into occupation of that building or house or any part of it after the date by which the order or resolution requires that building or house to be vacated, or permits any other person to enter into such occupation after that date, shall be guilty of an offence and shall be liable on summary conviction—
- (a) to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment; and
  - (b) in the case of a continuing offence to a further fine of £5 for every day, or part of a day, on which the occupation continues after conviction.

## **128 Recovery of possession of house to which Rent Act applies**

Nothing in the Rent (Scotland) Act 1984 shall be deemed to affect the provisions of this Act relating to obtaining possession of a house with respect to which a closing order, or a demolition order has been made or to which a resolution passed under section 125 applies, or to prevent possession being obtained—

- (a) of any house possession of which is required for the purpose of enabling a local authority to exercise their powers under any enactment relating to housing;
- (b) of any house possession of which is required for the purpose of securing compliance with any byelaws made for the prevention of overcrowding;
- (c) of any premises by any owner in a case where an undertaking has been given under this Part that those premises shall not be used for human habitation.

*Appeals and date of operation of certain notices, etc.*

## **129 Appeals**

- (1) Subject to the provisions of this section and subsections (2), (3) and (4) of section 324 any person aggrieved by—
- (a) a closing order made under section 114 or section 119 or a refusal to determine such a closing order;
  - (b) a demolition order or a refusal to determine a demolition order or a resolution under section 125;
  - (c) a notice of determination to purchase served under section 121(3);
  - (d) a notice that no payment falls to be made under section 304(1) served under subsection (2) of that section;

may appeal to the sheriff by giving notice of appeal within 21 days after the date of the service of the notice, or order or resolution, or after the refusal, as the case may be; and no proceedings shall be taken by the local authority to enforce any notice, or order while an appeal against it is pending.

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- (2) No appeal shall lie under paragraphs (a), (b) or (c) of subsection (1) at the instance of a person who is in occupation of the premises to which the order or resolution or notice relates under a lease or agreement the unexpired term of which does not exceed 6 months.
- (3) On an appeal under paragraph (a) or paragraph (b) of subsection (1), the sheriff may consider any undertaking such as is specified in relation to a closing order or a demolition order, as the case may be, in section 117 and, if he thinks it proper to do so having regard to the undertaking, may direct the local authority to make a suspension order under that section.

### **130 Date of operation of notices, orders or resolutions subject to appeal**

- (1) Any notice, or order or resolution against which an appeal might be brought to the sheriff under section 129 shall, if no such appeal is brought, become operative on the expiration of 21 days after the date of the service of the notice, or order or resolution, as the case may be, and shall be final and conclusive as to any matters which could have been raised on such an appeal.
- (2) Any such notice or order or resolution against which an appeal is brought shall, if and so far as it is confirmed by the sheriff, become operative as from the date of the determination of the appeal.

#### *Charging orders*

### **131 Power of local authority to make charging order in favour of themselves**

- (1) Where a local authority have themselves incurred expenses under section 123 in the demolition of a building, they may make a charging order in favour of themselves in respect of such expenses.
- (2) The provisions of Schedule 9 shall, subject to any necessary modifications and to the provisions of subsection (3), apply to a charging order so made.
- (3) A charging order so made shall be made in relation to the site of the building demolished, including the area of any yard, garden or pertinent belonging to the building or usually enjoyed therewith.

#### *Supplementary*

### **132 Protection of superiors and owners**

- (1) If the superior of any lands and heritages gives notice to the local authority of his right of superiority, the authority shall give to him notice of any proceedings taken by them in pursuance of this Part in relation to the lands and heritages.
- (2) Nothing in this Part shall prejudice or interfere with the rights or remedies of any owner for the breach, non-observance or nonperformance of any contract or obligation entered into by a tenant or lessee with reference to any house in respect of which an order or resolution is made by a local authority under this Part; and if any owner is obliged to take possession of any house in order to comply with any such order or resolution the taking possession shall not affect his right to avail himself of any such

breach, non-observance or non-performance which may have occurred before he so took possession.

### **133 Interpretation**

- (1) In this Part (except sections 125, 126 and 132) any reference to a house, or to a building, includes a reference to premises occupied by agricultural workers although such premises are used for sleeping purposes only.
- (2) For the purposes of this Part a crofter or a landholder shall be deemed to be the owner of any house on his croft or holding in respect of which he would, on the termination of his tenancy, be entitled to compensation under the Crofters (Scotland) Acts 1955 and 1961 or, as the case may be, the Small Landholders (Scotland) Acts 1886 to 1931, as for an improvement.

### *Saving*

### **134 Saving for telecommunication and gas apparatus**

Paragraph 23 of Schedule 2 to the Telecommunications Act 1984 (code for cases where works involve the alteration of apparatus), as applied by paragraph 2(7) of Schedule 7 to the Gas Act 1986 to gas apparatus, shall apply to a local authority for the purposes of any works which they are authorised to execute under this Part.