



# Housing (Scotland) Act 1987

## 1987 CHAPTER 26

### PART VIII

#### HOUSES IN MULTIPLE OCCUPATION

##### *Registration schemes*

#### 152 Registration schemes

- (1) A local authority may make and submit to the Secretary of State for confirmation by him a registration scheme authorising the authority to compile and maintain a register for their district of—
  - (a) houses which, or a part of which, are let in lodgings, or which are occupied by members of more than one family; and
  - (b) buildings which comprise separate dwellings, two or more of which lack either or both of the following—
    - (i) a sanitary convenience accessible only to those living in the dwelling, and
    - (ii) personal washing facilities so accessible,and the Secretary of State may, if he thinks fit, confirm the scheme, with or without modification.
- (2) A registration scheme need not be for the whole of a local authority's district and need not be for every description of house or building falling within paragraphs (a) and (b) of subsection (1).
- (3) A registration scheme may—
  - (a) specify the particulars to be inserted in the register;
  - (b) make it the duty of such persons as may be specified by the scheme to notify the local authority of the fact that a house or building appears to be registrable, and to give to the authority as regards the house or building all or any of the particulars specified in the scheme;

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- (c) make it the duty of such persons to notify the authority of any change which makes it necessary to alter the particulars inserted in the register as regards any house or building; and
  - (d) make a contravention of, or failure to comply with, any provision in the scheme an offence under the scheme, and a person guilty of an offence under the scheme shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (4) A registration scheme may vary or revoke a previous registration scheme and a local authority may at any time, with the consent of the Secretary of State, by order revoke a registration scheme.
- (5) A registration scheme shall not come into force until it has been confirmed but, subject to that, comes into force on such date as may be fixed by the scheme or, if no date is so fixed, at the expiration of one month after it is confirmed.

### **153 Steps to inform the public about scheme**

- (1) The local authority shall publish notice of their intention to submit a registration scheme to the Secretary of State for confirmation in one or more newspapers circulating in their district at least one month before the scheme is submitted to the Secretary of State for confirmation by him.
- (2) As soon as any such scheme is confirmed by the Secretary of State, the local authority shall publish in one or more newspapers circulating in their district a notice—
- (a) stating the fact that a registration scheme has been confirmed, and
  - (b) describing any steps which will have to be taken under the scheme by those concerned with registrable houses and buildings (other than steps which have only to be taken after a notice from the local authority), and
  - (c) naming a place where a copy of the scheme may be seen at all reasonable hours.
- (3) A copy of a registration scheme confirmed by the Secretary of State—
- (a) shall be printed and deposited at the offices of the local authority by whom it was made, and
  - (b) shall at all reasonable hours be open to public inspection without payment, and
  - (c) a copy thereof shall on application be furnished to any person on payment of such sum, not exceeding 5p for every copy, as the authority may determine.
- (4) If a local authority revoke a registration scheme by order they shall publish notice of the order in one or more newspapers circulating in their district.

### **154 Proof of scheme and contents of register**

The production of a printed copy of a registration scheme purporting to be made by a local authority upon which is endorsed a certificate purporting to be signed by the proper officer of the authority stating—

- (a) that the scheme was made by the authority,
- (b) that the copy is a true copy of the scheme, and
- (c) that on a specified date the scheme was confirmed by the Secretary of State,

shall be prima facie evidence of the facts stated in the certificate, and without proof of the handwriting or official position of the person by whom the certificate purports to be signed.

### **155 Power to require information for purposes of scheme**

- (1) Without prejudice to the provisions of section 325 (power of local authority to require occupier to state interest), a local authority may—
  - (a) for the purpose of ascertaining whether a house or building is registrable, and
  - (b) for the purpose of ascertaining the particulars to be entered in the register as regards the house or building,require any person who has an estate or interest in, or who lives in, the house or building to state in writing any information in his possession which the authority may reasonably require for that purpose.
- (2) Any person who, having been required in pursuance of this section to give information to a local authority, fails to give information, or knowingly makes any mis-statement in respect of it, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### *Management code*

### **156 Power of Secretary of State to make management code**

- (1) The Secretary of State may by regulations contained in a statutory instrument with a view to providing a code for the management of houses which may be applied under section 157, make provision for the purpose of ensuring that the person managing a house which, or a part of which, is let in lodgings, or which is occupied by members of more than one family observes proper standards of management.
- (2) Without prejudice to the generality of subsection (1), the regulations may, in particular, require the person managing a house to which the regulations apply to ensure the repair, maintenance, cleansing and good order of—
  - (a) all means of water supply and drainage in the house;
  - (b) kitchens, bathrooms and water closets used in common by persons living in the house;
  - (c) sinks and wash-basins used in common by persons living in the house;
  - (d) the roof and windows forming part of the house;
  - (e) common staircases, corridors and passage ways;
  - (f) outbuildings, yards and gardens used in common by persons living in the house;and to make satisfactory arrangements for the disposal of refuse and litter from the house.
- (3) The regulations may—
  - (a) make different provision for different types of houses;
  - (b) provide for keeping a register of the names and addresses of those who are managers of houses;
  - (c) impose duties on persons who have an estate or interest in a house or any part of a house to which the regulations apply as to the giving of information to

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- the local authority, and in particular may make it the duty of any person who acquires or ceases to hold an estate or interest in such a house to notify the authority;
- (d) impose duties on persons who live in a house to which the regulations apply for the purpose of ensuring that the person managing the house can effectively carry out the duties imposed on him by the regulations;
  - (e) authorise the local authority to obtain information as to the number of individuals or households accommodated in the house;
  - (f) make it the duty of the person managing the house to cause a copy of the order under section 157 and of the regulations, to be displayed in a suitable position in the house;
  - (g) contain such other incidental and supplementary provisions as may appear to the Secretary of State to be expedient.
- (4) If any person knowingly contravenes or without reasonable excuse fails to comply with any regulation under this section as applied under this Act in relation to any house he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In this section, "person managing a house" means—
- (a) the person who is an owner or lessee of the house and who, directly or through a trustee, tutor, curator, factor or agent, receives rents or other payments from persons who are tenants of parts of the house, or who are lodgers; and
  - (b) where those rents or other payments are received through another person as his trustee, tutor, curator, factor or agent, that other person.
- (6) Regulations under this section may vary or replace for the purposes of this section and of the regulations made under it the definition of the "person managing a house" in subsection (5).

### **157 Power of local authority to apply management code to particular house**

- (1) If it appears to a local authority that a house which, or a part of which, is let in lodgings, or which is occupied by members of more than one family is in an unsatisfactory state in consequence of failure to maintain proper standards of management and, accordingly, that it is necessary that the regulations made under section 156 should apply to the house, the authority may by order direct that those regulations shall so apply; and so long as the order is in force the regulations shall apply in relation to the house accordingly.
- (2) Not less than 21 days before making an order under this section, the local authority shall—
- (a) serve on an owner of the house, and on every person who is to their knowledge a lessee of the house, notice of their intention to make the order, and
  - (b) post such a notice in some position in the house where it is accessible to those living in the house,
- and shall afford to any person on whom a notice is served an opportunity of making representations regarding their proposal to make the order.
- (3) The order comes into force on the date on which it is made.
- (4) The local authority shall within 7 days from the making of the order—

- (a) serve a copy of the order on an owner of the house and on every person who is to their knowledge a lessee of the house, and
  - (b) post a copy of the order in some position in the house where it is accessible to those living in the house.
- (5) The local authority may at any time revoke the order on the application of a person having an estate or interest in the house.

### **158 Appeal against making of, or failure to revoke, order under s. 157**

- (1) A person on whom a copy of an order is served under section 157(4), and any other person who is a lessee of the house, may, within 14 days from the latest date by which copies of the order are required to be served, appeal to the sheriff on the ground that the making of the order was unnecessary.
- (2) On an appeal under subsection (1) the sheriff shall take into account the state of the house at the time when the local authority under section 157 served notice of their intention to make the order, as well as at the time of the making of the order, and shall disregard any improvement in the state of the house between those times unless the sheriff is satisfied that effective steps have been taken to ensure that the house will in future be kept in a satisfactory state.
- (3) If the sheriff allows the appeal, he shall revoke the order, but without prejudice to its operation prior to the revocation and without prejudice to the making of a further order.
- (4) If a local authority—
  - (a) refuse an application for the revocation of an order under section 157(5), or
  - (b) do not within 42 days from the making of the application, or within such further period as the applicant may in writing allow, notify the applicant of their decision on the application,the applicant may appeal to the sheriff and the sheriff, if of the opinion that there has been a substantial change in the circumstances since the making of the order, and that it is in other respects just to do so, may revoke the order.

### **159 Registration of order and of revocation**

- (1) The local authority shall as soon as practicable after an order under section 157 has come into force cause the order to be recorded in the General Register of Sasines or registered in the Land Register, as the case may be.
- (2) If any such order is revoked the authority shall as soon as practicable cause to be recorded in the General Register of Sasines or registered in the Land Register, as the case may be, a notice stating that the order has been revoked.

#### *Powers of local authority to require works to be done*

### **160 Notice requiring compliance with management code**

- (1) If in the opinion of the local authority the condition of a house is defective in consequence of—
  - (a) neglect to comply with the requirements imposed by regulations under section 156 (regulations prescribing management code), or

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- (b) in respect of a period falling wholly or partly before the regulations applied to the house, neglect to comply with standards corresponding to the requirements imposed by the regulations,

the authority may serve on the person managing the house a notice specifying the works which in the opinion of the authority are required to make good the neglect, and requiring the person on whom the notice is served to execute those works.

- (2) If it is not practicable after reasonable inquiry to ascertain the name or address of the person managing the house, the notice under this section may be served by addressing it to him by the description of "manager of the house" (naming the house to which it relates) and by delivering it to some person on the premises.
- (3) The notice shall require the execution of the works specified in the notice within such period, being not less than 21 days from the service of the notice, as may be so specified.
- (4) That period may from time to time be extended by written permission of the local authority.
- (5) Where the local authority serve a notice on any person under this section they shall inform any other person who is to their knowledge an owner or lessee of the house or a person holding a heritable security over the house of the fact that such a notice has been served.

#### **161 Notice requiring compliance with standards**

- (1) The local authority may serve a notice under this section where the condition of a house which, or a part of which, is let in lodgings, or which is occupied by members of more than one family is, in the opinion of the authority, so far defective with respect to any of the matters mentioned in subsection (2), having regard to the number of individuals or households, or both, accommodated for the time being on the premises, as not to be reasonably suitable for occupation by those individuals or households.
- (2) The matters referred to in subsection (1) are—
- natural and artificial lighting,
  - ventilation,
  - water supply,
  - personal washing facilities,
  - drainage and sanitary conveniences,
  - facilities for the storage, preparation and cooking of food, and for the disposal of waste water,
  - installations for space heating or for the use of space heating appliances.
- (3) The notice shall specify the works which in the opinion of the authority are required for rendering the premises reasonably suitable—
- (a) for occupation by the individuals and households for the time being accommodated there, or
  - (b) for a smaller number of individuals or households and the number of individuals or households, or both, which, in the opinion of the authority, the premises could reasonably accommodate if the works were carried out.
- (4) The notice shall be served either—
- (a) on the person having control of the house, or

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- (b) on any person to whom the house is let, or on any person who, as the trustee, tutor, curator, factor or agent for or of a person to whom the house is let, receives rents or other payments from tenants of parts of the house or lodgers in the house.
- (5) The notice shall require the person on whom it is served to execute the works specified in the notice within such period (of at least 21 days from the service of the notice) as may be so specified.
- (6) That period may from time to time be extended by written permission of the authority.
- (7) If the local authority are satisfied that—
- (a) after the service of a notice under this section in respect of any premises the number of individuals living on those premises has been reduced to a level which will make the work specified in the notice unnecessary, and
  - (b) that number will be maintained at or below that level whether in consequence of exercise of the authority's powers under section 166 (powers to limit number of occupants of houses) or otherwise,
- they may notify in writing the person on whom the notice was served of the withdrawal of the notice, but the withdrawal of the notice shall be without prejudice to the issue of a further notice.
- (8) Where the local authority serve a notice on any person under this section they shall inform any other person who is to their knowledge an owner or lessee of the house or a person holding a heritable security over the house of the fact that such a notice has been served.

## **162 Notice requiring provision of means of escape from fire**

- (1) If it appears to a local authority that a house which, or a part of which, is let in lodgings, or which is occupied by members of more than one family is not provided with such means of escape from fire as the authority consider necessary, the authority may, subject to this section, serve on any person on whom a notice may be served under section 161a notice specifying the works which in the opinion of the authority are required to provide such means of escape, and requiring the person on whom the notice is served to execute those works.
- (2) A local authority shall serve such a notice if such house is of such description or occupied in such manner as the Secretary of State may, with the consent of the Treasury, specify by order a draft of which has been approved by the House of Commons.
- (3) A local authority shall, before serving a notice under this section, consult with the fire authority concerned.
- (4) A notice under this section shall require the execution of the works within such period, being not less than 21 days from the service of the notice, as may be specified in the notice, but that period may from time to time be extended by written permission of the local authority.
- (5) Where the local authority serve a notice on any person under this section they shall inform any other person who is to their knowledge an owner or lessee of the house or a person holding a heritable security over the house of the fact that such a notice has been served.

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(6) In this section "fire authority" has the same meaning as in section 82.

### **163 Appeal against notice requiring execution of works**

- (1) A person on whom a notice is served under section 160, 161 or 162 or any other person who is an owner or lessee of the house, or a person holding a heritable security over the house, to which the notice relates, may, within 21 days from the service of the notice, or within such longer period as the local authority may in writing allow, appeal to the sheriff on any of the grounds specified in subsection (2).
- (2) Those grounds are—
  - (a) that there has been some informality, defect or error in, or in connection with, the notice;
  - (b) that the local authority have refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary;
  - (c) that the time within which the works are to be executed is not reasonably sufficient for the purpose;
  - (d) that some person other than the appellant is wholly or in part responsible for the state of affairs calling for the execution of the works, or will as the holder of an estate or interest in the premises derive a benefit from the execution of the works, and that that other person ought to pay the whole or any part of the expenses of executing the works;
  - (e) in the case of a notice under section 160, that the condition of the house did not justify the local authority in requiring the execution of the works specified in the notice;
  - (f) in the case of a notice under section 161, that—
    - (i) having regard to the matters mentioned in subsections (1) and (2) of that section, the condition of the house did not justify the local authority in requiring the execution of the works specified in the notice;
    - (ii) the number of individuals or households, or both, specified in the notice is unreasonably low;
  - (g) in the case of a notice under section 162, that the notice is not justified by the terms of that section.
- (3) In an appeal on ground (a), the sheriff shall dismiss the appeal if he is satisfied that the informality, defect or error was not a material one.
- (4) In an appeal on ground (d)—
  - (a) the appellant shall serve a copy of his notice of appeal on each other person referred to in that notice, and
  - (b) on the hearing of the appeal the sheriff may, if satisfied that any other person referred to in the notice of appeal has had proper notice of the appeal, make such order as he thinks fit with respect to the payment to be made by that other person to the appellant or, where the work is executed by the local authority, to the authority.
- (5) If on an appeal under this section against a notice under section 161, the sheriff is satisfied that the number of persons living in the house has been reduced, and that adequate steps (whether by the exercise by the exercise by the local authority of the



power conferred by section 166 to limit the number of persons living in the house or otherwise) have been taken to prevent that number being again increased, the sheriff may, if he thinks fit, revoke the notice or vary the list of works specified in the notice.

#### **164 Carrying out of works by local authority**

- (1) If a notice under section 160, 161 or 162 (notice requiring the execution of works) is not complied with, the local authority may themselves do the works required by the notice, with any variation made by the sheriff.
- (2) Compliance with a notice means the completion of the works specified in the notice within the period for compliance, which is—
  - (a) if no appeal is brought against the notice, the period specified in the notice with any extension duly permitted by the local authority;
  - (b) if an appeal is so brought, and the notice is confirmed in whole or in part on the appeal, the period of 28 days from the final determination of the appeal, or such longer period as the sheriff in determining the appeal may fix.
- (3) If, before the expiration of the period for compliance with the notice, the person on whom the notice was served notifies the local authority in writing that he is not able to do the work in question, the authority may, if they think fit, themselves do the work forthwith.
- (4) Part IV of Schedule 11 shall have effect in relation to the recovery by the local authority of expenses reasonably incurred by them under this section.

#### **165 Penalty for failure to execute works**

- (1) A person on whom a notice has been served under section 160, 161 or 162 who wilfully fails to comply with the notice, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding—
  - (a) in the case of a notice under section 160 or 161, level 3 on the standard scale;
  - (b) in the case of a notice under section 162, level 4 on the standard scale.
- (2) The obligation to execute the works specified in the notice continues notwithstanding that the period for compliance has expired; and a person who wilfully fails to comply with that obligation, after being convicted of an offence in relation to the notice under subsection (1) or this subsection, commits a further summary offence and is liable on conviction to a fine not exceeding level 4 on the standard scale.
- (3) References in this section to compliance with a notice and to the period for compliance shall be construed in accordance with section 164(2).
- (4) No liability arises under subsection (1) if the local authority, on being notified under section 164(3) by the person on whom any such notice requiring the execution of works was served that he is not able to do the work in question, serve notice that they propose to do the work and relieve the person served with the notice from liability under subsection (1).
- (5) Subsection (1) shall be without prejudice to the exercise by the local authority of their powers of carrying out works under section 164.

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### *Overcrowding*

#### **166 Local authority may give directions to prevent or reduce overcrowding in house in multiple occupation**

- (1) A local authority may, for the purpose of preventing the occurrence of, or remedying, a state of affairs calling for the service of a notice or further notice under section 161, fix as a limit for any house what is in their opinion the highest number of individuals who should, having regard to the considerations set out in subsections (1) and (2) of that section, live in the house in its existing condition, and give a direction applying that limit to the house.

References in this section to a house include references to part of a house, and the local authority shall have regard to the desirability of applying separate limits where different parts of a house are, or are likely to be, occupied by different persons.

- (2) The powers conferred by this section shall be exercisable whether or not a notice has been given under section 161 and where a local authority have served a notice under subsection (3) of that section specifying the number of individuals or households, or both, which in the opinion of the authority any premises could reasonably accommodate if the works specified in the notice were carried out, the authority may adopt that number of individuals, or a number of individuals determined by reference to that number of households, in fixing a limit under subsection (1) as respects those premises.
- (3) The powers conferred by subsection (1) may be exercised as regards any premises notwithstanding the existence of any previous direction under the subsection laying down a higher maximum.
- (4) A direction under subsection (1) shall have effect so as to make it the duty of the occupier for the time being of the house—
- (a) not to permit any individual to take up residence in the house so as to increase the number of individuals living in the house to a number above the limit specified in the direction, and
  - (b) where the number of individuals living in the house is for the time being above the limit so specified and any individual ceases to reside in the house, not to permit any other individual to take up residence in the house.

In this subsection the reference to the occupier for the time being of a house shall include a reference to any person who is for the time being entitled or authorised to permit individuals to take up residence in the house or any part of it.

- (5) If any person knowingly fails to comply with the requirements imposed on him by subsection (4) he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **167 Notice of direction**

- (1) A local authority shall, not less than 7 days before giving a direction under section 166—
- (a) serve on an owner of the house, and on every person who is to their knowledge a lessee of the house, notice of their intention to give the direction, and
  - (b) post such a notice in some position in the house where it is accessible to those living in the house,

and shall afford to any person on whom a notice is so served an opportunity of making representations regarding their proposal to give the direction.

- (2) The local authority shall within 7 days from the giving of any such direction—
  - (a) serve a copy of the direction on an owner of the house and on every person who is to their knowledge a lessee of the house, and
  - (b) post a copy of the direction in some position in the house where it is accessible to those living in the house.

### **168 Power to require information where notice is in force**

- (1) The local authority may from time to time serve on the occupier of a house or part of a house in respect of which a direction under section 166 is in force a notice requiring him to furnish them within 7 days with a statement in writing giving all or any of the following particulars—
  - (a) the number of individuals who are, on a date specified in the notice, living in the house or part of the house, as the case may be;
  - (b) the number of families or households to which those individuals belong;
  - (c) the names, ages and sex of those individuals and the names of the heads of each of those families or households;
  - (d) the rooms used by those individuals and families or households respectively.
- (2) If the occupier makes default in complying with the requirements or furnishes a statement which to his knowledge is false in any material particular, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **169 Revocation and variation**

- (1) At any time after giving such a direction the local authority may on the application of any person having an estate or interest in the house—
  - (a) revoke that direction, or
  - (b) vary it so as to allow more people to be accommodated in the house.
- (2) In exercising their powers under subsection (1) the local authority shall have regard to—
  - (a) any works which have been executed in the house, or
  - (b) any other change of circumstances.

### **170 Appeal against refusal**

- (1) If the local authority refuse an application under section 169 or do not within 42 days from the making of such an application, or within such further period as the applicant may in writing allow, notify the applicant of their decision on the application, the applicant may appeal to the sheriff.
- (2) The sheriff may revoke the direction or vary it in any manner in which it might have been varied by the authority.

### *Supplementary*

#### **171 Application of sections 156 to 161 to certain buildings comprising separate dwellings**

- (1) Subject to the provisions of this section, sections 156 to 161 apply—
- (a) to a building which is not a house but comprises separate dwellings, two or more of which lack either or both of the following—
    - (i) a sanitary convenience accessible only to those living in the dwelling, and
    - (ii) personal washing facilities so accessible, and
  - (b) to a building which is not a house but comprises separate dwellings, two or more of which are wholly or partly let in lodgings or occupied by members of more than one family,
- being in either case a building all the dwellings in which are owned by the same person, as if references in those sections to a house which, or part of which, is let in lodgings or which is occupied by members of more than one family included references to any such building.
- (2) A notice under section 161(3)(b) shall not by virtue of this section be served in respect of such a building.
- (3) A direction under section 166 shall not by virtue of this section be given in relation to such a building.
- (4) If a local authority make an order under section 157, as applied by subsection (1), in respect of any building at a time when another order under that section is in force as respects one of the dwellings in the building, they shall revoke the last-mentioned order.
- (5) References to a house in sections 163, 164, 175 and 177 shall include references to a building to which this section applies.

#### **172 Management code to be available for dwellings in certain tenements**

- (1) If—
- (a) all the dwellings in any tenement are owned by the same person, and
  - (b) all or any of those dwellings are without one or more of the standard amenities,
- sections 156 to 160 shall apply to the tenement as if references in those sections to a house which, or a part of which, is let in lodgings, or which is occupied by members of more than one family included references to the tenement.
- (2) If a local authority make an order under section 157, as applied by subsection (1), in respect of any tenement at a time when another order under that section is in force as respects one of the dwellings in the tenement, they shall revoke the last-mentioned order.
- (3) References to a house in section 163 (so far as relating to appeals against notices under section 160) and in sections 164, 175 and 177 shall include references to a tenement to which this section applies.
- (4) In this section—

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"dwelling" means a building or part of a building occupied or intended to be occupied as a separate house;

"tenement" means a building which contains two or more flats.

### **173 Warrant to authorise entry**

- (1) Where it is shown to the satisfaction of the sheriff, or of a justice of the peace or magistrate, on sworn information in writing, that admission to premises specified in the information is reasonably required by a person employed by, or acting on the instructions of, a local authority for the purpose—
  - (a) of survey and examination to determine whether any powers under the foregoing provisions of this Part should be exercised in respect of the premises, or
  - (b) of ascertaining whether there has been a contravention of any regulations or direction made or given under the foregoing provisions of this Part,then, subject to this section, the sheriff, justice or magistrate may by warrant under his hand authorise that person to enter on the premises for the purposes mentioned in paragraphs (a) and (b), or for such of those purposes as may be specified in the warrant.
- (2) A sheriff, justice or magistrate shall not grant a warrant under this section unless he is satisfied—
  - (a) that admission to the premises has been refused and, except where the purpose specified in the information—
    - (i) is the survey and examination of premises to determine whether there has been a failure to comply with a notice under section 160 or section 161 or section 162, or
    - (ii) is to ascertain whether there has been a contravention of any regulations or direction made or given under the foregoing provisions of this Part,that admission was sought after not less than 24 hours' notice of the intended entry had been given to the occupier; or
  - (b) that an application for admission to the premises would defeat the object of the entry.
- (3) Every warrant granted under this section shall continue in force until the purpose for which the entry is required has been satisfied.
- (4) Any person who, in the exercise of a right of entry under this section, enters any premises which are unoccupied, or any premises the occupier of which is temporarily absent, shall leave the premises as effectually secured against trespassers as he found them.
- (5) Any power of entry conferred by this section—
  - (a) shall include power to entry, if need be, by force, and
  - (b) may be exercised by the person on whom it is conferred either alone or together with any other persons.

### **174 Application to sheriff where consent unreasonably withheld**

If on an application made by any person required by a notice under the foregoing provisions of this Part to execute any works it appears to the sheriff that any other person having an estate or interest in the premises has unreasonably refused to give

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any consent required to enable the works to be executed, the sheriff may give the necessary consent in place of that other person.

### **175 Protection of superiors and owners**

- (1) If the superior or owner of any lands and heritages gives notice to the local authority of his estate in those lands and heritages, the authority shall give to him notice of any proceedings taken by them in pursuance of the foregoing provisions of this Part in relation to those lands and heritages or any part thereof.
- (2) Nothing in the foregoing provisions of this Part shall prejudice or interfere with the rights or remedies of any owner for the breach, non-observance or non-performance of any agreement or stipulation entered into by a lessee with reference to any house in respect of which a notice requiring the execution of works is served by a local authority under the foregoing provisions of this Part, or as respects which regulations made under section 156 are for the time being in force; and if any owner is obliged to take possession of a house in order to comply with any such notice the taking possession shall not affect his right to avail himself of any such breach, non-observance or non-performance which has occurred before he so took possession.

### **176 Identity and notice under Part VIII**

- (1) A local authority shall take reasonable steps to identify the persons mentioned in subsection (2).
- (2) Those persons are—
  - (a) the person having control of or managing premises;
  - (b) the person having an estate or interest in premises or any class of such persons, upon whom the local authority require to serve a document under this Part.
- (3) A person having an estate or interest in premises may for the purposes of this Part give notice to the local authority of his interest in the premises, and the authority shall enter the notice in their records.

### **177 Statutory tenant to be regarded as lessee, etc.**

In this Part—

- (a) references to a lessee of a house and to a person to whom a house is let include references to any person who retains possession of the house by virtue of the Rent (Scotland) Act 1984 and not as being entitled to any tenancy; and
- (b) references to a person having an estate or interest in a house include references to any person who retains possession of the house as mentioned in paragraph (a).

### *Control orders*

### **178 Making of control order**

- (1) A local authority may make a control order in respect of a house in their district which, or a part of which, is let in lodgings, or which is occupied by members of more than one family if—

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- (a) a notice has been served in respect of the house under section 160 or 161 (notices requiring the execution of works),
  - (b) a direction has been given in respect of the house under section 166 (direction limiting number of occupants),
  - (c) an order under section 157 is in force in respect of the house (order applying management code), or
  - (d) it appears to the local authority that the state or condition of the house is such as to call for the taking of action under any of those sections,
- and if it appears to the local authority that the living conditions in the house are such that it is necessary to make the control order in order to protect the safety, welfare or health of persons living in the house.
- (2) A local authority may exclude from the provisions of a control order any part of the house which, when the control order comes into force, is occupied by a person who has an estate or interest in the whole of the house, and, except where the context otherwise requires, references in this Part to the house do not include references to any part of the house so excluded from the provisions of the control order.
  - (3) A control order shall come into force when it is made, and as soon as practicable after making a control order the local authority shall, in exercise of the power conferred in the following provisions of this Part and having regard to the duties imposed on them by the said provisions, enter on the premises and take all such immediate steps as appear to them to be required to protect the safety, welfare or health of persons living in the house.
  - (4) As soon as practicable after making a control order the local authority shall—
    - (a) post a copy of the control order, together with a notice as described in subsection (5), in some position in the house where it is accessible to those living in the house; and
    - (b) serve a copy of the control order, together with such a notice, on every person who, to the knowledge of the local authority—
      - (i) was, immediately before the coming into force of the control order, a person managing the house or a person having control of the house, or
      - (ii) is an owner or lessee of the house or a person holding a heritable security over the house.
  - (5) The notice referred to in subsection (4) shall set out the effect of the control order in general terms, referring to the rights of appeal against control orders conferred by this Part and stating the principal grounds on which the local authority consider it necessary to make a control order.
  - (6) As soon as practicable after making a control order the local authority shall cause the control order to be recorded in the General Register of Sasines or registered in the Land Register, as the case may be.

## **179 General effect of control order**

- (1) While a control order is in force the local authority—
  - (a) have the right to possession of the premises, and
  - (b) have the right to do, and to authorise others to do, in relation to the premises anything which any person having an estate or interest in the premises would,

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but for the making of the control order, be entitled to do, without incurring any liability to any such person except as expressly provided by this Part.

(2) Subject to subsection (3), the local authority may, notwithstanding that they do not, under this section, have an interest amounting to an estate in the premises, create an interest in the premises which, as near as may be, has the incidents of a lease and, subject to the provisions of section (4) and to any other express provision of this Part, any enactment or rule of law relating to landlords and tenants or leases shall apply in relation to any interest created under this section as if the local authority were the owner of the premises.

(3) Subject to the provisions of paragraphs 5(6) and 6(1) of Schedule 11, the local authority shall not, in exercise of the power conferred by this section, create any right in the nature of a lease or licence which is for a fixed term exceeding one month, on which is terminable by notice to quit (or an equivalent notice) of more than 4 weeks:

Provided that this subsection shall not apply to a right created with the consent in writing of the person or persons who would have power to create that right if the control order were not in force.

(4) On the coming into force of a control order any order under section 157, and any notice or direction under sections 160, 161, 162 or 166, shall cease to have effect as respects the house to which the control order applies, but without prejudice to any criminal liability incurred before the coming into force of the control order, or to the right of the local authority to recover any expenses incurred in carrying out any works.

(5) References in this Act or in any other enactment to housing accommodation provided or managed by a local authority shall not include references to any house which is subject to a control order, but this subsection shall not be taken as restricting the powers of acquiring land by agreement or compulsorily conferred on local authorities by Part I.

## **180 Effect of control order on persons occupying house**

(1) This section applies to a person who at the time a control order comes into force—

- (a) is occupying any part of the house, and
- (b) does not have an estate or interest in the whole of the house.

(2) Section 179 (general effect of control order) does not affect the rights or liabilities of such a person under any lease, licence or agreement, whether in writing or not, under which that person is occupying any part of the house at the time when the control order comes into force, and—

- (a) any such lease, licence or agreement has effect, while the control order is in force, as if the local authority were substituted in it for any party to it who has an estate or interest in the house and who is not a person to whom this section applies; and
- (b) any such lease continues to have effect as near as may be as a lease notwithstanding that the rights of the local authority, as substituted for the lessor, do not amount to an estate in the premises.

(3) Subject to the provisions of subsection (4) and to any other express provision of this Part, any enactment or rule of law relating to landlords and tenants or leases shall apply in relation to any lease to which the local authority become a party under this section as if the authority were the owner of the premises.



- (4) Section 5 of the Rent (Scotland) Act 1984 (which excludes lettings by local authorities from being protected tenancies within the meaning of the Act) shall not apply to any lease or agreement under which a person to whom this section applies is occupying any part of the house, and if immediately before the control order came into force any person to whom this section applies was occupying part of the house under a protected or statutory tenancy, within the meaning of the Rent (Scotland) Act 1984, nothing in this Part relating to control orders shall prevent the continuance of that protected or statutory tenancy nor affect the continued operation of that Act in relation to that protected or statutory tenancy after the coming into force of the control order.
- (5) So much of the regulations made under section 156 as imposes duties on persons who live in a house to which the regulations apply (regulations prescribing management code) also applies to persons who live in a house as respects which a control order is in force.
- (6) Without prejudice to the rights conferred on the local authority by section 179, the authority and any person authorised in writing by them, shall have the right at all reasonable times, as against any person having an estate or interest in a house which is subject to a control order, to enter any part of the house for the purpose of—
  - (a) survey and examination, and
  - (b) carrying out any works.
- (7) The rights conferred by subsection (6) shall, so far as reasonably required for the purpose of survey and examination of a part of a house subject to a control order, or for the purpose of carrying out any works in that part of a house, be exercisable as respects the part of the house which, by virtue of section 178(2), is not subject to the control order.

## **181 Effect of control order in relation to furniture in furnished lettings**

- (1) Subject to this section, if on the date on which a control order comes into force there is any furniture in the house which a resident in the house has the right to use in consideration of periodical payments to the dispossessed proprietor (whether included in the rent payable by the resident or not), the right to possession of the furniture shall, on that date and as against all persons other than the resident, vest in the local authority and remain vested in the authority while the control order remains in force.
- (2) The local authority may, on the application in writing of the person owning any furniture to which subsection (1) applies, by notice served on that person not less than 2 weeks before the notice takes effect, renounce the right to possession of the furniture conferred by subsection (1).
- (3) In respect of the period during which the local authority have the right to possession of any furniture in pursuance of subsection (1), the authority shall be liable to pay to the dispossessed proprietor compensation in respect of the use of any furniture the right to possession of which vests under that subsection at such rate as the parties may agree or as may be determined by the rent assessment committee constituted under section 44 of the Rent (Scotland) Act 1984 or under any corresponding enactment repealed by that Act for the area in which the house is situated.
- (4) If the local authority's right to possession of any furniture conferred by subsection (1) is a right exercisable as against more than one person interested in the furniture, any such person may apply to the sheriff for an adjustment of the rights and liabilities of those persons as regards the furniture, and the sheriff may make an order for any such

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adjustment of rights and liabilities either unconditionally or subject to such terms and conditions (including terms or conditions with respect to the payment of money by any party to the proceedings to any other party to the proceedings by way of compensation, damages or otherwise) as he thinks just and equitable.

- (5) Compensation due under this section—
- (a) shall be payable by quarterly instalments, the first instalment being payable 3 months after the date when the control order comes into force;
  - (b) is to be considered as accruing due from day to day and shall be apportionable in respect of time accordingly.
- (6) In this Part "dispossessed proprietor" means the person by whom the rents or other periodical payments to which a local authority become entitled on the coming into force of a control order would have been receivable but for the making of the control order, and the successors in title of that person; and in this section "furniture" includes fittings and other articles.

## **182 General duties of local authority when control order in force**

- (1) The local authority shall—
- (a) exercise the powers conferred on them by a control order so as to maintain proper standards of management in the house,
  - (b) take such action as is needed to remedy all the matters which they would have considered it necessary to remedy by the taking of action under any other provision of this Part if they had not made a control order.
- (2) The local authority may fit out, furnish and supply any house subject to a control order with such furniture, fittings and conveniences as appear to them to be required.
- (3) The local authority shall make reasonable provision for insurance of any premises subject to a control order, including any part of the premises which, by virtue of section 178(2), is excluded from the provisions of the control order, against destruction or damage by fire or other cause, and premiums paid for the insurance of the premises shall, for the purposes of the provisions of this Part, be treated as expenditure incurred by the local authority in respect of the premises.
- (4) The local authority shall keep full accounts of their income and expenditure in respect of a house which is subject to a control order, and afford to the dispossessed proprietor, or any other person having an estate or interest in the house, all reasonable facilities for inspecting, taking copies of and verifying those accounts.
- (5) While a control order is in force the local authority shall afford to the dispossessed proprietor, or any other person having an estate or interest in the house, any reasonable facilities requested by him for inspecting and examining the house.

## **183 Compensation payable to dispossessed proprietor**

- (1) The local authority shall be liable to pay the dispossessed proprietor compensation in respect of the period during which the control order is in force at an annual rate of an amount equal to one half of the gross annual value for rating purposes of the house as shown in the valuation roll on the date when the control order comes into force.
- (2) Compensation due under this section—

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- (a) shall be payable by quarterly instalments, the first instalment being payable 3 months after the date when the control order comes into force;
  - (b) is to be considered as accruing due from day to day and shall be apportionable in respect of time accordingly.
- (3) If at the time when compensation under this section accrues due the estate or interest of the dispossessed proprietor is subject to any heritable security or charge, the compensation shall be deemed to be comprised in that heritable security or charge.
- (4) For the purposes of the references in this section to the gross annual value of a house—
- (a) where after the date on which the control order comes into force the valuation roll is altered so as to vary the gross annual value of the house or of the lands and heritages of which house forms part, and the alteration has effect from a date not later than the date on which the control order comes into force, compensation shall be payable under this section as if the gross annual value of the house or lands and heritages shown in the valuation roll on the date when the control order came into force had been the amount of the value shown on the roll as altered; and
  - (b) if the house forms part only of any lands and heritages, such proportion of the gross annual value shown in the valuation roll for those lands and heritages as may be agreed in writing between the local authority and the person claiming the compensation shall be the gross annual value of the house;
- and any dispute arising under paragraph (b) shall be determined by the sheriff on the application of either party.
- (5) If different persons are the dispossessed proprietors of different parts of any house, compensation payable under this section shall be apportioned between them in such manner as they may agree (or as may, in default of agreement, be determined by the sheriff on the application of any of such persons) according to the proportions of the gross annual value of the house properly attributable to the parts of the house in which they are respectively interested.
- (6) In the application of this section to any lands and heritages whose net annual value is ascertained under subsection (8) of section 6 of the Valuation and Rating (Scotland) Act 1956 ( and for which there is therefore no gross annual value shown in the valuation roll)—
- (a) in subsection (1), for the words "one half of the gross" there shall be substituted the words "0.625 of the net", and
  - (b) in each of subsections (4) and (5), for the word "gross", whenever it occurs, there shall be substituted the word "net".

#### **184 Duty to prepare management scheme**

- (1) After a control order has been made, the local authority shall prepare a management scheme and shall, not later than 8 weeks after the date on which the control order comes into force, serve a copy of the scheme on—
- (a) every person who is to the knowledge of the authority—
    - (i) a dispossessed proprietor, or
    - (ii) an owner or lessee of the house, ora person holding a heritable security over the house, and
  - (b) on any other person on whom the local authority served a copy of the control order.

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- (2) Part I of Schedule 11 has effect with respect to the matters to be provided for in a management scheme and for related matters.
- (3) This section does not affect the powers conferred on a local authority by section 179 and, accordingly, a local authority may carry out any works in a house which is subject to a control order whether or not particulars of those works have been included in a management scheme.

### **185 Power of sheriff to modify or determine lease**

- (1) Either the lessor or the lessee under any lease of premises which consist of or comprise a house which is subject to a control order, other than a lease to which section 180(2) applies, may apply to the sheriff for an order under this section.
- (2) On any such application, the sheriff may make an order for the determination of the lease, or for its variation, and, in either case, either unconditionally or subject to such terms and conditions or subject to such terms and conditions (including terms or conditions with respect to the payment of money by any party to the proceedings to any other party to the proceedings by way of compensation, damages or otherwise) as the sheriff may think just and equitable to impose, regard being had to the respective rights, obligations and liabilities of the parties under the lease and to the other circumstances of the case.
- (3) If on any such application the sheriff is satisfied that—
  - (a) if the lease is determined and control order is revoked the lessor will be in a position, and intends, to take all such action to remedy the condition of the house as the local authority consider would have to be taken in pursuance of the powers conferred on them under this Part (other than those relating to control orders); and
  - (b) the local authority intend, if the lease is determined, to revoke the control order,
 the sheriff shall exercise the jurisdiction conferred by this section so as to determine the lease.

### *Appeals*

### **186 Appeal against control order**

- (1) Any person having an estate or interest in a house to which a control order relates, or, subject to subsection (2), any other person, may appeal to the sheriff against the control order at any time after the making of the control order, but not later than the expiry of a period of 6 weeks from the date on which a copy of the relevant scheme is served in accordance with section 184(1).
- (2) The sheriff may, before entertaining an appeal by a person who had not, when he brought the appeal, an estate or interest in the house, require the appellant to satisfy the sheriff that he may be prejudiced by the making of the control order.
- (3) The grounds of appeal are—
  - (a) that (whether or not the local authority have made an order or issued a notice or direction under sections 157, 160, 161 or 166) the state or condition of

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- the house was not such as to call for the taking of action under any of those provisions;
- (b) that it was not necessary to make the control order in order to protect the safety, welfare or health of persons living in the house;
  - (c) where part of the house was occupied by the dispossessed proprietor when the control order came into force, that it was practicable and reasonable for the local authority to exercise their powers under section 178(2) so as to exclude from the provisions of the control order a part of the house (or a greater part of the house than has been excluded);
  - (d) that the control order is invalid on the ground that any requirement of this Act has not been complied with or on the ground of some informality, defect or error in or in connection with the control order.
- (4) In so far as an appeal under this section is based on the ground that the control order is invalid, the sheriff shall confirm the control order unless satisfied that interests of the appellant have been substantially prejudiced by the facts relied on by him.
- (5) A control order shall, subject to the right of appeal conferred by this section, be final and conclusive as to any matter which could have been raised on any such appeal.
- (6) Where a control order is revoked on an appeal under this section, the local authority shall as soon as practicable thereafter cause to be recorded in the General Register of Sasines or registered in the Land Register, as the case may be, a notice stating that the control order has been revoked as aforesaid.

### **187 Control order revoked on appeal**

- (1) This section shall have effect if a control order is revoked by the sheriff on an appeal against the control order.
- (2) If the local authority are in the course of carrying out any works in the house which, if a control order were not in force, the authority would have power to require some other person to carry out under the provisions of this Part or under any other enactment relating to housing or public health, and on the hearing of the appeal the sheriff is satisfied that the carrying out of the works could not be postponed until after the determination of the appeal because the works were urgently required for the sake of the safety, welfare or health of persons living in the house, or of other persons, the sheriff may suspend the revocation of the control order until the works have been completed.
- (3) Part II of Schedule 11 has effect in relation to matters arising on the revocation of a control order on appeal.

*Expiration and revocation of control order, etc.*

### **188 Expiration of control order, and earlier revocation by local authority or sheriff**

- (1) A control order shall cease to have effect on the expiry of a period of 5 years beginning with the date on which it came into force.
- (2) The local authority may at any earlier time, either on an application under this section or on their own initiative, by order revoke a control order.

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- (3) Not less than 21 days before the local authority revoke a control order they shall serve notice of their intention to revoke the control order on the persons occupying any part of the house, and on every person who is to the knowledge of the authority an owner or lessee of the house or a person holding a heritable security over the house.
- (4) If any person applies to the local authority requesting the authority to revoke a control order, and giving the grounds on which the application is made, the authority shall, if they refuse the application, inform the applicant of their decision and of their reason for rejecting the grounds advanced by the applicant.
- (5) Where the local authority propose to revoke a control order on their own initiative and apply to the sheriff under this subsection, the sheriff may take any of the following steps, to take effect on the revocation of the control order, that is—
  - (a) approve the making of an order under section 157;
  - (b) approve the giving of a notice under section 160 or section 161 or section 162; or
  - (c) approve the giving of a direction under section 166;
 and no appeal lies against any order or notice so approved.

### **189 Effect of cessation of control order**

Part III of Schedule 11 (which sets out the consequences of a control order ceasing to have effect) shall have effect for the purposes of this Part.

### **190 Interpretation of Part VIII**

- (1) In this Part of this Act, unless the context otherwise requires—
  - "dispossessed proprietor" has the meaning given by section 181(6);
  - "establishment charges" means, in relation to any expenditure incurred by a local authority, the proper addition to be made to that expenditure to take account of overhead expenditure incurred by the authority, and to allow for a proper return of capital;
  - "lease" includes a sublease or any tenancy, and any agreement for a lease, sublease or tenancy, and references to a lessor or to a lessee or to a person to whom a house is let shall be construed accordingly;
  - "licence" means any right or permission relating to land but not amounting to an estate or interest therein;
  - "person managing a house" has the meaning given to it by section 156(5);
  - "surpluses on revenue account as settled by the scheme" has the meaning given by paragraph 1(3) of Schedule 11.
- (2) References in this Part to the net amount of rents or other payments received by a local authority from persons occupying a house are references to the amount of the rent and other payments received by the authority from those persons under leases or licences, or in respect of furniture to which section 181(1) applies, after deducting income tax paid or borne by the authority in respect of those rents and other payments.
- (3) References in this Part to expenditure incurred in respect of a house subject to a control order include, in a case where the local authority—
  - (a) require persons living in a house to vacate their accommodation for any period while the local authority are carrying out works in the house, and

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- (b) defray all or any part of the expenses incurred by or on behalf of those persons removing from and returning to the house, or provide housing accommodation for those persons for any part of that period,  
references to the sums so defrayed by the local authority, and to the net cost to the authority of so providing housing accommodation.
- (4) For the purposes of this Part the withdrawal of an appeal shall be deemed the final determination thereof having the like effect as a decision dismissing the appeal.