



Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

PART 8

HOUSING: REGISTRATION OF CERTAIN LANDLORDS

Enforcement

93 Offences

(1) Where—

- (a) a relevant person owns a house within the area of a local authority which is subject to—
 - (i) a lease; or
 - (ii) an occupancy arrangement,by virtue of which an unconnected person may use the house as a dwelling;
and

(b) the relevant person is not registered by that authority,
the relevant person shall be guilty of an offence.

(2) Where—

- (a) a relevant person is not registered by a local authority; and
- (b) in relation to a house that the relevant person owns in the area of the authority, the relevant person communicates with another person with a view to entering into a lease or an occupancy arrangement such as is mentioned in subsection (1)(a),

the relevant person shall be guilty of an offence.

(3) Where subsection (5) applies, nothing in subsection (1) makes it an offence for a relevant person to own a house which is subject to a lease or, as the case may be, occupancy arrangement such as is mentioned in subsection (1).

(4) Where subsection (5) applies, nothing in subsection (2) makes it an offence for a relevant person to communicate with another person with a view to entering into

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a lease or, as the case may be, occupancy arrangement such as is mentioned in subsection (2).

(5) This subsection applies where—

- (a) the relevant person has made an application under section 83 to the local authority within whose area the house is situated; ^{F1} . . .
- [^{F2}(aa) the local authority has not, during the year which immediately preceded the making of the application, refused to enter the relevant person in pursuance of an earlier application under section 83;
- [^{F3}(aaa) the relevant person is not disqualified from being registered by virtue of an order under section 93A(2);]
- (ab) the application is accompanied by the fee determined under section 83(2); and]
- (b) the application has not been determined under section 84 by the authority.

(6) It shall be a defence for a person charged with an offence under subsection (1) or (2) to show that there was a reasonable excuse for acting in the way charged.

(7) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine not exceeding [^{F4}£50,000].

Textual Amendments

- F1** Word following s. 93(5)(a) repealed (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(8)(a)**, 195 (with s. 193); [S.S.I. 2006/14](#), **art. 2**
- F2** S. 93(5)(aa)(ab) inserted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(8)(b)**, 195 (with s. 193); [S.S.I. 2006/14](#), **art. 2**
- F3** S. 93(5)(aaa) inserted (1.4.2013) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), s. 41(3), **sch. para. 8**; [S.S.I. 2013/82](#), **art. 2(1)**, **sch.**
- F4** Sum in s. 93(7) substituted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 7**, 41(3); [S.S.I. 2011/270](#), **art. 2**, **sch.** (with art. 3)

[^{F5}93A Disqualification orders etc.

- (1) This section applies where a court convicts a person of an offence under section 93(1) or (2).
- (2) The court may, in addition to imposing a penalty under section 93(7), by order disqualify the convicted person (and, where the person is not an individual, any director, partner or other person concerned in the management of the person) from being registered by any local authority for such period not exceeding 5 years as may be specified in the order.
- (3) A person may appeal against an order under subsection (2) in the same manner as the convicted person may appeal against sentence.
- (4) The court may suspend the effect of an order made under subsection (2) pending such an appeal.
- (5) The court may, on summary application by a person disqualified by an order under subsection (2), revoke the order with effect from such date as the court may specify.
- (6) But no such revocation may be made unless the court is satisfied that there has been a change of circumstances which justifies the revocation of the order.

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- (7) No application may be made for the purposes of subsection (5) during the first year of a disqualification.
- (8) The court may order the applicant to pay the whole or part of the expenses arising from an application made for the purposes of subsection (5).
- (9) Within 6 days of the court—
 - (a) disqualifying a person under subsection (2); or
 - (b) revoking an order under subsection (5),the clerk of court must provide an extract of the disqualification or, as the case may be, the revocation to the local authority for the area in which the house concerned is situated.]

Textual Amendments

F5 S. 93A inserted (1.4.2013) by Private Rented Housing (Scotland) Act 2011 (asp 14), ss. 8, 41(3); S.S.I. 2013/82, art. 2(1), sch. (with art. 3(2)(3))

94 Circumstances in which no rent to be payable

- (1) Where a local authority is satisfied that the conditions in subsection (2) are met in relation to a house within its area, the authority may serve a notice under this section on the persons mentioned in subsection (5).
- (2) Those conditions are—
 - (a) that the owner of the house is a relevant person;
 - (b) that the house is subject to—
 - (i) a lease; or
 - (ii) an occupancy arrangement,by virtue of which an unconnected person may use the house as a dwelling;
 - (c) that the relevant person is not registered by the local authority; and
 - (d) that, having regard to all the circumstances relating to the relevant person, it is appropriate for a notice to be served under this section.
- (3) Where a notice is served under this section, during the relevant period—
 - (a) no rent shall be payable under any lease or occupancy arrangement in respect of the house to which the notice relates;
 - (b) no other consideration shall be payable or exigible under any such lease or occupancy arrangement.
- (4) A notice served under this section shall specify—
 - (a) the name of the relevant person to whom it relates;
 - (b) the address of the house to which it relates;
 - (c) the effect of subsection (3); and
 - (d) the date on which it takes effect (which must not be earlier than the day after the day on which it is served).
- (5) Those persons are—
 - (a) the relevant person;

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- (b) if the local authority is aware of the name and address of a person who has, by virtue of a lease or an occupancy arrangement such as is mentioned in subsection (2)(b), the use of the house to which the notice relates, that person; and
 - (c) if the local authority is aware of the name and address of a person who acts for the relevant person in relation to such a lease or an occupancy arrangement, that person.
- (6) If—
- (a) the local authority is unable to identify the relevant person, it may serve the notice under this section by publishing it in two or more newspapers (of which one shall, if practicable, be a local newspaper) circulating in the locality of the house to which the notice relates;
 - (b) the local authority is aware of the relevant person's identity but is unable to ascertain the relevant person's current address, it may serve the notice under this section by serving it on the landlord—
 - (i) at the house to which the notice relates; and
 - (ii) if it is aware of a previous address of the relevant person, at that address.
- (7) The condition mentioned in subsection (2)(c) shall not be taken to be met where—
- (a) the relevant person has made an application under section 83 to the local authority in whose area the house is situated; but
 - (b) the application has not been determined under section 84 by the authority.
- (8) Except as provided in subsection (3), nothing in this Part affects the validity of any lease or occupancy arrangement under which an unconnected person has the use as a dwelling of a house during the relevant period.
- (9) Where a local authority is aware of the name and address of a person mentioned in paragraph (b) or, as the case may be, (c) of subsection (5), failure to serve a notice on the person shall not affect the validity of the notice.
- (10) In this section, “relevant period” means the period beginning with the date specified in the notice and ending with the earlier of—
- (a) the revocation of the notice under section 95(2); or
 - (b) where the effect of the decision made on an appeal under section 97 is that rent or, as the case may be, other consideration is payable or exigible, that decision.

95 Notices under section 94: revocation

- (1) Subsection (2) applies where a local authority serves a notice under section 94 in relation to a house.
- (2) If (whether on the application of a person having an interest in the case or otherwise) the local authority which served the notice is satisfied that the conditions mentioned in section 94(2) are no longer met in relation to the house, the authority shall, with effect from such day as it may specify, revoke the notice.
- (3) The revocation of a notice under subsection (2) shall not operate so as to make a person liable to pay any rent or other consideration in respect of the period during which the notice was in force.

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96 Notification of revocation of notice

- (1) Subsection (2) applies where a local authority revokes a notice under section 95 in relation to a house.
- (2) As soon as practicable after revoking the notice, the local authority shall give notice of the fact to—
 - (a) the relevant person;
 - (b) if the local authority is aware of the name and address of a person who has, by virtue of a lease or an occupancy arrangement such as is mentioned in section 94(2)(b), the use of the house to which the notice relates, that person; and
 - (c) if the local authority is aware of the name and address of a person who acts for the relevant person in relation to such a lease or an occupancy arrangement, that person.
- (3) Where a local authority is aware of the name and address of a person mentioned in paragraph (b) or, as the case may be, (c) of subsection (2), failure to serve a notice on the person may not be founded on in any proceedings.

97 Appeals

- (1) A relevant person on whom a notice under section 94 is served may, before the expiry of the period of 21 days beginning with the date specified by virtue of subsection (4) (d) of that section in the notice, appeal to the sheriff against the decision of the local authority to serve the notice.
- (2) Where, on the application of a person having an interest, a local authority makes a decision refusing to revoke a notice under section 95(2), the person may, before the expiry of the period of 21 days beginning with the day on which the decision is made, appeal to the sheriff against the decision.
- (3) Subsection (4) applies where a person appeals against a decision such as is mentioned in subsection (1) or (2).
- (4) The person shall (in addition to complying with any other requirements as to notification imposed by virtue of any enactment) give notice to the person who has the use as a dwelling of the house to which the notice relates (the “tenant”) of such matters as may be prescribed by the Scottish Ministers by regulations.
- (5) Regulations under subsection (4) may include provision for or in connection with—
 - (a) the form of the notice;
 - (b) the manner and timing of service of the notice.
- (6) If a person fails to comply with subsection (4), the court hearing the appeal may not require the tenant to pay any sums that, but for the making of the [F6decision], would have been due by the tenant.
- (7) The Scottish Ministers may by regulations make provision for or in connection with specifying other circumstances in which the [F7court hearing the appeal] shall not require a tenant to pay any sums that, but for the making of the [F8decision], would have been due by the tenant.
- (8) Regulations under subsection (7) may in particular include provision—
 - (a) specifying procedures;

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(b) imposing obligations on landlords.

Textual Amendments

- F6** Word in s. 97(6) substituted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(9)**, 195 (with [s. 193](#)); [S.S.I. 2006/14](#), **art. 2**
- F7** Words in s. 97(7) substituted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(10)(a)**, 195 (with [s. 193](#)); [S.S.I. 2006/14](#), **art. 2**
- F8** Word in s. 97(7) substituted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(10)(b)**, 195 (with [s. 193](#)); [S.S.I. 2006/14](#), **art. 2**

Commencement Information

- II** S. 97 wholly in force at 30.4.2006; s. 97 not in force at Royal Assent see s. 145(2); s. 97 in force for specified purposes at 28.10.2004 and 9.11.2005 and for all other purposes at 30.4.2006 by [S.S.I. 2004/420](#), **arts. 2, 3**, **Schs. 1, 6** (as amended by [S.S.I. 2005/553](#), **art. 2**, **Sch.** and [S.S.I. 2006/104](#), **art. 2**)

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