

PRIVATE RENTED HOUSING (SCOTLAND) ACT 2011

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 3 – Overcrowding Statutory Notices

27. This Part introduces powers to enable local authorities to deal with overcrowding in the private rented sector.

Section 17 – Overcrowding statutory notice

28. **Section 17** gives a local authority the power to serve an overcrowding statutory notice on the landlord of a house which is overcrowded, where the local authority considers that the overcrowding is having an adverse effect on the health or wellbeing of any person or on the amenity of the house or its locality. This will allow enforcement action to be taken in the worst cases of overcrowding in the sector, where it is creating adverse effects for occupants, neighbours and others in the locality. The notice will set out the steps to be taken by the landlord to rectify the situation (that is, to reduce the occupancy level to the maximum permitted by the Housing (Scotland) Act 1987), the period within which the steps must be taken, and any other conditions considered appropriate by the local authority. Section 17(7) allows the Scottish Ministers to prescribe by order the form of an overcrowding statutory notice and such other information to be included in the notice as they see fit, plus the persons who must be given a copy of the notice. Ministers are required to consult local authorities, representatives of landlords and occupiers, and such others as they consider appropriate, before making an order.

Section 18 – Matters to be considered prior to service of an overcrowding statutory notice

29. **Section 18** sets out matters which a local authority must consider before serving an overcrowding statutory notice. The authority must assess whether serving the notice is reasonable and proportionate in the circumstances. In so doing, the authority must weigh up the nature of the adverse effect, and the degree to which the overcrowding is contributing or connected to it, as well as the likely effects of serving a notice, and whether there are other means to address the problem. In addition to this assessment of reasonableness and proportionality, the local authority must, in deciding whether to serve a notice, take account of the views of the landlord, occupier and others living in the house and examine the particular circumstances of the occupier and others living in the house. In particular, the authority is required to consider whether the overcrowding is causing homelessness as defined in section 24 of the Housing (Scotland) Act 1987 or whether the service of a notice may have this effect.

Section 19 – Information and advice for occupiers

30. **Section 19** requires the local authority to provide information and advice to the occupier of a house at the same time as serving an overcrowding statutory notice. This must

*These notes relate to the Private Rented Housing (Scotland) Act
2011 (asp 14) which received Royal Assent on 20 April 2011*

take the form of a notice containing prescribed information and advice. The Scottish Ministers have a power by order to prescribe the content and form of the notice but before making such an order must consult local authorities, representatives of landlords and occupiers and other appropriate bodies and persons. In addition to the information notice, the local authority must provide information or advice reasonably requested by the occupier or other people living in the house in connection with the notice and may give the occupier such additional information and advice as it considers appropriate.

Sections 20 to 26 and 28 – Overcrowding: further provisions

31. Sections 20 to 26 and 28 of the Act make further provision about the content and duration of notices and the procedure for making them, outline the appeals procedure and provide that failure by a landlord to comply with a notice will be an offence attracting a fine not exceeding level 5 on the standard scale. They also make provision for variation of notices, though not so as to shorten their duration. A local authority may revoke a notice at any time.

Section 27 – Power to obtain information

32. Section 27 gives a local authority the power to obtain certain information from persons connected to the house to enable it to carry out its functions in connection with overcrowding statutory notices. Any person who is required to provide information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence attracting a fine not exceeding level 2 on the standard scale.

Section 29 – Guidance

33. Section 29 requires local authorities to have regard to any guidance issued by the Scottish Ministers in relation to their functions under Part 3. Ministers are required to consult local authorities, representatives of landlords and occupiers, and such others as they deem appropriate before issuing any such guidance.

Section 30 – Reports

34. Section 30 requires the Scottish Ministers to publish a report every 3 years outlining the number of overcrowding statutory notices issued in each local authority area during the 3 year period and their impact on reducing overcrowding, along with any other measures to reduce overcrowding that have been considered by local authorities. The report must also outline the extent to which overcrowding statutory notices have created homelessness.