



Private Rented Housing (Scotland) Act 2011

2011 asp 14

PART 3

OVERCROWDING STATUTORY NOTICES

17 **Overcrowding in private rented housing: statutory notice**

- (1) A local authority may, subject to section 18, require the landlord of a house to which subsection (2) applies to take steps to ensure the house is not overcrowded.
- (2) This subsection applies to any house in the local authority's area—
 - (a) which is overcrowded, and
 - (b) the overcrowding of which is, in the local authority's opinion, contributing or connected to (or is likely to contribute or be connected to)—
 - (i) an adverse effect on the health or wellbeing of any person,
 - (ii) an adverse effect on the amenity of the house or its locality.
- (3) A requirement under subsection (1) must be made by serving a notice (an "overcrowding statutory notice") on the landlord in accordance with section 28.
- (4) Where there are joint landlords, the duty under subsection (3) may be satisfied by service on any one of them.
- (5) An overcrowding statutory notice—
 - (a) must specify—
 - (i) the steps which require to be carried out to ensure the house is no longer overcrowded, and
 - (ii) the period within which the steps must be completed (being a period not shorter than 28 days),
 - (b) must state the conditions set out in section 20, and
 - (c) may specify other steps which require to be carried out for the purposes of section 20(b) or otherwise.

Status: This is the original version (as it was originally enacted).

- (6) An overcrowding statutory notice may not specify any step which would require the landlord to breach any statutory or contractual obligation.
- (7) The Scottish Ministers may by order prescribe—
 - (a) the form of an overcrowding statutory notice,
 - (b) other information to be included in the notice,
 - (c) persons who must be given a copy of the notice by the local authority.
- (8) Before making an order under subsection (7), the Scottish Ministers must consult—
 - (a) local authorities,
 - (b) such persons or bodies as appear to them to be representative of the interests of—
 - (i) landlords,
 - (ii) occupiers of houses, and
 - (c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

18 Matters to be considered prior to service of overcrowding statutory notice

- (1) This section applies where a local authority is considering serving an overcrowding statutory notice in relation to a house.
- (2) The authority may serve the notice only if it is reasonable and proportionate in the circumstances to do so having regard to—
 - (a) the nature of the adverse effect referred to in section 17(2)(b) by reference to which the notice would be served,
 - (b) the degree to which the overcrowding of the house is contributing to or connected to that adverse effect,
 - (c) the likely effects of service of the notice, and
 - (d) whether there are means other than by service of the notice by which the adverse effect could be mitigated or avoided.
- (3) The authority must take into account—
 - (a) the circumstances of the occupier of the house and of any other persons residing in the house (including, in particular, whether any of them is, as a result of the overcrowding of the house, homeless),
 - (b) the views (if known) of the landlord, the occupier and any other persons residing in the house, and
 - (c) the likely effects of service of the notice on the occupier and any other persons residing in the house (including, in particular, whether it may lead to the occupier or any such person becoming homeless or threatened with homelessness).
- (4) For the purposes of subsection (3), whether a person is homeless or threatened with homelessness is to be determined in accordance with section 24 of the Housing (Scotland) Act 1987 (c.26).

19 Information and advice for occupiers

- (1) This section applies where a local authority serves an overcrowding statutory notice in relation to a house.

- (2) The authority must, at the same time as serving the overcrowding statutory notice, also serve on the occupier of the house a notice containing prescribed information and advice in connection with the overcrowding statutory notice.
- (3) If the occupier of the house or any other person residing in the house requests information or advice from the local authority in connection with the overcrowding statutory notice, the local authority must comply with the request, unless the authority considers the request to be unreasonable.
- (4) The local authority may give the occupier of the house such other information and advice as the authority considers appropriate in connection with the overcrowding statutory notice.
- (5) In subsection (2), “prescribed” means prescribed by order made by the Scottish Ministers.
- (6) Such an order may also prescribe the form of the notice to be served under subsection (2).
- (7) Before making an order under this section, the Scottish Ministers must consult—
 - (a) local authorities,
 - (b) such persons or bodies as appear to them to be representative of the interests of—
 - (i) landlords,
 - (ii) occupiers of houses, and
 - (c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

20 Mandatory conditions

The conditions are, where the steps have been taken as specified in the notice to ensure the house is no longer overcrowded, that the landlord must—

- (a) not cause the house to become overcrowded,
- (b) take reasonable steps to prevent the house becoming overcrowded.

21 Duration of notice

- (1) An overcrowding statutory notice—
 - (a) has effect from, and
 - (b) expires 5 years (or such shorter period of not less than one year as may be specified in the notice) after,the latest of the dates set out in subsection (2).
- (2) Those dates are—
 - (a) the last date on which the notice may be appealed to the sheriff under section 23,
 - (b) where such an appeal is made, the date on which—
 - (i) an order is made under section 23(4), or
 - (ii) the application is abandoned, and
 - (c) any later date as may be specified in the notice.

Status: This is the original version (as it was originally enacted).

- (3) An overcrowding statutory notice ceases to have effect in relation to a person if that person ceases to be the landlord of the house.

22 Representations

- (1) A person on whom an overcrowding statutory notice is served may make representations to the local authority concerning the notice within 7 days of the notice being served.
- (2) A local authority must consider any representations made under subsection (1) and respond to the person within 7 days of the representations having been made by—
- (a) confirming the notice,
 - (b) varying the notice, or
 - (c) revoking the notice.
- (3) Where the local authority fails to respond in accordance with subsection (2), the overcrowding statutory notice is revoked.
- (4) Where this section applies to the variation of an overcrowding statutory notice by virtue of section 24(4)(a), subsection (3) of this section only applies to the variation of the overcrowding statutory notice.

23 Appeals

- (1) The landlord may appeal against an overcrowding statutory notice by summary application to the sheriff.
- (2) An application under subsection (1) must be made—
- (a) where representations under section 22(1) have been made, before the expiry of the period of 28 days beginning with the service of the notice,
 - (b) in any other case, before the expiry of the period of 21 days beginning with the service of the notice.
- (3) But the sheriff may, on cause shown, hear an appeal made after the deadline set by subsection (2).
- (4) The sheriff may determine the appeal by making an order—
- (a) confirming the notice,
 - (b) varying it in such manner as may be specified in the order, or
 - (c) revoking the notice.
- (5) The sheriff's decision on any such appeal is final.
- (6) Where this section applies to the variation of an overcrowding statutory notice by virtue of section 24(4)(b), the sheriff's powers under subsection (4) of this section are not prejudiced in relation to the overcrowding statutory notice.

24 Variation

- (1) The local authority may vary an overcrowding statutory notice (including extending the duration of its effect) at any time.
- (2) But a notice may not be so varied so as to shorten the duration of its effect.

- (3) The local authority must serve notice of any variation of an overcrowding statutory notice on the landlord in accordance with section 28.
- (4) The following sections apply to a notice of variation of an overcrowding statutory notice as they apply to an overcrowding statutory notice—
 - (a) section 22 (representations),
 - (b) section 23 (appeals).
- (5) A variation of an overcrowding statutory notice has effect from the latest of the dates set out in subsection (6).
- (6) Those dates are—
 - (a) the last date on which the notice of variation of the overcrowding statutory notice may be appealed to the sheriff under section 23,
 - (b) where such an appeal is made, the date on which—
 - (i) an order is made under section 23(4), or
 - (ii) the application is abandoned, and
 - (c) any later date as may be specified in the notice of variation of the overcrowding statutory notice.
- (7) Any reference to an overcrowding statutory notice in this Part includes, unless the context otherwise requires, any variation which has effect by virtue of this section.

25 Revocation

- (1) The local authority may revoke an overcrowding statutory notice at any time.
- (2) The local authority must serve notice of any revocation of an overcrowding statutory notice on the landlord in accordance with section 28.
- (3) A revocation of an overcrowding statutory notice has effect from the date on which the notice of revocation is served on the landlord.

26 Offences

- (1) A landlord commits an offence if the landlord fails, without reasonable excuse, to comply with any requirement or condition contained in an overcrowding statutory notice within the period (if any) specified for completion.
- (2) A person who commits an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

27 Power to obtain information

- (1) A local authority may, for the purpose of enabling it to discharge its functions under this Part, serve a notice on a person falling within subsection (2) (referred to as “A”) requiring A to provide the authority with any of the information mentioned in subsection (3).
- (2) A person falls within this subsection if the person appears to the local authority to—
 - (a) own, occupy or have any other interest in a house in the local authority’s area,or

Status: This is the original version (as it was originally enacted).

- (b) act in relation to the lease or occupancy arrangement to which any such house is subject.
- (3) The information is—
 - (a) confirmation of the nature of A’s interest in the house,
 - (b) the name and address of, and information about A’s relationship with, any other person whom A knows to—
 - (i) own, occupy or have any other interest in the house, or
 - (ii) act in relation to the lease or occupancy arrangement to which the house is subject,
 - (c) such other information relating to the house, or such other person, as the local authority may reasonably require.
- (4) A person commits an offence if the person—
 - (a) without reasonable excuse, fails to comply with a requirement of a notice served on the person under subsection (1), or
 - (b) knowingly or recklessly provides information which is false or misleading in a material respect to a local authority or other person—
 - (i) in purported compliance with a requirement of such a notice, or
 - (ii) otherwise if the person knows, or could reasonably be expected to know, that the information may be used by, or provided to, a local authority for the purpose of the discharge of its functions under this Part.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

28 Service of notices

- (1) A notice is served on a person if it is—
 - (a) delivered to the person at the place mentioned in subsection (2),
 - (b) sent, by post in a prepaid registered letter or by the recorded delivery service, to the person at that place, or
 - (c) sent to the person in some other manner (including by electronic means) which the local authority reasonably considers likely to cause it to be delivered to the person on the same or next day.
- (2) The place referred to in subsection (1) is—
 - (a) where the person is an individual, that person’s place of business or usual or last known place of abode,
 - (b) where the person is an incorporated company or body, its registered or principal office.
- (3) Subsection (4) applies where service of the notice by one of the methods described in subsection (1) has been attempted and failed.
- (4) Where this subsection applies, service of the notice may be on the person by—
 - (a) where the person is an individual, leaving a copy of the notice at that person’s place of business or usual or last known place of abode,
 - (b) where the person is an incorporated company or body, leaving a copy of the notice at the person’s registered or principal office.

- (5) Subsection (6) applies where the local authority is unable to deliver or send a notice to the person because the local authority is not (having made reasonable enquiries) aware of the name or address of that owner or occupier.
- (6) Where this subsection applies, service of the notice may be by addressing a copy of it to “The Owner” or, as the case may be, “The Occupier” of the house and leaving it at the house or other premises.
- (7) A notice which is sent by electronic means must be received in a form which is legible and capable of being used for subsequent reference.

29 Guidance

- (1) A local authority must have regard to any guidance issued by the Scottish Ministers about—
 - (a) the discharge of its functions under this Part, or
 - (b) matters arising in connection with the discharge of those functions.
- (2) Before issuing any such guidance, the Scottish Ministers must consult—
 - (a) local authorities,
 - (b) such persons or bodies as appear to them to be representative of the interests of—
 - (i) landlords,
 - (ii) occupiers of houses, and
 - (c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

30 Reports

- (1) The Scottish Ministers must, as soon as practicable after the end of each 3 year period, publish a report containing the information referred to in subsection (2).
- (2) That is information, in relation to each local authority area, about—
 - (a) the number of overcrowding statutory notices served during the period to which the report relates,
 - (b) the extent to which service of the notices has reduced the overcrowding of houses,
 - (c) the extent to which persons have become homeless as a result of the service of the notices, and
 - (d) any other measures that have been taken or considered by the local authority during the period for the purpose of reducing the overcrowding of houses.
- (3) A local authority must provide the Scottish Ministers with such information as they may reasonably require to comply with subsection (1).
- (4) In subsection (1), “3 year period” means—
 - (a) the period of 3 years beginning with the day on which section 17 comes into force, and
 - (b) each subsequent period of 3 years.

31 Interpretation of Part 3

(1) In this Part—

“house” means premises—

- (a) which are subject to a lease or occupancy arrangement by virtue of which they may be used as a separate dwelling, and
- (b) the owner of which would, if not registered in the register maintained by a local authority under section 82(1) of the 2004 Act, be guilty of an offence under subsection (1) of section 93 of that Act (disregarding subsection (3) of that section),

“landlord”, in relation to a house, means the owner of the house.

(2) In this Part references to a house being overcrowded are to be construed according to the definition of overcrowding in section 135 of the Housing (Scotland) Act 1987 (c. 26); but do not include any house to which the matters mentioned in section 139(2) (a) or (b) of that Act apply.