



# Housing (Scotland) Act 2014

## 2014 asp 14

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 25th June 2014 and received Royal Assent on 1st August 2014**

An Act of the Scottish Parliament to make provision about housing, including provision about the abolition of the right to buy, social housing, the law affecting private housing, the regulation of letting agents and the licensing of sites for mobile homes.

VALID FROM 20/11/2014

### PART 1

#### RIGHT TO BUY

#### **1 Abolition of the right to buy**

- (1) Sections 61 to 81, 84 and 84A of the 1987 Act (right to buy provisions) are repealed.
- (2) Section 52 of the 2001 Act (reports on right to buy) is repealed.
- (3) Sections 145 to 147 of the 2010 Act (duties to collect information in relation to right to buy) are repealed.

#### **2 Amendment of right to buy provisions**

In the 1987 Act—

- (a) in section 61ZA(1) (limitation on the right to purchase: new tenants), after “occupation” insert “ as a tenant ”, and
- (b) in section 61F (limitation on the right to purchase: new supply social housing), repeal the words “created before the relevant day” in each place where they occur.

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VALID FROM 20/11/2014

## PART 2

### SOCIAL HOUSING

#### *Allocation of social housing*

VALID FROM 01/05/2019

### 3 Reasonable preference in allocation of social housing

In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), for subsection (1) substitute—

“(1) A social landlord must, in relation to all houses held by it for housing purposes, secure that in the selection of its tenants a reasonable preference is given to the persons mentioned in subsection (1ZA).

(1ZA) The persons are—

- (a) persons who—
  - (i) subject to subsection (1A), are homeless persons and persons threatened with homelessness (within the meaning of Part 2), and
  - (ii) have unmet housing needs,
- (b) persons who—
  - (i) are living under unsatisfactory housing conditions, and
  - (ii) have unmet housing needs, and
- (c) tenants of houses which—
  - (i) are held by a social landlord, and
  - (ii) the social landlord selecting its tenants considers to be under-occupied.

(1ZB) For the purposes of subsection (1ZA), persons have unmet housing needs where the social landlord considers the persons to have housing needs which are not capable of being met by housing options which are available.”.

### 4 Rules on priority of allocation of housing: consultation

(1) After section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), insert—

#### **“20A Rules on priority of allocation of housing: consultation**

(1) Before making or altering its rules governing the priority of allocation of houses, a social landlord must—

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- (a) consult the persons mentioned in subsection (2), and
  - (b) prepare and publish a report on the consultation.
- (2) The persons are—
- (a) applicants on its housing list (within the meaning of section 19),
  - (b) tenants of the landlord,
  - (c) bodies for the time being registered in the register of tenant organisations maintained by the landlord under section 53(3) of the Housing (Scotland) Act 2001 (asp 10), and
  - (d) such other persons as the landlord thinks fit.
- (3) A social landlord may publish a consultation report mentioned in subsection (1)(b) in such manner as it thinks fit (and may in particular publish a joint report with any other social landlord).”.
- (2) In section 21 of the 1987 Act, after subsection (3) insert—
- “(3A) In making or altering its rules governing the priority of allocation of houses, a social landlord must have regard to—
- (a) any local housing strategy (within the meaning of section 89(1)(b) of the Housing (Scotland) Act 2001) for its area, and
  - (b) any guidance published by the Scottish Ministers.
- (3B) Before publishing any guidance mentioned in subsection (3A), the Scottish Ministers must consult such persons as they consider appropriate.
- (3C) The Scottish Ministers may by regulations prescribe persons of a description or type who a social landlord must include in its rules governing the priority of allocation of houses.
- (3D) Regulations under subsection (3C) are subject to the affirmative procedure.”.
- (3) The title of section 21 of the 1987 Act becomes “ **Rules relating to the housing list and to transfer of tenants** ”.

VALID FROM 01/05/2019

## **5 Factors which may be considered in allocation: ownership of property**

- (1) In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), for subsection (2)(a)(viii) substitute—
- “(viii) where any of the circumstances in subsection (2C) apply to that person, the ownership of, or value of, heritable property owned by—
- (A) the applicant,
  - (B) a person who normally resides with the applicant, or
  - (C) a person who it is proposed will reside with the applicant.”.

(2) After subsection (2B) insert—

“(2C) The circumstances are that—

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- (a) in the case of a property which has not been let, the owner cannot secure entry to that property,
- (b) it is probable that occupation of the property will lead to abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14)) from some other person residing in that property,
- (c) it is probable that occupation of it will lead to abuse (within the meaning of that Act) from some other person who previously resided with that person, whether in that property or elsewhere,
- (d) occupation of the property may endanger the health of the occupants and there are no reasonable steps which can be taken by the applicant to prevent that danger.”.

## 6 Determination of minimum period for application to remain in force

- (1) In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing)—
- (a) in subsection (2)(a)(iii), at the beginning insert “ except to the extent permitted by section 20B, ”, and
  - (b) in subsection (2)(b)(i), at the beginning insert “ except to the extent permitted by section 20B, ”.
- (2) After section 20A of the 1987 Act (inserted by section 4(1)), insert—

### “20B Determination of minimum period for application to remain in force

- (1) A social landlord may impose a requirement that an application must have remained in force for a minimum period before the applicant is eligible for the allocation of housing falling within section 20(1) if, before making that application, any of the circumstances mentioned—
- (a) in subsection (6) applied in relation to the applicant, or
  - (b) in paragraphs (a) to (g) of subsection (6) applied in relation to a person who it is proposed will reside with the applicant.
- (2) But a social landlord may not impose a requirement under subsection (1) if the landlord—
- (a) in relation to the same application has previously relied on the same circumstance as it applied to an applicant or a person who it is proposed will reside with the applicant to impose a requirement under subsection (1), or
  - (b) is a local authority and has a duty to the applicant under section 31(2) (duty to secure accommodation where applicant is homeless).
- (3) In considering whether to impose a requirement under subsection (1), a social landlord must have regard to any guidance about this section (including the matters mentioned in subsection (5)) published by the Scottish Ministers.
- (4) Before publishing any guidance mentioned in subsection (3), the Scottish Ministers must consult such persons as they consider appropriate.
- (5) The Scottish Ministers may by regulations prescribe—

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- (a) the maximum period preceding the application which a social landlord may consider in relation to any circumstances mentioned in subsection (6),
  - (b) the maximum period for an application to have remained in force which a social landlord may impose in relation to any circumstances mentioned in subsection (6), and such regulations may make different provision for different cases.
- (6) The circumstances are—
- (a) the person has—
    - (i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person,
    - (ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person, or
    - (iii) acted in an antisocial manner, or pursued a course of conduct which is antisocial conduct, in relation to an employee of the social landlord in the course of making the application,
  - (b) the person has been, or has resided with a person who has been, convicted of—
    - (i) using a house or allowing it to be used for immoral or illegal purposes, or
    - (ii) an offence punishable by imprisonment which was committed in, or in the locality of, a house occupied by the person,
  - (c) an order for recovery of possession has been made against the person in proceedings under—
    - (i) the Housing (Northern Ireland) Order 1983 (S.I. 1983/1118),
    - (ii) the Housing Act 1985 (c.68),
    - (iii) this Act,
    - (iv) the Housing (Scotland) Act 1988 (c.43),
    - (v) the Housing (Scotland) Act 2001 (asp 10),
  - (d) the person's tenancy has been terminated by the landlord under section 18(2) of the Housing (Scotland) Act 2001 (repossession where abandoned tenancy),
  - (e) the person's interest in a tenancy has been terminated by the landlord under section 20(3) of the Housing (Scotland) Act 2001 (abandonment by joint tenant),
  - (f) in relation to a house where the person was a tenant, a court has ordered recovery of possession on the ground set out in paragraph 3 or 4 of schedule 2 to the Housing (Scotland) Act 2001,
  - (g) there is or was any outstanding liability (for payment of rent or otherwise) in relation to a house which—
    - (i) is attributable to the person's tenancy of the house, and
    - (ii) either—
      - (A) section 20(2A) would not be satisfied in respect of that debt, or

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- (B) in the case of a debt which is no longer outstanding, section 20(2A) would not have been satisfied at any time while that debt remained outstanding,
- (h) the person knowingly or recklessly made a false statement in any application for housing held by a social landlord,
- (i) the person has refused one or more offers of housing falling within section 20(1) and the landlord considers the refusal of that number of offers to be unreasonable.
- (7) In subsection (6)—
- “antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,
- “conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and
- “harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).
- (8) The Scottish Ministers may by regulations modify subsections (6) and (7).
- (9) After the social landlord imposes a requirement under subsection (1) (whether or not previously varied under this subsection), it may—
- (a) withdraw the requirement, or
- (b) vary the requirement in order to shorten the period imposed for the application to have remained in force.
- (10) An applicant may by summary application appeal to the sheriff against any decision of a social landlord under subsection (1).
- (11) Regulations under subsection (5) and under subsection (8) are subject to the affirmative procedure.”.

#### *Short Scottish secure tenancy*

### **7 Creation of short Scottish secure tenancy: antisocial behaviour**

- (1) In section 34 of the 2001 Act (short Scottish secure tenancies)—
- (a) in subsection (7), for “or 2” substitute “, 2 or 2A”, and
- (b) after subsection (8), insert—
- “(9) A landlord must have regard to any guidance published by the Scottish Ministers—
- (a) before creating a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6, and
- (b) when taking any steps in relation to such a tenancy with a view to—
- (i) extending the term of the tenancy under section 35A, or
- (ii) raising proceedings for the recovery of possession of the house under section 36.

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- (10) Before publishing any guidance mentioned in subsection (9), the Scottish Ministers must consult such persons as they consider appropriate.”.
- (2) In section 35 of the 2001 Act (conversion to a short Scottish secure tenancy)—
- (a) for subsection (2) substitute—
- “(2) The landlord may serve a notice under subsection (3) only where—
- (a) the tenant (or any one of joint tenants) or a person residing or lodging with, or a subtenant of, the tenant is subject to an antisocial behaviour order under—
- (i) section 234AA of the Criminal Procedure (Scotland) Act 1995 (c.46), or
- (ii) section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), or
- (b) the tenant (or any one of joint tenants), a person residing or lodging with, or a subtenant of, the tenant, or a person visiting the house has, within the period of 3 years preceding the date of service of the notice—
- (i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person, or
- (ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person.”,
- (b) in subsection (3)—
- (i) the word “and” immediately preceding paragraph (b) is repealed,
- (ii) in paragraph (b), after “order” insert “ or, as the case may be, has behaved as described in subsection (2)(b) ”, and
- (iii) after paragraph (b), insert—
- “(c) if the notice is served under subsection (2)(b), specify—
- (i) the actions of the tenant or other person which the landlord has taken into account, and
- (ii) the landlord's reasons for serving the notice, and
- (d) explain the right of appeal conferred by subsection (5).” , and
- (c) after subsection (6), insert—
- “(7) In this section —
- “antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,
- “conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and

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“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).”.

- (3) In section 37(1) of the 2001 Act (conversion to Scottish secure tenancy), in paragraph (a) for “or 2” substitute “, 2 or 2A ”.
- (4) In schedule 6 to the 2001 Act (grounds for granting short Scottish secure tenancy)—
- (a) after paragraph 2 insert—

**2A “Other antisocial behaviour**

- (1) A person mentioned in sub-paragraph (2) has, within the period of 3 years preceding the date of service of the notice—

- (a) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the prospective tenant or by a person who it is proposed will reside with the prospective tenant, or
- (b) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person.

- (2) The persons are—

- (a) the prospective tenant,
- (b) any one of prospective joint tenants,
- (c) a person visiting a house occupied by the prospective tenant or by a person who it is proposed will reside with the prospective tenant, and
- (d) a person who it is proposed will reside with the prospective tenant.

- (3) In sub-paragraph (1)—

“antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,

“conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and

“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).”, and

- (b) for paragraph 6 substitute—

**6 “Accommodation for person in receipt of housing support**

The house is to be let expressly on a temporary basis to a person—

- (a) to whom no other paragraph of this schedule applies, and
- (b) who is in receipt of a housing support service.”.

- (5) In section 31(5) of the 1987 Act (permanent accommodation where duty to secure accommodation for persons found to be homeless), in paragraph (c) for “or 2” substitute “, 2 or 2A ”.



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VALID FROM 01/05/2019

## **8 Grant of short Scottish secure tenancy: homeowners**

In schedule 6 to the 2001 Act (grounds for granting short Scottish secure tenancy), after paragraph 7 insert—

### **“Temporary letting where other property owned**

- 7A (1) The house is to be let expressly on a temporary basis to a person pending the making of arrangements in relation to a property mentioned in sub-paragraph (2) which will allow the person's housing needs to be met.
- (2) The property is heritable property owned by the person or a person who it is proposed will reside with that person.”.

VALID FROM 01/05/2019

## **9 Short Scottish secure tenancy: term**

(1) In section 34 of the 2001 Act (short Scottish secure tenancies)—

(a) after subsection (5), insert—

“(5A) Subsection (5) does not apply to a tenancy mentioned in subsection (6A).”.

(b) after subsection (6) insert—

“(6A) A tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 has a term of 12 months from the day on which the tenancy is granted.”.

(2) In section 35 of the 2001 Act (conversion to short Scottish secure tenancy)—

(a) after subsection (3) insert—

“(3A) A short Scottish secure tenancy created by virtue of this section has a term of 12 months from the day on which the landlord serves a notice under subsection (3).”, and

(b) for subsection (4), substitute—

“(4) Where a tenancy becomes a short Scottish secure tenancy by virtue of this section—

(a) subsection (5) of section 34 does not apply to the tenancy, but

(b) otherwise subsection (6) of that section does apply to the tenancy.”.

(3) In section 37 of the 2001 Act (conversion to Scottish secure tenancy), after subsection (4) insert—

“(5) Subsection (6) applies to a tenancy which—

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- (a) became a short Scottish secure tenancy by virtue of section 35, and
  - (b) becomes a Scottish secure tenancy by virtue of this section.
- (6) The term of the tenancy is the term which applied immediately before the tenancy became a short Scottish secure tenancy.”.

VALID FROM 01/05/2019

## 10 Short Scottish secure tenancy: extension of term

- (1) After section 35 of the 2001 Act, insert—

### “35A Extension of term of short Scottish secure tenancy

- (1) The landlord under a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 may extend the term of that tenancy by 6 months from the day which would otherwise be the day of expiry of the tenancy.
  - (2) Such an extension may not be made unless—
    - (a) the tenant is in receipt of housing support services, and
    - (b) the landlord has, on or before the day which is 2 months before the day which would otherwise be the day of expiry of the tenancy, served on the tenant a notice informing the tenant of—
      - (i) the extension, and
      - (ii) the reasons for the extension.
  - (3) A landlord may not give a notice if the landlord has previously given a notice under subsection (2) in relation to that short Scottish secure tenancy.”.
- (2) In section 37 of the 2001 Act (conversion to Scottish secure tenancy)—
- (a) in subsection (1)—
    - (i) the words “, in the period of 12 months following the creation of the tenancy,” are repealed,
    - (ii) after “36(2)” insert “ before the expiry of the relevant period ”, and
    - (iii) for “that” substitute “ the relevant ”,
  - (b) after subsection (1), insert—
 

“(1A) In this section, the “relevant period” is—

    - (a) the period of 12 months following the creation of the tenancy, or
    - (b) if an extension notice has been served under section 35A, the period of 18 months following the creation of the tenancy.”.
  - (c) in subsection (2)—
    - (i) for “period of 12 months following the creation of the tenancy” substitute “ relevant period ”, and

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(ii) for “that period of 12 months”, in both places where it occurs, substitute “ the relevant period ”.

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## 11 Short Scottish secure tenancy: recovery of possession

In section 36 of the 2001 Act (recovery of possession)—

- (a) in subsection (2), after paragraph (a) insert—
  - “(aa) in the case of a short Scottish secure tenancy created by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6, the landlord considers that any obligation of the tenancy has been broken,”
- (b) in subsection (3), after paragraph (a) insert—
  - “(aa) state the reason why the landlord is seeking recovery of possession (including, in a case where subsection (2)(aa) applies, the obligations which the landlord considers to have been broken),”
- (c) after subsection (4), insert—
  - “(4A) A tenant may, before the end of the period of 14 days beginning with the day of service of a notice under subsection (2), apply to the landlord for a review of a decision to seek recovery of possession of the house which is the subject of the tenancy.
  - (4B) If an application for a review under subsection (4A) is made, the landlord must, before the day specified in the notice by virtue of subsection (3)(b)—
    - (a) confirm its decision to seek recovery of possession or withdraw its notice under subsection (2),
    - (b) notify the tenant of its decision on the review, and
    - (c) where its decision on the review is to confirm the decision to seek recovery of possession, notify the tenant of the reasons.
  - (4C) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with a review following an application under subsection (4A).”
- (d) in subsection (5)(a), after “34(5)” insert “ or, in a case where subsection (2)(aa) applies, the end of the term applicable to the tenancy in accordance with section 34(6A), 35(3A) or 35A(1) ”,
- (e) in subsection (7), after “16” insert “ , but subject to the modification mentioned in subsection (8) ”, and
- (f) after subsection (7), insert—
  - “(8) In relation to the recovery of possession of the house which is the subject of a short Scottish secure tenancy, section 14(4) is to be read as if for paragraph (b) there were substituted—
    - “(b) a date, not earlier than 4 weeks from the date of service of the notice on or after which the

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landlord may raise proceedings for recovery of possession,””

*Scottish secure tenancy*

VALID FROM 01/11/2019

**12 Assignment, sublet and joint tenancy of Scottish secure tenancy**

(1) In section 11 of the 2001 Act (Scottish secure tenancy)—

- (a) in subsection (6), the words “, or is intended to be,” are repealed, and
- (b) after subsection (6) insert

“(6A) An application under subsection (5) may be made only where the house in question has been the only or principal home of the person falling within subsection (6) throughout the period of 12 months ending with the date of the application.

(6B) For the purposes of subsection (6A) a period may be considered in relation to a person only if, at any time before that period began, the landlord was notified by—

- (a) the person, or
- (b) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the person's only or principal home.”.

(2) In section 32 of the 2001 Act (assignment, subletting, etc.)—

- (a) in subsection (1)—
  - (i) the word “and” immediately preceding paragraph (b) is repealed,
  - (ii) in paragraph (b), after “been” insert “ the tenant's and ”,
  - (iii) in paragraph (b), for “6” substitute “ 12 ”, and
  - (iv) after paragraph (b), insert “ and
- (c) in the case of a sublet, only where the house has been the tenant's only or principal home throughout the period of 12 months ending with the date of the application for the landlord's consent to the sublet under paragraph 9 of schedule 5.”,

(b) after subsection (1), insert—

“(1A) For the purposes of an assignment mentioned in subsection (1)(b), a period may be considered in relation to a person only if—

- (a) the person was the tenant of the house throughout that period, or
- (b) at any time before that period began, the landlord was notified by—

(i) the person, or

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- (ii) any other person who was the tenant of the house in question when the notice was given, that the house in question was the person's only or principal home.
- (1B) For the purposes of a sublet mentioned in subsection (1)(c), a period may be considered in relation to a tenant only if—
  - (a) the tenant was the tenant of the house throughout that period, or
  - (b) at any time before that period began, the landlord was notified by—
    - (i) the tenant, or
    - (ii) any other person who was the tenant of the house in question when the notice was given, that the house in question was the tenant's only or principal home.”, and
- (c) in subsection (3)—
  - (i) the word “or” immediately preceding paragraph (e) is repealed, and
  - (ii) after paragraph (e), insert—
    - “(f) in the case of consent to an assignation by a local authority or a registered social landlord, if the proposed assignee is not a person to whom that local authority or registered social landlord would give a reasonable preference when selecting tenants under section 20(1) of the 1987 Act, or
    - (g) in the case of consent to an assignation, if the assignation would in the opinion of the landlord, result in the house being under-occupied.”.

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### 13 Succession to Scottish secure tenancy

In schedule 3 to the 2001 Act (succession to Scottish secure tenancy: qualified persons)—

- (a) in paragraph 2(2), for “6” insert “ 12 ”,
- (b) in paragraph 3, for “at the time of” substitute “ throughout the period of 12 months ending with ”,
- (c) in paragraph 4(b), for “at the time of” substitute “ throughout the period of 12 months ending with ”, and
- (d) after paragraph 4, insert—

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#### 4A “Only or principal home

For the purposes of paragraph 2, 3 or 4 a period may be considered in relation to a person only if, at any time before that period began, the landlord was notified by—

- (a) the person, or
- (b) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the person's only or principal home.”.

### 14 Grounds for eviction: antisocial behaviour

- (1) In section 14 of the 2001 Act (proceedings for possession), after subsection (2A) insert—

“(2B) Where such proceedings are to include a ground for recovery of possession set out in paragraph 2 of schedule 2, the landlord must have regard to any guidance published by the Scottish Ministers before raising such proceedings in relation to recovering possession of the house.

(2C) Before publishing any guidance mentioned in subsection (2B), the Scottish Ministers must consult such persons as they consider appropriate.”.

- (2) In section 16 of the 2001 Act (powers of court in possession proceedings)—

- (a) in subsection (2), after paragraph (a) insert—

“(aa) whether or not paragraph (a) applies, that—

- (i) the landlord has a ground for recovery of possession set out in paragraph 2 of that schedule and so specified, and

- (ii) the landlord served the notice under section 14(2) before the day which is 12 months after—

(A) the day on which the person was convicted of the offence forming the ground for recovery of possession, or

(B) where that conviction was appealed, the day on which the appeal is dismissed or abandoned,” and

- (b) after subsection (3), insert—

“(3A) Subsection (2) does not affect any other rights that the tenant may have by virtue of any other enactment or rule of law.”.

VALID FROM 01/05/2019

### 15 Recovery of possession of properties designed for special needs

In schedule 2 to the 2001 Act (grounds for recovery of possession of house)—

- (a) in paragraph 11(a), the words “longer a” are repealed, and

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(b) in paragraph 12(a), the words “longer a” are repealed.

VALID FROM 20/11/2014

### PART 3

#### PRIVATE RENTED HOUSING

##### *Transfer of sheriff's jurisdiction to First-tier Tribunal*

VALID FROM 01/12/2017

#### **16 Regulated and assured tenancies etc.**

- (1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—
  - (a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),
  - (b) a Part VII contract (within the meaning of section 63 of that Act),
  - (c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).
- (2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.
- (3) Part 1 of schedule 1 makes minor and consequential amendments.

#### **Commencement Information**

- 11** S. 16(1)(2) in force at 1.12.2017 by [S.S.I. 2017/330](#), [art. 3](#), [sch.](#) (with [art. 4](#))
- 12** S. 16(3) in force at 1.12.2017 for specified purposes by [S.S.I. 2017/330](#), [art. 3](#), [sch.](#)

VALID FROM 01/12/2017

#### **17 Repairing standard**

- (1) The 2006 Act is amended as follows.
- (2) In section 18—
  - (a) in subsection (1), for “sheriff” substitute “ First-tier Tribunal ”,
  - (b) in subsection (2)(b), for “sheriff” substitute “ Tribunal ”.
- (3) The title of section 18 becomes “ **Contracting out with consent of First-tier Tribunal** ”.

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(4) In section 57—

- (a) in subsection (2), for “sheriff” substitute “ relevant authority ”,
- (b) after subsection (2) insert—

“(2A) In subsection (2), the relevant authority is—

- (a) where the requirement or thing which the person is authorised or entitled to do relates to the repairing standard, the First-tier Tribunal,
- (b) in any other case, the sheriff.”.

(5) Part 2 of schedule 1 makes minor and consequential amendments.

VALID FROM 01/12/2017

## **18 Right to adapt rented houses**

(1) After section 66 of the 2006 Act insert—

### **“66A Appeals in relation to section 52**

- (1) A tenant aggrieved by a decision by a landlord—
  - (a) to impose any condition on a consent to carry out work in pursuance of section 52(2), or
  - (b) to refuse to consent to the carrying out of any such work,
 may appeal to the First-tier Tribunal within 6 months of being notified of that decision.
- (2) The First-tier Tribunal may, on cause shown, hear an appeal after the deadline set by subsection (1).
- (3) The First-tier Tribunal must, unless the Tribunal considers the condition or, as the case may be, refusal appealed against to be reasonable, determine an appeal under subsection (1) by quashing the decision and directing the landlord to withdraw the condition (or to vary it in such manner as the Tribunal may specify) or, as the case may be, to consent to the application (with or without such conditions as the Tribunal may specify).
- (4) In determining whether a condition or refusal appealed against under subsection (1) is reasonable, the First-tier Tribunal must, where the appeal relates to an application made for the purposes of section 52(2)(a), have regard to any code of practice issued by the Commission for Equality and Human Rights which relates to section 52 or 53.
- (5) The First-tier Tribunal's determination on an appeal under subsection (1) is final.”.

(2) Part 3 of schedule 1 makes minor and consequential amendments.



**Status:** Point in time view as at 01/10/2014. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/12/2017

## 19 Landlord registration

- (1) The 2004 Act is amended as follows.
- (2) In section 92(2), for “sheriff” substitute “ First-tier Tribunal ”.
- (3) In section 97—
  - (a) in subsection (1), for “sheriff” substitute “ First-tier Tribunal ”,
  - (b) in subsection (2), for “sheriff” substitute “ First-tier Tribunal ”.
- (4) Part 4 of schedule 1 makes minor and consequential amendments.

## 20 Houses in multiple occupation

- (1) The Scottish Ministers may by regulations—
  - (a) provide that the First-tier Tribunal may make an order of the kind mentioned in section 153(2) of the 2006 Act instead of the sheriff,
  - (b) provide that the following may be made to the First-tier Tribunal instead of the sheriff—
    - (i) appeals against decisions of local authorities to which section 158 of that Act applies,
    - (ii) applications to extend the period mentioned in paragraph 9(1) of schedule 4 to that Act,
    - (iii) applications for a warrant for the ejection of the occupant from land or premises where the occupant has not complied with a requirement under paragraph 2 of schedule 5 to that Act in relation to the land or premises.
- (2) Regulations under subsection (1) may—
  - (a) disapply the following provisions of the 2006 Act—
    - (i) section 153(2),
    - (ii) section 159(1),
    - (iii) paragraph 9(2) of schedule 4,
    - (iv) paragraph 3(1) of schedule 5,
  - (b) make such other consequential modifications to the 2006 Act and any other enactment as the Scottish Ministers consider appropriate.

PROSPECTIVE

*Landlord registration: time limit for determining application*

## 21 Landlord registration: time limit for determining application

- (1) After section 85A of the 2004 Act, insert—

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### **“85B Time limit for determining application**

- (1) This section applies where a relevant person makes an application to a local authority in accordance with section 83.
  - (2) The local authority must determine the application under section 84 within 12 months of receiving the application.
  - (3) The period mentioned in subsection (2) may be extended by the First-tier Tribunal, on application by the local authority, by such period as the Tribunal thinks fit.
  - (4) The First-tier Tribunal may not extend a period unless the local authority applies for the extension before the period expires.
  - (5) The relevant person is entitled to be a party to any proceedings on such an application.
  - (6) The decision of the First-tier Tribunal on such an application is final.
  - (7) If the local authority does not determine the application within the period required by this section—
    - (a) the authority is to be treated as having entered, on the day by which the authority was required to determine the application, the relevant person in the register maintained by the authority under section 82(1), and
    - (b) unless otherwise removed from the register in accordance with this Part, that person is to be treated as being removed from the register on the expiry of the period of 12 months beginning with that day.
  - (8) Where subsection (7) applies the authority must—
    - (a) enter the name of the relevant person in the register maintained by the authority under section 82(1), and
    - (b) state in the register a registration number in relation to that person (which is to be treated as having been given under section 84(5A)).
  - (9) Subject to the modifications in subsection (10), the relevant person is for all purposes to be treated as having been registered by virtue of section 84(2)(a).
  - (10) The modifications are—
    - (a) in the case of an application to which section 84(3)(a) and (b) applies, the relevant person is to be treated as having been registered by virtue of section 84(3), and
    - (b) in the case of an application to which section 84(4)(a) and (b) applies, the relevant person is to be treated as having been registered by virtue of section 84(4),
    - (c) section 84(6) does not apply, and
    - (d) section 89(2)(b), (3)(b) and (3A)(b) are to be read as if for the words “no longer applies” there were inserted “does not apply”.
- (2) In section 86(1)(a) of the 2004 Act (entry in the register), after “section 84(2)” insert “or section 85B(8)(a)”.

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## Repairing standard

VALID FROM 01/12/2015

### 22 Carbon monoxide alarms

In section 13 of the 2006 Act—

- (a) the word “and” after paragraph (e) of subsection (1) is repealed,
- (b) after paragraph (f) of subsection (1) insert “, and
  - (g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”,
- (c) after subsection (5) insert—

“(6) In determining whether a house meets the standard of repair mentioned in subsection (1)(g), regard is to be had to any building regulations and any guidance issued by the Scottish Ministers on provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”.

### 23 Electrical safety inspections

(1) In section 13 of the 2006 Act (the repairing standard), after subsection (4) insert—

“(4A) In determining whether a house meets the standard of repair mentioned in subsection (1)(c) and (d) in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances, regard is to be had to any guidance issued by the Scottish Ministers on electrical safety standards.”.

(2) After section 19 of the 2006 Act insert—

#### “19A Duty to ensure regular electrical safety inspections

- (1) The landlord must ensure that regular inspections are carried out for the purpose of identifying any work which—
  - (a) relates to installations for the supply of electricity and electrical fixtures, fittings and appliances, and
  - (b) is necessary to ensure that the house meets the repairing standard.
- (2) The duty in subsection (1) is complied with if—
  - (a) an inspection has been carried out before the tenancy starts (but not earlier than 5 years before the start of the tenancy), and
  - (b) inspections are carried out during the tenancy at such intervals to ensure that there is a period of no more than 5 years between each inspection.
- (3) The landlord must—
  - (a) before the start of the tenancy, provide the tenant with a copy of the record of the most recent inspection carried out, and

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(b) provide the tenant with a copy of the record of any inspection carried out during the tenancy.

(4) For the purposes of sections 16(4), 17, 22 and 24 and schedule 2, references to a duty under section 14(1) include the duties under this section.

### **19B Electrical safety inspections**

(1) An inspection carried out in pursuance of section 19A must be carried out by a competent person.

(2) The person carrying out the inspection must prepare a record of the inspection including the following information—

- (a) the date on which the inspection was carried out,
- (b) the address of the house inspected,
- (c) the name and address of the landlord or the landlord's agent,
- (d) the name, address and relevant qualifications of the person who carried out the inspection,
- (e) a description, and the location, of each installation, fixture, fitting and appliance inspected,
- (f) any defect identified,
- (g) any action taken to remedy a defect.

(3) A copy of the record must be—

- (a) given to the landlord, and
- (b) retained by the landlord for a period of 6 years.

(4) The Scottish Ministers must publish guidance on the carrying out of inspections.

(5) In determining who is competent to carry out an inspection, the landlord must have regard to the guidance.”.

## **24 Power to modify repairing standard etc.**

(1) After section 20 of the 2006 Act insert—

### **“20A Power to modify repairing standard etc.**

(1) The Scottish Ministers may by regulations vary or extend the repairing standard and a landlord's duty to ensure a house meets that standard.

(2) Regulations under subsection (1) may, in particular, make provision about—

- (a) the tenancies to which this Chapter applies,
- (b) determining whether a house meets the repairing standard,
- (c) carrying out inspections in relation to the repairing standard.

(3) Regulations under subsection (1) may modify sections 12 to 14 and any other provision of this Chapter.”.

(2) In section 191(5) of the 2006 Act, after “section” insert “ 20A, ”.

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## Enforcement of repairing standard

VALID FROM 01/12/2015

### 25 Third party application in respect of the repairing standard

(1) In section 22 of the 2006 Act (tenant application to private rented housing panel)—

(a) after subsection (1), insert—

“(1A) A person mentioned in subsection (1B) may apply to the private rented housing panel for determination of whether a landlord has failed to comply with the duty imposed by section 14(1)(b) (a person who makes such an application being referred to as a “third party applicant”).

(1B) The persons are—

- (a) a local authority,
- (b) a person specified by order made by the Scottish Ministers.”
- (b) in subsection (2), for “(1) must set out the tenant's” substitute “(1) or (1A) must set out the tenant's, or as the case may be, the third party applicant's”,
- (c) in subsection (3), for “such application may be made unless the tenant” substitute “ application under this section may be made unless the person making the application ”,
- (d) in subsection (4), for “such application” substitute “ application under this section ”, and
- (e) after subsection (4), insert—

“(4A) The tenant of the house concerned is entitled to be a party in the determination of any application made under subsection (1A).”

(2) The title of section 22 of the 2006 Act becomes “ **Application in respect of the repairing standard** ”.

(3) In section 22A(1) of the 2006 Act (information to be given to a local authority), after “22(1)” insert “ , or under section 22(1A) where the applicant is not a local authority ”.

(4) In section 23 of the 2006 Act (referral to private rented housing committee)—

- (a) in subsection (1), after “22(1)” insert “ or 22(1A) ”,
- (b) in subsection (2)(b), after “tenant” insert “ or third party applicant ”,
- (c) in subsection (4), after “application”, where it first occurs, insert “ under section 22(1) ”,
- (d) after subsection (4) insert—

“(4A) The president must, as soon as practicable after rejecting an application under section 22(1A) give notice of the rejection to—

- (a) the third party applicant, and
- (b) the tenant.”, and
- (e) in subsection (5), for “Such a notice” substitute “ A notice under subsection (4) or (4A) ”.

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- (5) In section 24(1) of the 2006 Act (determination by private rented housing committee) for “a tenant's application under section 22(1)” substitute “ an application under section 22(1) or (1A) ”.
- (6) In section 181 of the 2006 Act (rights of entry: general)—
- (a) after subsection (1) insert—
- “(1A) Any person authorised by a third party applicant is entitled to enter any house in respect of which an application under section 22 may be made for the purposes of enabling or assisting the third party applicant to decide whether to make an application under section 22(1A).”, and
- (b) in subsection (2), for “a tenant's application under section 22(1)” substitute “ an application under section 22(1) or (1A) ”.
- (7) In section 182 of the 2006 Act (warrants authorising entry)—
- (a) in subsection (1), after “subsection (1)” insert “ , (1A) ”, and
- (b) after subsection (3) insert—
- “(3A) In relation to an application for a warrant under section 181(1A), the reference to the occupier in subsection (3) is to be read as including the tenant, the landlord and any known agent of the landlord.”.
- (8) In section 184 of the 2006 Act (rights of entry: supplemental), after subsection (4) insert—
- “(4A) In relation to the exercise of the right conferred by section 181(1A), the reference to occupants in subsection (4) is to be read as including the tenant, the landlord and any known agent of the landlord.”.
- (9) In section 187 of the 2006 Act (formal communications), in subsection (3)(b), for “the recorded delivery service” substitute “ a service which provides for the delivery of the communication to be recorded ”.
- (10) In section 194(1) of the 2006 Act (interpretation), after the definition of “tenant” insert—
- ““third party applicant” has the meaning given by section 22(1A).”.
- (11) Section 35(3) of the Private Rented Housing (Scotland) Act 2011 (asp 14) is repealed.

#### Commencement Information

- I3** S. 25(1)(a) in force at 1.12.2015 for specified purposes by [S.S.I. 2015/349, art. 3, Sch.](#)
- I4** S. 25(1)(b)-(e)(2)-(11) in force at 1.12.2015 by [S.S.I. 2015/349, art. 3, Sch.](#)

## 26 Procedure for third party applications

- (1) In paragraph 1 of schedule 2 to the 2006 Act (notification)—
- (a) in sub-paragraph (1), for “a tenant's application” substitute “ an application ”,

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- (b) in sub-paragraph (2), for “either party” substitute “ the landlord or the tenant ”,
  - (c) in sub-paragraph (3), for “both parties” substitute “ the landlord and the tenant ”, and
  - (d) after sub-paragraph (3), insert—
    - “(4) In the case of an application under section 22(1A), the committee must, in addition to carrying out the matters mentioned in sub-paragraphs (1) to (3)—
      - (a) serve on the third party applicant a notice containing the matters mentioned in sub-paragraph (1)(a) to (c),
      - (b) if the committee thinks fit following a request of the third party applicant, change the day specified for the purposes of sub-paragraph (1)(c),
      - (c) notify—
        - (i) the third party applicant of any change under sub-paragraph (2)(b),
        - (ii) the landlord and the tenant of any change under paragraph (b).”.
- (2) In paragraph 2 of schedule 2 to the 2006 Act (inquiries)—
- (a) in sub-paragraph (3)(a), for “or tenant” substitute “ , the tenant or, as the case may be, third party applicant ”,
  - (b) in sub-paragraph (3)(b), for “or tenant” substitute “ , tenant or, as the case may be, third party applicant ”,
  - (c) in sub-paragraph (4)(a), for “in the notice served under” substitute “ in accordance with ”, and
  - (d) in sub-paragraph (4)(b), for “in a notice served under paragraph 1(2)(b)” substitute “ in accordance with paragraph 1(2)(b) or (4)(b) ”.
- (3) In paragraph 3(1) of schedule 2 to the 2006 Act (evidence), after “tenant” insert “ , third party applicant ”.
- (4) In paragraph 5 of schedule 2 to the 2006 Act (expenses)—
- (a) after sub-paragraph (2)(b), insert—
    - “(ba) the third party applicant,”, and
  - (b) in sub-paragraph (2)(c), for “or tenant” substitute “ , tenant or third party applicant ”.
- (5) In paragraph 6 of schedule 2 to the 2006 Act (recording and notification of decisions)
- (a) in sub-paragraph (1)(a), for “a tenant's” substitute “ an ”,
  - (b) the word “and” at the end of sub-paragraph (3)(c) is repealed, and
  - (c) for sub-paragraph (3)(d), substitute—
    - “(d) in the case of an application under section 22(1A), the third party applicant, and
    - (e) the local authority (unless the local authority is the third party applicant in relation to the decision).”.
- (6) After paragraph 7(1) of schedule 2 to the 2006 Act (withdrawal of application), insert—

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“(1A) A third party applicant may withdraw an application under section 22(1A) at any time.”.

(7) In paragraph 8(1) of schedule 2 to the 2006 Act (further provision on procedure), after “22(1)” insert “ and 22(1A) ”.

VALID FROM 01/12/2015

## 27 Appeals in relation to third party applications

(1) In section 64 of the 2006 Act (Part 1 appeals)—

- (a) in subsection (4)(a), for “a tenant’s” substitute “ an ”,
- (b) after subsection (4), insert—

“(4A) A third party applicant aggrieved by a decision by a private rented housing committee which—

- (a) is mentioned in subsection (4)(a) to (f),
- (b) was made following an application by the applicant under section 22(1A),

may appeal to the sheriff within 21 days of being notified of that decision.”, and

- (c) in subsection (5), after “tenant” insert “ or a third party applicant ”.

(2) In section 65(2) of the 2006 Act (determination of appeals), after “64(4)” insert “, (4A) ”.

(3) After section 66(3) of the 2006 Act (appeals procedure), insert—

“(3A) In an appeal by a landlord under section 64(4) which relates to a decision following an application under section 22(1A)—

- (a) the third party applicant is to be a party to the proceedings,
- (b) the tenant is entitled to be a party to the proceedings.

(3B) In an appeal by a tenant under section 64(4) which relates to a decision following an application under section 22(1A), the landlord and the third party applicant are to be parties to the proceedings.

(3C) In an appeal by a third party applicant under section 64(4A)—

- (a) the landlord is to be a party to the proceedings,
- (b) the tenant is entitled to be a party to the proceedings.”.

*Private rented housing: Enhanced Enforcement Areas*

## 28 Private rented housing: Enhanced Enforcement Areas

(1) The Scottish Ministers must by regulations provide a scheme whereby a local authority may apply to the Scottish Ministers for additional discretionary powers to enable it to target enforcement action at an area characterised by poor conditions in houses subject to tenancies and occupancy agreements of the type mentioned in section 16(1) (“private rented housing”).



**Status:** Point in time view as at 01/10/2014. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Housing (Scotland) Act 2014 is up to date with all changes known to be in force on or before 21 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) The scheme under subsection (1) must provide—
- (a) that a local authority may apply to the Scottish Ministers for an area to be designated as an Enhanced Enforcement Area where it considers that the area is characterised by—
    - (i) an overprovision or a concentration of private rented housing that appears to the local authority to be—
      - (A) of a poor environmental standard,
      - (B) overcrowded, and
    - (ii) a prevalence of antisocial behaviour, as defined by section 81(4) of the 2004 Act,
  - (b) where the Scottish Ministers agree to designate an area as an Enhanced Enforcement Area, that the local authority will acquire such additional discretionary powers as the Scottish Ministers consider necessary or expedient, to be exercised for prescribed purposes, including in relation to—
    - (i) the checks it may carry out before entering a relevant person on the register of landlords that it maintains under Part 8 of the 2004 Act,
    - (ii) authority to inspect dwellings let by a landlord who is entered on that register,
  - (c) where the Scottish Ministers agree to designate an area as an Enhanced Enforcement Area, that—
    - (i) the local authority must take steps to advertise the fact that the designation has been granted,
    - (ii) the designation will apply for a period of five years commencing from the date on which the Scottish Ministers notify a local authority of its decision,
    - (iii) the local authority may make a further application for the area to be designated as an Enhanced Enforcement Area before the expiry of its first designation.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) local authorities,
  - (b) persons or bodies who appear to them to represent the interests of—
    - (i) landlords,
    - (ii) tenants,
  - (c) such other persons or bodies as they consider appropriate.
- (4) The Scottish Ministers must lay before the Scottish Parliament a draft Scottish statutory instrument containing regulations under subsection (1) by 1 April 2015.
- (5) Regulations under subsection (1) may modify, or disapply any provision of, any enactment (including this Act) for the purposes of this section.

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VALID FROM 20/11/2014

## PART 4

### LETTING AGENTS

VALID FROM 02/02/2016

#### *Inclusion in the register*

#### **29 Register of letting agents**

- (1) The Scottish Ministers must establish and maintain a register of letting agents (the “register”).
- (2) The register must contain an entry for each person entered in the register setting out—
  - (a) the name and address of the person entered in the register, and
  - (b) such information relating to that person as the Scottish Ministers may by regulations prescribe.
- (3) The Scottish Ministers must make the information contained in the register publicly available by such means as they consider appropriate.

#### **30 Application for registration**

- (1) A person may apply to the Scottish Ministers—
  - (a) to be entered in the register, or
  - (b) to renew that person's existing entry in the register.
- (2) The application must—
  - (a) state the name and address of the applicant,
  - (b) state whether the applicant is—
    - (i) trading as a sole trader,
    - (ii) a partnership,
    - (iii) a company, or
    - (iv) a body with some other legal status,
  - (c) in the case where the applicant is a company registered under the Companies Act 2006 (c.46), state the company's registered number,
  - (d) in the case where the applicant is not a natural person, state the name and address of the individual who holds the most senior position within the management structure of the relevant partnership, company or body,
  - (e) state the name and address of any other person who—
    - (i) owns 25% or more of an applicant which is not a natural person, or
    - (ii) otherwise is (or is to be) directly concerned with the control or governance of the applicant's letting agency work (whether or not the applicant is a natural person), and

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(f) include such other information as the Scottish Ministers may by regulations prescribe.

(3) The application must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.

VALID FROM 31/01/2018

### **31 Offence of providing false information in an application**

- (1) It is an offence for a person, in an application under section 30, to—
- (a) provide information which the person knows is false in a material particular, or
  - (b) knowingly fail to specify information required by section 30(2).
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **32 Decision on application**

- (1) The Scottish Ministers must determine an application under section 30 in accordance with this section.
- (2) The Scottish Ministers must enter the applicant in the register or renew an existing entry if they are satisfied that—
- (a) the applicant is a fit and proper person to carry out letting agency work,
  - (b) any other person who is required to be identified in an application by virtue of section 30 is a fit and proper person in relation to letting agency work, and
  - (c) the applicant meets such training requirements as the Scottish Ministers may by regulations prescribe.
- (3) Regulations under subsection (2)(c) may, in particular, prescribe—
- (a) the matters on which training must have been undertaken,
  - (b) the persons who must have undertaken training,
  - (c) qualifications which must be held by the applicant or other persons,
  - (d) the period within which training must have taken place.
- (4) An applicant who is entered in the register, or whose entry is renewed, is to be known as a “registered letting agent”.
- (5) The Scottish Ministers must refuse to enter the applicant in the register or to renew an existing entry if they are not satisfied in accordance with subsection (2).
- (6) Before refusing to enter the applicant in the register or to renew an existing entry, the Scottish Ministers must give to the applicant a notice stating that—
- (a) they are considering refusing the application and their reasons for doing so, and
  - (b) the applicant has the right to make written representations to the Scottish Ministers before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).

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- (7) In making their decision under this section the Scottish Ministers must consider the application and any representations made in accordance with subsection (6)(b).
- (8) The Scottish Ministers must, as soon as practicable after making their decision under this section, notify the applicant of—
  - (a) their decision,
  - (b) in the case of a decision to enter the applicant in the register, the date of entry in the register,
  - (c) in the case of a decision to renew an existing entry, the date of renewal, and
  - (d) in the case of a refusal to enter the applicant in the register or to renew an existing entry, their reasons for the refusal and the date of that refusal.
- (9) If the Scottish Ministers refuse to renew an existing entry they must remove the registered letting agent from the register on the date of final refusal.
- (10) For the purposes of subsection (9) the date of final refusal is the date on which—
  - (a) the period mentioned in section 41(2) expires without an appeal being made,
  - (b) where such an appeal is made, the appeal is finally determined or abandoned.

VALID FROM 31/01/2018

### **33 Time limit for determining application**

- (1) This section applies where a person (referred to in this section as the “applicant”) makes an application in accordance with section 30.
- (2) The Scottish Ministers must determine the application under section 32 within 12 months of receiving the application.
- (3) The period mentioned in subsection (2) may be extended by the First-tier Tribunal, on application by the Scottish Ministers, by such period as the Tribunal thinks fit.
- (4) The Tribunal may not extend a period unless the Scottish Ministers apply for the extension before the period expires.
- (5) The applicant is entitled to be a party to any proceedings on an application under subsection (3).
- (6) The decision of the Tribunal on such an application is final.
- (7) If the Scottish Ministers do not determine the application within the period required by this section—
  - (a) on the day by which they were required to determine the application, they are to be treated as having entered the applicant in the register or, as the case may be, having renewed the applicant's existing entry in the register, and
  - (b) the applicant is to be treated as being removed from the register on the expiry of the period of 12 months beginning with that day unless—

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- (i) before the expiry of the period, the applicant made a subsequent application in accordance with section 30 to renew the applicant's entry in the register, or
  - (ii) the applicant is otherwise removed from the register in accordance with this Part.
- (8) Where subsection (7) applies the Scottish Ministers must—
  - (a) notify the applicant—
    - (i) that subsection (7) applies, and
    - (ii) of the day on which, in accordance with subsection (7)(a), they are treated as having entered the applicant in the register or, as the case may be, having renewed the applicant's existing entry in the register, and
  - (b) enter the name of the applicant in the register or, as the case may be, renew the applicant's existing entry in the register.
- (9) Subject to the modifications in subsection (10), the applicant is for all purposes to be treated as a registered letting agent entered in the register or, as the case may be, whose entry has been renewed by virtue of section 32(2).
- (10) The modifications are—
  - (a) section 38 does not apply,
  - (b) paragraphs (a) and (b) of section 39(1) are to be read as if for the words “no longer” there were substituted “not”, and
  - (c) subsections (1)(b) and (5)(b) of section 43 are to be read as if after the word “under” there were inserted “section 33(7)(b) or”.

VALID FROM 31/01/2018

### **34 Fit and proper person considerations**

- (1) In deciding under this Part if a person is a fit and proper person, the Scottish Ministers must have regard to all of the circumstances of the case, including any material falling within subsections (2) and (4).
- (2) Material falls within this subsection if it shows that the person has—
  - (a) been convicted of an offence—
    - (i) involving fraud or other dishonesty,
    - (ii) involving violence,
    - (iii) involving drugs,
    - (iv) involving firearms,
    - (v) which is a sexual offence within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c.46),
  - (b) practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15),
  - (c) contravened any provision of—
    - (i) the law relating to housing,
    - (ii) landlord and tenant law,
    - (iii) the law relating to debt.

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- (3) Material which shows that a person has a conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 (c.53) does not fall within subsection (2).
- (4) Material falls within this subsection if it shows the extent to which any person mentioned in subsection (1) has—
- (a) complied with any Letting Agent Code of Practice made under section 46,
  - (b) complied with any Letting Code issued under section 92A of the 2004 Act,
  - (c) failed to comply with a duty applying to that person in accordance with section 36 to use a letting agent registration number,
  - (d) contravened any provision of any letting agent enforcement order issued under section 48,
  - (e) failed to pay any costs for which the person is liable under this Part arising from an application to the First-tier Tribunal under section 48,
  - (f) failed to provide information in accordance with section 52 or 53(2)(d)(i),
  - (g) obstructed a person acting in the proper exercise of the persons' functions under sections 53 to 55,
  - (h) failed to comply with a requirement made by a person who is so acting.
- (5) The Scottish Ministers may by order modify this section by adding to, removing or varying any material in subsections (2) and (4).

VALID FROM 31/01/2018

### **35 Fit and proper person: criminal record information**

- (1) This section applies where the Scottish Ministers have reasonable grounds to suspect that the information provided under this Part in relation to material falling within section 34(2) is, or has become, inaccurate.
- (2) In deciding under this Part if a person is a fit and proper person, the Scottish Ministers may have regard to the information which would be included in a criminal conviction certificate (within the meaning of section 112 of the Police Act 1997 (c.50)) in relation to that person.

VALID FROM 31/01/2018

### *Duties of registered letting agents*

### **36 Letting agent registration number**

- (1) The Scottish Ministers must allocate a number to each registered letting agent (the “letting agent registration number”).
- (2) A registered letting agent must take all reasonable steps to ensure that the agent's letting agent registration number is included in—

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- (a) any document sent to a landlord, tenant, prospective landlord or prospective tenant in the course of the agent's letting agency work,
  - (b) any property advertisement or communication in relation to the agent's letting agency work, and
  - (c) any other document or communication of a type specified by the Scottish Ministers by order.
- (3) For the purposes of this section—
- (a) “advertisement” includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons, and
  - (b) “communication” includes electronic communications sent or placed on a web page on a website operated by or on behalf of the registered letting agent.

### **37 Duty to inform: change of circumstances**

- (1) This section applies if, in consequence of a change in circumstances, any information provided by a registered letting agent to the Scottish Ministers by virtue of section 30 or, as the case may be, this section, becomes inaccurate.
- (2) The registered letting agent must notify the Scottish Ministers in writing, as soon as practicable after the inaccuracy arises, of the change that has occurred.
- (3) The notice must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.
- (4) It is an offence for a person to fail to comply with subsection (2) without reasonable excuse.
- (5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

VALID FROM 31/01/2018

### *Removal from the register*

### **38 Duration of registration**

- (1) The Scottish Ministers must remove a registered letting agent from the register if, on the expiry of the registration period, the registered letting agent has not made an application in accordance with section 30.
- (2) The registration period is—
  - (a) in the case of a letting agent whose registration has not previously been renewed, the period of 3 years beginning with the date on which the entry was made,
  - (b) in any other case, the period of 3 years beginning the day after the end of the previous registration period.

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### **39 Revocation of registration**

- (1) The Scottish Ministers may remove a registered letting agent from the register if they are satisfied that—
  - (a) the agent is not, or is no longer, a fit and proper person to carry out letting agency work,
  - (b) any other person who is required to be identified in an application by virtue of section 30 or in accordance with the duty in section 37, is not, or is no longer, a fit and proper person in relation to letting agency work, or
  - (c) the agent does not meet the training requirements prescribed under section 32(2)(c).
- (2) Before removing a registered letting agent from the register under this section the Scottish Ministers must give to the agent a notice stating that—
  - (a) they are considering removing the agent from the register and their reasons for doing so, and
  - (b) the agent has the right to make written representations to the Scottish Ministers before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).
- (3) In making their decision under this section the Scottish Ministers must consider any representations made in accordance with subsection (2)(b).
- (4) The Scottish Ministers must, as soon as practicable after making a decision to remove a registered letting agent from the register, notify the agent of—
  - (a) their decision and their reasons for that decision,
  - (b) the date of removal from the register.

### **40 Removal from register on application**

- (1) A registered letting agent may apply to the Scottish Ministers to be removed from the register.
- (2) The application must be accompanied by a fee of such amount (if any) as the Scottish Ministers may determine.
- (3) The Scottish Ministers must remove a registered letting agent from the register if, having considered an application under this section, they are satisfied that—
  - (a) the registered letting agent is no longer carrying out letting agency work, and
  - (b) it is otherwise appropriate to remove that agent from the register.
- (4) The Scottish Ministers must, as soon as practicable after making their decision under this section, notify the agent who made the application of—
  - (a) their decision,
  - (b) in the case of a decision to remove the agent from the register, the date of removal from the register, and
  - (c) in the case of a decision not to remove the agent from the register, their reasons for that decision.



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VALID FROM 31/01/2018

### *Appeals*

#### **41 Appeals**

- (1) A person may appeal to the First-tier Tribunal against a decision by the Scottish Ministers—
  - (a) under section 32 to refuse to enter that person in the register or to renew that person's existing entry in the register,
  - (b) under section 39 to remove that person from the register.
- (2) An appeal must be made before the end of the period of 21 days beginning with the date of notification of the decision.
- (3) In determining an appeal the Tribunal may make an order requiring the Scottish Ministers to enter the person in the register.

VALID FROM 31/01/2018

### *Consequences of refusal or removal*

#### **42 Note on register where refusal or removal**

- (1) Where the Scottish Ministers refuse to enter a person in the register or to renew a person's existing entry in the register under section 32, they must, after the date of final refusal, note that fact in the register.
- (2) Where the Scottish Ministers remove a person from the register under section 39 they must, after the date of final refusal, note that fact in the register.
- (3) For the purposes of this section the date of final refusal is the later of the date on which—
  - (a) the period mentioned in section 41(2) expires without an appeal being made,
  - (b) where such an appeal has been made, the appeal is finally determined or abandoned.
- (4) Where a fact is noted by virtue of subsection (1) or (2) it must—
  - (a) remain on the register for the period of 12 months beginning with the date on which the Scottish Ministers are required to note it in the register, and
  - (b) be removed from the register at the end of that period.
- (5) But where a person in respect of whom the Scottish Ministers note a fact by virtue of subsection (1) or (2) is subsequently entered in the register before the end of the period mentioned in subsection (4)(a), the Scottish Ministers must remove the fact from the register.

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#### **43 No payment for letting agency work where refusal or removal**

- (1) This section applies where the Scottish Ministers—
- (a) refuse to enter a person in the register or to renew the person's existing entry in the register under section 32,
  - (b) remove a person from the register under section 38,
  - (c) remove a person from the register under section 39,
  - (d) remove a person from the register under section 40.
- (2) After the relevant date—
- (a) no costs incurred by the person in respect of letting agency work are recoverable,
  - (b) no charge imposed by the person which relates to letting agency work in a period after the relevant date is recoverable.
- (3) Subsection (2)(a) does not apply in relation to costs incurred before the relevant date in a case where the person is removed from the register under section 38 or 40.
- (4) The Scottish Ministers must, as soon as practicable after the relevant date, publish in such manner as they think fit a notice of—
- (a) the refusal or removal mentioned in subsection (1),
  - (b) the relevant date, and
  - (c) the effect of subsection (2).
- (5) For the purposes of this section, the relevant date—
- (a) in the case of a refusal or removal mentioned in subsection (1)(a) or (c), is the later of the date on which—
    - (i) the period mentioned in section 41(2) expires without an appeal being made,
    - (ii) where such an appeal has been made, the appeal is finally determined or abandoned, and
  - (b) in the case of a removal mentioned in subsection (1)(b) or (d), is the day after the day on which the person is removed from the register.

VALID FROM 31/01/2018

#### *Offences where no registration*

VALID FROM 02/10/2018

#### **44 Offence of operating as a letting agent without registration**

- (1) It is an offence for a person who is not a registered letting agent to carry out letting agency work, unless subsection (2) applies to that person.
- (2) This subsection applies to a person from the day on which the person is removed from the register under section 39 until—
- (a) where the period mentioned in section 41(2) expires without an appeal being made, the expiry of that period,

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- (b) where such an appeal is made, the day on which it is finally determined or abandoned.
- (3) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse for acting in the way charged.
- (4) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding £50,000, or to both.

#### **45 Offence of using a registration number where no registration**

- (1) It is an offence for a person who is not entered in the register, without reasonable excuse, to use a number purporting to be a letting agent registration number in any document or communication.
- (2) Subsection (1) does not apply to a person who is removed from the register under section 39 until—
  - (a) where the period mentioned in section 41(2) expires without an appeal being made, the expiry of that period,
  - (b) where such an appeal is made, the day on which it is finally determined or abandoned.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### *Code of practice*

#### **46 Letting Agent Code of Practice**

- (1) The Scottish Ministers may, by regulations, set out a code of practice which makes provision about—
  - (a) the standards of practice of persons who carry out letting agency work,
  - (b) the handling of tenants' and landlords' money by those persons, and
  - (c) the professional indemnity arrangements to be kept in place by those persons.
- (2) The code of practice is to be known as the Letting Agent Code of Practice.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate on a draft of the code of practice.

VALID FROM 31/01/2018

#### **47 Prohibition on contracting out**

- (1) The terms of any agreement of a kind mentioned in subsection (2) are of no effect in so far as they purport to—
  - (a) exclude or limit any duty a letting agent has under the Letting Agent Code of Practice, or

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- (b) impose any penalty, disability or obligation in the event of a person enforcing compliance by the letting agent with such a duty.
- (2) The agreements are—
  - (a) an agreement between a landlord and a letting agent,
  - (b) an agreement between a tenant and a letting agent,
  - (c) an agreement (including a lease) between a landlord and a tenant.

VALID FROM 31/01/2018

### *Letting agent enforcement orders*

#### **48 Applications to First-tier Tribunal to enforce code of practice**

- (1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.
- (2) A relevant letting agent is—
  - (a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,
  - (b) in relation to an application by a landlord, a letting agent appointed by the landlord,
  - (c) in relation to an application by the Scottish Ministers, any letting agent.
- (3) An application under subsection (1) must set out the applicant's reasons for considering that the letting agent has failed to comply with the code of practice.
- (4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.
- (5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.
- (6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.
- (7) Where the Tribunal decides that the letting agent has failed to comply, it must by order (a “letting agent enforcement order”) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.
- (8) A letting agent enforcement order—
  - (a) must specify the period within which each step must be taken,
  - (b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.
- (9) References in this section to—
  - (a) a tenant include—
    - (i) a person who has entered into an agreement to let a house, and

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- (ii) a former tenant,
- (b) a landlord include a former landlord.

#### **49 Variation and revocation of enforcement orders**

- (1) The First-tier Tribunal may, at any time—
  - (a) vary a letting agent enforcement order, or
  - (b) where it considers that the steps required by the order are no longer necessary, revoke it.
- (2) References in this Part (including this section) to a letting agent enforcement order are to be treated as references to the order as so varied.

#### **50 Failure to comply with enforcement order**

- (1) The First-tier Tribunal may, after the period within which a letting agent enforcement order requires steps to be taken, review whether the letting agent has complied with the order.
- (2) If the Tribunal decides that the letting agent has failed to comply with the letting agent enforcement order it must notify the Scottish Ministers of that failure.
- (3) But the Tribunal may not make such a decision if it is satisfied that the letting agent has a reasonable excuse for failing to comply.

#### **51 Enforcement orders: offence**

- (1) A letting agent who, without reasonable excuse, fails to comply with a letting agent enforcement order commits an offence.
- (2) A letting agent cannot be guilty of an offence under subsection (1) unless the First-tier Tribunal has decided that the letting agent has failed to comply with the order (but such a decision does not establish a presumption that the letting agent has committed an offence under subsection (1)).
- (3) A letting agent who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

VALID FROM 02/02/2016

### *Monitoring of compliance*

#### **52 Power to obtain information**

- (1) The Scottish Ministers may, for the purpose of monitoring compliance with the provisions of this Part, serve a notice on a person who appears to be a letting agent requiring the person to provide them with information specified in the notice.
- (2) The Scottish Ministers may by regulations make further provision about the requiring of information under subsection (1) and, in particular, may make provision about—

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- (a) the form of the notice and manner of service,
- (b) the time within which information must be provided.

(3) Nothing in this section authorises the Scottish Ministers to require the disclosure of any information if such disclosure would make the person holding it susceptible under any enactment or rule of law to any sanction or other remedy.

VALID FROM 31/01/2018

### 53 Power to carry out inspections

- (1) For the purpose of monitoring compliance with the provisions of this Part, an authorised person may carry out an inspection of premises which appear to be being used for the purpose of carrying out letting agency work.
- (2) For the purposes of carrying out the inspection, the authorised person may—
- (a) enter and inspect the premises,
  - (b) require the production of any book, document, data or record (in whatever form it is held) and inspect it, and take copies of or extracts from it,
  - (c) take possession of any book, document, data or record (in whatever form it is held) which is on the premises and retain it for as long as the authorised person considers necessary,
  - (d) require any person to—
    - (i) give the authorised person such information as the authorised person considers necessary,
    - (ii) afford the authorised person such facilities and assistance as the authorised person considers necessary.
- (3) Nothing in this section authorises the authorised person to require the disclosure of any information if such disclosure would make the person holding it susceptible under any enactment or rule of law to any sanction or other remedy.
- (4) In this section—
- “authorised person” means a person authorised by the Scottish Ministers,
  - “premises” includes any place and any vehicle, vessel, or moveable structure.

VALID FROM 31/01/2018

### 54 Warrants for entry

- (1) A sheriff, justice of the peace or stipendiary magistrate may by warrant authorise a person to enter premises (if necessary using reasonable force) for the purpose of carrying out an inspection under section 53.
- (2) A warrant may be granted under subsection (1) only if the sheriff, justice or magistrate is satisfied by evidence on oath—
- (a) that there are reasonable grounds for entering the premises in question, and

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(b) that—

- (i) entry to the premises has been or is likely to be refused and that notice of the intention to apply for a warrant under this section has been given to the occupier,
- (ii) a request for entry, or the giving of such notice, would defeat the object of the proposed entry,
- (iii) the premises are unoccupied, or
- (iv) the occupier is temporarily absent and it might defeat the object of the entry to await the occupier's return.

VALID FROM 31/01/2018

## 55 Inspections: supplemental

- (1) A person entering any premises under section 53(2)(a) or in accordance with a warrant granted under section 54 may take on to the premises such other persons and such equipment as the person considers necessary.
- (2) A right to enter any premises conferred by section 53(2)(a) may be exercised only at a reasonable time.
- (3) The occupier of the premises concerned must be given at least 24 hours' notice before a person carries out an inspection under section 53 unless the person carrying out the inspection considers that giving such notice would defeat the object of the proposed inspection.
- (4) A person carrying out an inspection under section 53 must, if required to do so, produce written evidence of the person's authorisation to carry out the inspection.
- (5) On leaving any premises which a person is authorised to enter by a warrant granted under section 54, the person must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as the person found them.
- (6) A person who takes possession of any item under section 53(2)(c) must leave a statement on the premises from which the item was removed—
  - (a) giving particulars of what has been taken, and
  - (b) stating that the person has taken possession of it.

VALID FROM 31/01/2018

## 56 Information and inspection: offence

- (1) It is an offence for a person who has been required to provide information in accordance with section 52 or section 53(2)(d)(i)—
  - (a) without reasonable excuse, to fail or refuse to provide the information,
  - (b) to knowingly or recklessly make any statement in respect of that information which is false or misleading in a material particular.
- (2) It is an offence for a person—

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- (a) to intentionally obstruct a person acting in the proper exercise of the persons' functions under sections 53 to 55,
  - (b) without reasonable excuse, to fail to comply with any requirement made under section 53(2)(b) or (d)(ii) by a person who is so acting.
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### General

VALID FROM 31/01/2018

#### 57 Transfer of jurisdiction of actions involving letting agents

- (1) The Scottish Ministers may by regulations provide that the functions and jurisdiction of the sheriff in relation to the actions between the following persons relating to the carrying out of letting agency work are transferred to the First-tier Tribunal—
- (a) a tenant and a relevant letting agent,
  - (b) a landlord and a relevant letting agent.
- (2) A relevant letting agent is—
- (a) in relation to a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,
  - (b) in relation to a landlord, a letting agent appointed by the landlord.
- (3) References in this section to—
- (a) a tenant include—
    - (i) a person who has entered into an agreement to let a house, and
    - (ii) a former tenant,
  - (b) a landlord include a former landlord.

VALID FROM 31/01/2018

#### 58 Offences by bodies corporate etc.

- (1) Where—
- (a) an offence under this Part has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
    - (i) a relevant individual, or
    - (ii) an individual purporting to act in the capacity of a relevant individual,



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the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

- (2) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate—
    - (i) a director, manager, secretary or other similar officer of the body,
    - (ii) where the affairs of the body are managed by its members, the members,
  - (b) in relation to a Scottish partnership, a partner,
  - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

VALID FROM 31/01/2018

#### **59 Delegation of functions relating to the register**

- (1) The Scottish Ministers may, to such extent and subject to such conditions as they think appropriate, delegate any of their functions under this Part (other than a function relating to the making of an order or regulations) to such person as they may determine.
- (2) A delegation under subsection (1) may be varied or revoked at any time.

VALID FROM 31/01/2018

#### **60 Landlord registration where agent is a registered letting agent**

- (1) In section 84(4) of the 2004 Act (registration), for paragraph (d) substitute—
- “(d) either—
- (i) the person is a registered letting agent, or
  - (ii) in the case of a person who is not a registered letting agent, the person is a fit and proper person to act for the landlord such as is mentioned in subsection (3)(c) in relation to the lease or, as the case may be, arrangement.”.
- (2) In section 88 of the 2004 Act (registered person: appointment of agent)—
- (a) in subsection (2B)—
    - (i) the word “or” at the end of paragraph (a) is repealed, and
    - (ii) after subsection (b), insert “,or
    - (c) the person appointed is a registered letting agent.”,
  - (b) for subsection (4), substitute—
- “(4) The condition is that either—
- (a) the person is a registered letting agent, or

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- (b) in the case of a person who is not a registered letting agent, the person is a fit and proper person to act for the registered person in relation to a lease or occupancy arrangement such as is mentioned in subsection (1)(b).”,
- (c) in subsection (5), for “(4)” substitute “ (4)(b) ”.
- (3) In section 89 of the 2004 Act (removal from the register)—
  - (a) in subsection (3)(b) for “(d)” substitute “ (d)(ii) ”,
  - (b) after subsection (3), insert—
    - “(3A) Where—
      - (a) a person is registered by the local authority by virtue of section 84(4), and
      - (b) paragraph (d)(i) of that section no longer applies, the authority may remove the person from the register.”.
- (4) In section 90(1) of the 2004 Act (notification of removal from register: registered person), after “89(1)” insert “ , (3A) ”.
- (5) In section 91(1) of the 2004 Act (notification of removal from register: other persons), after “89(1)” insert “ , (3A) ”.
- (6) In section 92(1)(b) of the 2004 Act (appeal), after “89(1)” insert “ , (3A) ”.
- (7) In section 92ZA(1)(a)(ii) of the 2004 Act (duty to note refusals and removals), after “89(1)” insert “ , (3A) ”.
- (8) In section 92A(1)(b) of the 2004 Act (the Letting Code), after “person” where it first occurs insert “ (other than a registered letting agent) ”.
- (9) In section 101 of the 2004 Act (interpretation of Part 8), after the definition of “registered” insert—
  - ““registered letting agent” has the meaning given by section 32(4) of the Housing (Scotland) Act 2014 (asp 14).”.

## 61 Meaning of letting agency work

- (1) For the purposes of this Part, “letting agency work” means things done by a person in the course of that person's business in response to relevant instructions which are—
  - (a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord's house as a dwelling, or
  - (b) for the purpose of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).
- (2) In subsection (1)—
  - (a) “relevant instructions” are instructions received from a person in relation to the house which is, or is to be, subject to a lease or arrangement mentioned in subsection (1)(a), and

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- (b) “occupancy arrangement”, “unconnected person”, “relevant person” and “use as a dwelling” are to be construed in accordance with section 101 of the 2004 Act.
- (3) The Scottish Ministers may by order—
  - (a) provide that “letting agency work” does not include things done—
    - (i) on behalf of a specified body, or
    - (ii) for the purpose of a scheme of a specified description, or
  - (b) otherwise modify the meaning of “letting agency work” for the time being in this section.
- (4) A scheme falling within a description specified by the Scottish Ministers under subsection (3)(a)(ii) must be—
  - (a) operated by a body which does not carry on the scheme for profit, and
  - (b) for the purpose of assisting persons to enter into leases or occupancy agreements.

## 62 Interpretation of Part 4

In this Part—

“house” is to be construed in accordance with section 101 of the 2004 Act,  
“landlord” is to be construed in accordance with section 101 of the 2004 Act,  
“letting agent registration number” has the meaning given by section 36(1),  
“letting agent” means a person who carries out letting agency work,  
“letting agent enforcement order” has the meaning given by section 48(7),  
“register” has the meaning given by section 29(1),  
“registered letting agent” has the meaning given by section 32(4),  
“tenant”, in relation to an occupancy arrangement, means the person who under the arrangement is permitted to occupy the house.

VALID FROM 20/11/2014

## PART 5

### MOBILE HOME SITES WITH PERMANENT RESIDENTS

VALID FROM 01/05/2017

#### *General application*

## 63 Licensing of sites for permanent residents

- (1) In section 32(1) of the 1960 Act (application of Part 1 to Scotland), after paragraph (l) insert—
  - “(m) the modifications in Part 1A.”.
- (2) After section 32 of the 1960 Act, insert—

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## “PART 1A

### LICENSING OF RELEVANT PERMANENT SITES IN SCOTLAND

#### *General application*

#### **32A Licences under Part 1A**

- (1) Subject to the modifications mentioned in subsection (2), Part 1 applies in relation to—
- (a) a relevant permanent site as it applies to a caravan site within the meaning of section 1(4),
  - (b) a relevant permanent site application as it applies in relation to an application for a site licence under Part 1, and
  - (c) a site licence issued or renewed under this Part (a “Part 1A site licence”) as it applies to a site licence within the meaning of section 1(1).
- (2) The modifications are—
- (a) the offence in section 1 does not apply to the holder of a Part 1A site licence in relation to that person’s use of the relevant permanent site which is the subject of the licence,
  - (b) sections 3 and 6 do not apply in relation to a relevant permanent site application,
  - (c) sections 4 and 9 do not apply in relation to a Part 1A site licence, and
  - (d) the further modifications in this Part.”.

#### *Part 1A site licence*

#### **64 Relevant permanent site application**

After section 32A of the 1960 Act (inserted by section 63(2)), insert—

#### *“Part 1A site licence*

#### **32B Relevant permanent site application**

- (1) A relevant permanent site application may be made by the occupier of land to the local authority in whose area the land is situated.
- (2) A relevant permanent site application must—
  - (a) be in writing and in such format as is determined by the local authority,
  - (b) specify the land in respect of which the application is made,
  - (c) include information specified in regulations made under section 32N, and

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- (d) include any information relevant to the material falling within section 32O(2) in relation to—
  - (i) the applicant,
  - (ii) any person to be appointed by the applicant to manage the site, and
  - (iii) any other person whom the local authority is required to be satisfied is a fit and proper person in accordance with section 32D(1)(b) or (2)(b).
- (3) An applicant must, either at the time of making the application or subsequently, give to the local authority such other information as the authority may reasonably require.

### **32C Fee for relevant permanent site application**

- (1) A relevant permanent site application must be accompanied by a fee of such amount (if any) as the relevant local authority may fix.
- (2) An authority may fix different fees for different applications or types of application.
- (3) A fee fixed by an authority must not exceed an amount which it considers represents the reasonable costs of an authority in deciding a relevant permanent site application.
- (4) The Scottish Ministers may by regulations subject to the negative procedure make provision about the charging of fees under subsection (1).
- (5) Regulations made under subsection (4) may in particular—
  - (a) provide for the fee not to exceed such amount as may be prescribed by the regulations,
  - (b) specify matters to be taken into account by an authority when fixing a fee.”.

## **65 Issue, renewal, transfer and transmission of a Part 1A site licence**

After section 32C of the 1960 Act (inserted by section 64), insert—

### **“32D Issue and renewal of a Part 1A site licence**

- (1) A local authority may issue a Part 1A site licence if—
  - (a) the applicant is, when the Part 1A site licence is issued, entitled to the benefit of planning permission for the use of the land as a relevant permanent site otherwise than by a development order, and
  - (b) the authority is satisfied—
    - (i) that the applicant is a fit and proper person to hold a site licence,
    - (ii) in the case where an applicant is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,

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- (iii) that any person to be appointed by the applicant to manage the site is a fit and proper person to do so, and
  - (iv) in the case where a person to be appointed by the applicant to manage the site is not a natural person, that any individual who is to be directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.
- (2) A local authority must renew a Part 1A site licence if—
- (a) the applicant is, when the Part 1A site licence is renewed, entitled to the benefit of planning permission for the use of the land as a relevant permanent site otherwise than by a development order, and
  - (b) the authority is satisfied—
    - (i) that the applicant is a fit and proper person to hold a site licence,
    - (ii) in the case where an applicant is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,
    - (iii) that any person appointed, or to be appointed, by the applicant to manage the site is a fit and proper person to do so, and
    - (iv) in the case where a person appointed, or to be appointed, by the applicant to manage the site is not a natural person, that any individual who is, or is to be, directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.
- (3) The local authority must not issue a Part 1A site licence to a person whom the local authority knows has held a site licence which has been revoked under this Act less than 3 years before that time.
- (4) Before refusing to issue or renew a Part 1A site licence, the authority must give to the applicant a notice stating that—
- (a) it is considering refusing the application and its reasons for doing so, and
  - (b) the applicant has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).
- (5) In making its decision under this section the local authority must consider the application and any representations made in accordance with subsection (4) (b).

### **32E Application to transfer a Part 1 A site licence**

- (1) This section applies where, under section 10(1), the holder of a Part 1A site licence seeks the consent of the local authority for the transfer of the licence to a person who is to become the occupier of the relevant permanent site (in this section the “transferee”).
- (2) The local authority may refuse consent to the transfer on the ground that the authority is not satisfied—

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- (a) that the transferee is a fit and proper person to hold a site licence,
  - (b) in the case where the transferee is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is a fit and proper person in relation to a site licence,
  - (c) that any person to be appointed by the transferee to manage the site is a fit and proper person to do so, and
  - (d) in the case where a person to be appointed by the transferee to manage the site is not a natural person, that any individual who is to be directly concerned with the management of the site on behalf of that manager is a fit and proper person to do so.
- (3) The applicant and the transferee must, either at the time of making the application or subsequently, give to the local authority such information as the authority may reasonably require in order to determine if the persons mentioned in subsection (2) are fit and proper persons.
- (4) Before refusing to consent to the transfer under subsection (2), the authority must give to the applicant a notice stating that—
  - (a) it is considering refusing the application and its reasons for doing so, and
  - (b) the applicant has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).
- (5) In making its decision under this section the local authority must consider the application and any representations made in accordance with subsection (4) (b).

### **32F Time limit for determining application**

- (1) This section applies where a person—
  - (a) makes a relevant permanent site application to a local authority in accordance with section 32B, or
  - (b) makes an application for consent to transfer a licence mentioned in section 32E.
- (2) The local authority must determine the application under section 32D or, as the case may be, sections 10 and 32E before the time limit specified under subsection (3).
- (3) The Scottish Ministers must, by regulations subject to the negative procedure, specify a time limit for the purposes of each application to which this section applies (and in doing so may specify different limits for different applications or types of application).
- (4) The period mentioned in subsection (2) may be extended by the sheriff, on summary application by the local authority, by such period as the sheriff thinks fit.
- (5) The sheriff may not extend a period unless the local authority applies for the extension before the period expires.

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- (6) The applicant is entitled to be a party to any proceedings on such summary application.
- (7) The sheriff's decision on such summary application is final.
- (8) If the local authority does not determine a relevant permanent site application within the period required by this section—
  - (a) the authority is to be treated as having issued a Part 1A site licence, on the day by which the authority was required to determine the application, and
  - (b) the relevant person is for all purposes to be treated as having been issued a Part 1A site licence by the local authority under section 32D.
- (9) If the local authority does not determine an application for consent to transfer a licence mentioned in section 32E within the period required by this section, the authority is to be treated as having given its consent to the transfer on the day on which the application was made.

### **32G Local authority power to transfer licence where no application**

- (1) This section applies where—
  - (a) the holder of a Part 1A site licence does not seek the consent of the local authority for the transfer of the licence under section 10(1), and
  - (b) it appears to the authority that the licence holder is no longer the occupier of the relevant permanent site.
- (2) The local authority may transfer the licence to a person whom the authority considers to be the occupier of the relevant permanent site (in this section the “transferee”).
- (3) Before deciding to transfer the licence under subsection (2), the authority must give to the licence holder and the transferee a notice stating that—
  - (a) it is considering transferring the licence to the transferee under this section and its reasons for doing so, and
  - (b) the licence holder and the transferee each have the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).
- (4) In making its decision under this section the local authority must consider any representations made in accordance with subsection (3)(b).
- (5) The licence holder and the transferee must give to the local authority such information as the authority may reasonably require in order to make a decision under this section.
- (6) It is an offence for a person to knowingly or recklessly provide information which is false or misleading in a material respect to a local authority in purported compliance with a request under subsection (5).
- (7) A person who commits an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.



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### **32H Transfer of Part 1A site licences on death: relevant permanent sites**

Where a Part 1A site licence is transferred to a person in accordance with section 10(4), that person must give to the local authority such information as the authority may reasonably require in order to make a determination under section 32L.

### **32I Notification of decision on Part 1A site licence**

- (1) A local authority must, as soon as practicable after making a decision mentioned in subsection (2), notify the persons mentioned in subsection (3) of—
  - (a) the making of the decision, and
  - (b) the right to appeal under section 32M.
- (2) The decisions are—
  - (a) the determination of a relevant permanent site application,
  - (b) the determination of an application for consent to transfer a licence mentioned in section 32E,
  - (c) the decision to transfer a licence mentioned in section 32G.
- (3) The persons are—
  - (a) in the case of a determination of a relevant permanent site application, the applicant,
  - (b) in the case of a determination of an application for consent to transfer a licence mentioned in section 32E, the applicant and the transferee,
  - (c) in the case of a decision of the local authority to transfer a licence under section 32G, the previous holder of the Part 1A site licence and the transferee.
- (4) A local authority must give to the persons mentioned in subsection (3) its reasons for making a decision mentioned in subsection (2).”.

VALID FROM 01/05/2017

## **66 Duration of a Part 1A site licence**

After section 32I of the 1960 Act (inserted by section 65), insert—

### **“32J Duration of a Part 1A site licence**

- (1) A Part 1A site licence—
  - (a) comes into operation at the time specified in or determined under the licence, and
  - (b) unless terminated by its revocation, continues in force until—
    - (i) the licence holder is not entitled to the benefit of planning permission for the use of the land as a caravan

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site, or any planning permission for the use of the relevant permanent site as a caravan site expires, or  
(ii) if earlier, the day which is 5 years after the day on which the licence comes into operation.

(2) The Scottish Ministers may, by order subject to the affirmative procedure, amend subsection (1)(b)(ii) so as to substitute for the figure for the time being specified there a different figure.”.

VALID FROM 01/05/2017

**67 Duty to inform local authority where change**

After section 32J of the 1960 Act (inserted by section 66), insert—

**“32K Duty to inform local authority where change**

- (1) The holder of a Part 1A site licence must notify the local authority which issued the licence—
  - (a) of the appointment of any new person to manage the site, and
  - (b) if, in consequence of a change of circumstances, any information provided by the licence holder to the local authority by virtue of this Part becomes inaccurate.
- (2) The notification must be made—
  - (a) in the case of an appointment mentioned in subsection (1)(a), no later than the day on which the appointment takes effect, and
  - (b) in any other case, before the end of the period of 28 days beginning with the day on which the inaccuracy arises.
- (3) The licence holder must, either at the time of notifying the local authority or subsequently, give to the authority such other information in relation to the appointment as the authority may reasonably require.
- (4) Where a local authority requests information under subsection (3), the licence holder must provide the information before the end of the period of 28 days beginning with the day on which the request is made.”.

VALID FROM 01/05/2017

**68 Revocation of a Part 1A site licence: fit and proper person**

After section 32K of the 1960 Act (inserted by section 67), insert—

**“32L Revocation of a Part 1A site licence: fit and proper person**

- (1) A local authority which issued a Part 1A site licence may revoke the licence if the authority is satisfied—

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- (a) that the licence holder is not, or is no longer, a fit and proper person to hold a site licence,
  - (b) in the case where the licence holder is not a natural person, that the individual who holds the most senior position within the management structure of the relevant partnership, company or body is not, or is no longer, a fit and proper person in relation to a site licence,
  - (c) that any person appointed by the licence holder to manage the site is not, or is no longer, a fit and proper person to do so, or
  - (d) in the case where a person appointed by the licence holder to manage the site is not a natural person, that any individual who is directly concerned with the management of the site on behalf of that manager is not, or is no longer, a fit and proper person to do so.
- (2) Where a local authority proposes to revoke a Part 1A site licence under this section, the authority must serve on the licence holder a notice stating that—
- (a) it is considering revoking the licence under this section and its reasons for doing so, and
  - (b) the licence holder has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).
- (3) In making its decision under this section the local authority must consider any representations made in accordance with subsection (2)(b).
- (4) Where a local authority revokes a licence under this section, the authority must serve on the person who held the licence a notice which—
- (a) states that the authority has revoked the licence,
  - (b) explains the right of appeal conferred by section 32M.
- (5) Where a local authority revokes a licence under this section, the authority must give to the person who held the licence its reasons for doing so.”.

VALID FROM 01/05/2017

## 69 Appeals relating to a Part 1A site licence

After section 32L of the 1960 Act (inserted by section 68), insert—

### “32M Appeals relating to a Part 1A site licence

- (1) A person mentioned in subsection (2) may by summary application appeal to the sheriff against—
- (a) the refusal by the local authority to issue or renew a Part 1A site licence following a relevant permanent site application,
  - (b) the determination by the local authority of an application for consent to transfer a licence mentioned in section 32E,

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- (c) the decision by the local authority to transfer a licence mentioned in section 32G,
  - (d) the decision by the local authority to revoke a Part 1A site licence under section 32L.
- (2) The persons are—
- (a) in the case of a determination of a relevant permanent site application, the applicant,
  - (b) in the case of a determination of an application for consent to transfer a licence mentioned in section 32E—
    - (i) the applicant,
    - (ii) the transferee,
  - (c) in the case of a decision by the local authority to transfer a licence mentioned in section 32G—
    - (i) the previous holder of the Part 1A site licence,
    - (ii) the transferee,
  - (d) in the case of a decision of the local authority to revoke a Part 1A site licence under section 32L, the person who held the licence.”.

## **70 Power to make provision in relation to procedure and appeals**

After section 32M of the 1960 Act (inserted by section 69), insert—

### **“32N Power to make provision in relation to procedure and appeals**

- (1) The Scottish Ministers may, by regulations subject to the negative procedure, make provision in relation to—
  - (a) the procedure to be followed in relation to—
    - (i) the issue, renewal, transfer, transmission and revocation of a Part 1A site licence,
    - (ii) appeals under section 32M,
  - (b) the determination and consequences of an appeal under section 32M.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
  - (a) the procedure to be followed by the person making an application for—
    - (i) a new Part 1A site licence,
    - (ii) the renewal of an existing Part 1A site licence which is due to expire,
    - (iii) consent to transfer a Part 1A site licence,
  - (b) the procedure to be followed by a person following the transfer of a licence,
  - (c) the information to be provided in relation to an application mentioned in paragraph (a) or a transfer mentioned in section 32G or 32H,

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- (d) the procedure to be followed in determining an application mentioned in paragraph (a) or in considering a transfer mentioned in section 32G or 32H,
- (e) the procedure to be followed after an application mentioned in paragraph (a) is determined or a transfer mentioned in section 32G or 32H is considered,
- (f) the time limits for the giving of reasons under section 32I(4) and 32L(5),
- (g) the time limits applying in relation to appeals,
- (h) the procedure to be followed by the person making an appeal.”.

VALID FROM 01/05/2017

### *Fit and proper persons*

## **71 Fit and proper person considerations**

After section 32N of the 1960 Act (inserted by section 70), insert—

### *“Fit and proper persons*

#### **320 Fit and proper person considerations**

- (1) In deciding under this Part if a person is a fit and proper person, the local authority must have regard to all of the circumstances of the case, including any material falling within subsections (2) to (6).
- (2) Material falls within this subsection if it shows that the person has—
  - (a) been convicted of an offence—
    - (i) involving fraud or other dishonesty,
    - (ii) involving violence,
    - (iii) involving drugs,
    - (iv) involving firearms,
    - (v) which is a sexual offence within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c.46),
  - (b) practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15),
  - (c) contravened any provision of—
    - (i) the law relating to caravans,
    - (ii) the law relating to housing,
    - (iii) landlord and tenant law,
  - (d) committed a breach of an agreement to which the Mobile Homes Act 1983 applies,
  - (e) contravened a direction made under section 37 of the Gas Act 1986 (c.44) (maximum prices for reselling gas),
  - (f) contravened a direction made under section 44 of the Electricity Act 1989 (c.29) (maximum prices for reselling electricity),

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- (g) contravened a charges scheme made under section 29A of the Water Industry (Scotland) Act 2002 (asp 3) (charges schemes) as it applied to the person by virtue of section 30(1) of that Act (maximum charges for services provided with help of Scottish Water),
  - (h) engaged in antisocial behaviour within the meaning of section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
  - (i) breached the conditions of a site licence issued under Part 1 or Part 1A of this Act.
- (3) Material which shows that a person has a conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 (c.53) does not fall within subsection (2).
- (4) Material falls within this subsection if it relates to the failure by a person to provide information which that person is required to give to the local authority in accordance with this Part.
- (5) Material falls within this subsection if it relates to a complaint made by a person of which the local authority is aware about antisocial behaviour within the meaning of section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) on the relevant permanent site.
- (6) Material falls within this subsection if it is material of which the local authority is aware as a result of any other function carried out by the authority and it appears to the authority to be relevant to the question of whether the person is a fit and proper person.
- (7) The Scottish Ministers may, by order subject to the affirmative procedure, modify this section by adding to, removing or varying any material in subsections (2) to (6).”

**72 Fit and proper person: criminal conviction certificate**

After section 32O of the 1960 Act (inserted by section 71), insert—

**“32P Fit and proper person: criminal conviction certificate**

- (1) A local authority may, in deciding under this Part if a person is a fit and proper person, require the person in respect of whom the decision is being made to provide the local authority with a criminal conviction certificate (within the meaning of section 112 of the Police Act 1997 (c.50)).
- (2) A local authority may require a criminal conviction certificate to be provided under subsection (1) only if it has reasonable grounds to suspect that the information provided under this Part in relation to material falling within section 32O(2) is, or has become, inaccurate.”

**73 Fit and proper person: information sharing**

After section 32P of the 1960 Act (inserted by section 72), insert—

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### **“32Q Fit and proper person: information sharing**

- (1) A local authority may, for the purpose of another local authority deciding under this Part if a person is a fit and proper person, provide to that other authority information which falls within subsection (2).
- (2) Information falls within this subsection if the local authority holding the information considers that—
  - (a) it is likely to be relevant to the other authority's decision under this Part as to whether a person is a fit and proper person, and
  - (b) it ought to be provided for that purpose.
- (3) Subsections (1) and (2) apply despite any duty of confidentiality owed to any person in respect of the information by the authority disclosing the information.”.

VALID FROM 01/05/2017

### *Offences relating to relevant permanent sites*

#### **74 Offences relating to relevant permanent sites**

After section 32Q of the 1960 Act (inserted by section 73), insert—

### *“Offences relating to relevant permanent sites*

#### **32R Offences in connection with information requirements**

- (1) It is an offence for a person to knowingly or recklessly provide information which is false or misleading in a material respect to a local authority in purported compliance with—
  - (a) a requirement under section 32B,
  - (b) a requirement under section 32E(3),
  - (c) a requirement under section 32H,
  - (d) a requirement under section 32K.
- (2) It is an offence for a person, without reasonable excuse—
  - (a) to fail to notify a local authority in accordance with 32K(1) and (2), or
  - (b) to fail to provide information in accordance with section 32K(3) and (4).
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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### **32S Relevant permanent sites: use without a licence**

- (1) It is an offence for the occupier of land to cause or permit that land to be used as a relevant permanent site unless—
  - (a) the occupier is the holder of a Part 1A site licence in relation to the site, or
  - (b) subsection (2) or (3) applies to that person.
- (2) This subsection applies to a person from the day on which the person makes a relevant permanent site application to a local authority in accordance with section 32B until—
  - (a) that application is determined under section 32D,
  - (b) in the case of a refusal by the authority to issue or renew a Part 1A site licence under that section, the day on which the period during which the applicant may make an appeal under section 32M(1) (a) expires without an appeal being made, or
  - (c) where such an appeal is made, the day on which it is finally determined or abandoned.
- (3) This subsection applies to a person from the day on which the person's Part 1A site licence is revoked under section 32L until—
  - (a) the day on which the period during which the person can make an appeal under section 32M(1)(d) expires without an appeal being made, or
  - (b) where such an appeal is made, the day on which it is finally determined or abandoned.
- (4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £50,000.

### **32T Relevant permanent sites: breach of licence conditions**

- (1) It is an offence for the holder of a Part 1A site licence to fail to comply with any condition of a Part 1A site licence issued in relation to the site.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £10,000.”.

*Local authority enforcement at relevant permanent sites*

VALID FROM 01/05/2017

## **75 Improvement notices**

After section 32T of the 1960 Act (inserted by section 74), insert—



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### *“Local authority enforcement at relevant permanent sites*

#### **32U Breach of licence condition: improvement notice**

- (1) If it appears to a local authority which issued a Part 1A site licence that the licence holder is failing or has failed to comply with a condition of the Part 1A site licence, the authority may serve an improvement notice on the licence holder.
- (2) An improvement notice is a notice which—
  - (a) sets out the condition in question and details of the failure to comply with it,
  - (b) requires the licence holder to take such steps as the local authority considers appropriate and as are specified in the notice in order to ensure that that condition is complied with,
  - (c) specifies the period within which those steps must be taken,
  - (d) explains the right of appeal conferred by subsection (3).
- (3) The holder of a Part 1A site licence who has been served with an improvement notice may by summary application appeal to the sheriff against—
  - (a) the issue of that notice,
  - (b) the terms of that notice.
- (4) The period specified in an improvement notice under subsection (2)(c) must begin on the later of—
  - (a) the day on which the period during which the person may make an appeal under subsection (3) expires, or
  - (b) where such an appeal is made, the day on which the appeal is finally determined or abandoned.
- (5) A local authority may—
  - (a) suspend an improvement notice,
  - (b) revoke an improvement notice,
  - (c) vary an improvement notice by extending the period specified in the notice under subsection (2)(c).
- (6) The power to suspend, revoke or vary an improvement notice is exercisable by the local authority—
  - (a) on an application made by the licence holder, or
  - (b) on the authority's own initiative.
- (7) Where a local authority suspends, revokes or varies an improvement notice, the authority must notify the licence holder to whom the notice relates of the decision as soon as is reasonably practicable.

#### **32V Improvement notice: offence**

- (1) It is an offence for a licence holder who has been served with an improvement notice to fail to take the steps specified in the notice within the period so specified.

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(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding £10,000.

(3) In proceedings against a licence holder for an offence under subsection (1), it is a defence that the licence holder had a reasonable excuse for failing to take the steps referred to in subsection (1) within the period referred to in that subsection.

### **32W Local authority power to carry out steps in an improvement notice**

(1) This section applies where—

- (a) an improvement notice has been served in relation to a relevant permanent site, and
- (b) the licence holder fails to take the steps specified in the notice within the period so specified.

(2) The local authority which issued the improvement notice may—

- (a) take any steps required by the improvement notice to be taken by the occupier, but which have not been so taken, and
- (b) take such further action as the authority considers appropriate for ensuring that the condition specified in the improvement notice is complied with.

(3) Where a local authority proposes to take action under subsection (2), the authority must serve on the occupier of the relevant permanent site a notice which—

- (a) identifies the land and the improvement notice to which it relates,
- (b) states that the authority intends to enter onto the land,
- (c) describes the action the authority intends to take on the land,
- (d) if the person whom the authority proposes to authorise to take the action on its behalf is not an officer of the authority, states the name of that person, and
- (e) sets out the dates and times on which it is intended that the action will be taken (in particular, when the authority intends to start taking the action and when it expects the action to be completed).

(4) The notice must be served sufficiently in advance of when the local authority intends to enter onto the land as to give the occupier of the relevant permanent site reasonable notice of the intended entry.”.

VALID FROM 01/05/2017

## **76 Penalty notices**

After section 32W of the 1960 Act (inserted by section 75), insert—

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### “32X Penalty notice where no licence or breach of licence

- (1) A local authority may serve a penalty notice on the occupier of a relevant permanent site if it appears to the local authority that the occupier—
  - (a) has caused or permitted the relevant permanent site to be used as a caravan site without being the holder of a Part 1A site licence in relation to the site, or
  - (b) has been served with an improvement notice and has failed to take the steps specified in the notice within the period so specified.
- (2) A penalty notice is a notice which—
  - (a) sets out the condition in question and details of the failure to comply with it,
  - (b) explains the effect of subsection (3),
  - (c) specifies the period within which the penalty applies,
  - (d) explains the right of appeal conferred by subsection (7).
- (3) Where a penalty notice is served under this section—
  - (a) no amount which a person is required to pay to the occupier of the relevant permanent site in respect of—
    - (i) the right to station a caravan on the site,
    - (ii) rent for the occupation of a caravan on the site, or
    - (iii) the use of the common areas of the site and their maintenance,is payable for the period specified in the notice under subsection (2)(c), and
  - (b) no commission on sale payable in accordance with paragraph 8 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (c.34) is payable to the occupier of the relevant permanent site in respect of a caravan on the site for the period specified in the notice under subsection (2)(c).
- (4) The period specified in a penalty notice under subsection (2)(c) must begin on the later of—
  - (a) the day on which the period during which the person may make an appeal under subsection (7) expires, or
  - (b) where such an appeal is made, the day on which the appeal is finally determined or abandoned.
- (5) The local authority must, as soon as practicable after serving a notice under this section and in such manner as it thinks fit, notify the occupiers of caravans on the site of the existence of the notice.
- (6) The ways in which a notification under subsection (5) may be carried out include by fixing a notice in a prominent place at or near the main entrance to the relevant permanent site.
- (7) The occupier of a relevant permanent site in respect of which a local authority has served a penalty notice may, within the period of 28 days

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beginning with the day on which the notice was served, by summary application appeal to the sheriff against the decision.”.

## 77 **Appointment of interim manager**

After section 32X of the 1960 Act (inserted by section 76), insert—

### **“32Y Power to appoint interim manager**

- (1) A local authority which has issued a Part 1A site licence may apply to the sheriff for an order appointing an interim manager of the site.
- (2) An order may be granted by the sheriff if—
  - (a) the authority has refused to renew a Part 1A site licence under section 32D,
  - (b) the authority has revoked a Part 1A site licence under section 32L, or
  - (c) the sheriff is satisfied that—
    - (i) the licence holder is failing or has failed, either seriously or repeatedly, to comply with a condition of the Part 1A site licence,
    - (ii) the site is not being managed by a person who is a fit and proper person to manage the site, or
    - (iii) there is no one managing the site.
- (3) The appointment of an interim manager is to be on terms (including as to remuneration and expenses) specified in, or determined in accordance with, the appointment.
- (4) The interim manager has—
  - (a) any power specified in the appointment, and
  - (b) any other power in relation to the management of the site required by the interim manager for the purposes specified in the appointment (including the power to enter into agreements and take other action on behalf of the occupier of the site).
- (5) The Scottish Ministers may by regulations subject to the negative procedure make further provision about the appointment of an interim manager.
- (6) Regulations under subsection (5) may, in particular, make provision in relation to—
  - (a) the procedure to be followed in making an application,
  - (b) the powers of an interim manager,
  - (c) property which vests in the interim manager on the interim manager's appointment,
  - (d) the qualifications that must be held by any person appointed as interim manager,
  - (e) the actions that must be carried out by an interim manager during and after the manager's appointment,
  - (f) the payment and recovery of the remuneration and expenses of the interim manager,

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- (g) the assistance to be provided to the interim manager by the licence holder and other persons,
- (h) powers of entry to the relevant permanent site,
- (i) criminal offences which are to apply to failures to comply with the regulations,
- (j) the procedure for and consequences of the termination of the interim manager's appointment.”.

VALID FROM 01/05/2017

## 78      **Emergency action**

After section 32Y of the 1960 Act (inserted by section 77), insert—

### “**32Z Power to take emergency action**

- (1) A local authority which has issued a Part 1A site licence may take emergency action in relation to the site concerned if it appears to the authority that—
  - (a) the licence holder is failing or has failed to comply with a condition for the time being attached to the Part 1A site licence, and
  - (b) as a result of that failure there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.
- (2) A local authority in whose area land is being used as a relevant permanent site may take emergency action in relation to the land concerned if it appears to the authority that—
  - (a) the occupier does not hold a Part 1A site licence in relation to the land, and
  - (b) there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.
- (3) The emergency action a local authority may take is such action as appears to the authority to be necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b) or, as the case may be, subsection (2)(b).
- (4) Where a local authority proposes to take emergency action, the authority must serve on the licence holder or, as the case may be, the occupier of the relevant permanent site an emergency action notice.
- (5) An emergency action notice is a notice which—
  - (a) identifies the land to which it relates,
  - (b) states that the authority intends to enter onto the land,
  - (c) describes the emergency action the authority intends to take on the land,
  - (d) if the person whom the authority proposes to authorise to take the action on its behalf is not an officer of the authority, states the name of that person, and

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- (e) specifies the powers under this section and section 26 as the powers under which the authority intends to enter onto the land.
- (6) An emergency action notice may state that, if entry onto the land were to be refused, the authority would propose to apply for a warrant under section 26(2).
- (7) The local authority must serve on the licence holder or, as the case may be, the occupier of the relevant permanent site an emergency action report within the period of 7 days beginning with the date when the authority starts taking the emergency action.
- (8) An emergency action report is a notice which—
  - (a) describes the imminent risk of serious harm to the health or safety of persons who are or may be on the land,
  - (b) describes the emergency action which has been, and any emergency action which is to be, taken by the authority on the land,
  - (c) sets out when the authority started taking the emergency action and when the authority expects it to be completed,
  - (d) if the person whom the authority has authorised to take the action on its behalf is not an officer of the authority, states the name of that person, and
  - (e) explains the right of appeal conferred by subsection (10).
- (9) The ways in which an emergency action notice and an emergency action report may be served include by fixing it in a prominent place at or near the main entrance to the relevant permanent site.
- (10) A licence holder or, as the case may be, an occupier of land in respect of which a local authority has taken or is taking emergency action may by summary application appeal to the sheriff against the taking of the action by the authority.
- (11) The grounds on which the appeal may be brought are—
  - (a) that there was no imminent risk of serious harm as mentioned in subsection (1)(b) or, as the case may be, subsection (2)(b) (or, where the action is still being taken, that there is no such risk),
  - (b) that the action the authority has taken was not necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b) or, as the case may be, subsection (2)(b) (or, where the action is still being taken, that it is not necessary to remove the risk).”.

VALID FROM 01/05/2017

**79 Powers of entry**

After section 32Z of the 1960 Act (inserted by section 78), insert—

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### **“32Z1 Powers of entry in relation to relevant permanent site**

- (1) Section 26 (as modified by section 32) applies in relation to a relevant permanent site—
  - (a) as if after every reference to “this Part” there were inserted “ or Part 1A ”,
  - (b) as if after paragraph (a) of subsection (1) there were inserted—
    - “(aa) for the purpose of inspecting a relevant permanent site,”and
  - (c) subject to the further modifications in this section.
- (2) If, under an improvement notice or an emergency action notice, a local authority authorises a person other than an officer of the authority to take the action on its behalf, the reference in section 26(1) to an authorised officer of the local authority is to be read as including that person.
- (3) In its application to an improvement notice, the requirement in section 26(1) to give 24 hours' notice of the intended entry applies only in relation to the day on which the local authority intends to start taking the action on the relevant permanent site.
- (4) In its application to an emergency action notice, section 26(1) has effect as if—
  - (a) the words “at all reasonable hours” were omitted, and
  - (b) the words from “Provided that” to the end were omitted.”.

VALID FROM 01/05/2017

## **80 Recovery of inspection and enforcement expenses**

After section 32Z1 of the 1960 Act (inserted by section 79), insert—

### **“32Z2 Expenses of issuing notices**

- (1) This section applies where a local authority has served—
  - (a) an improvement notice,
  - (b) a penalty notice,
  - (c) an emergency action notice, or
  - (d) an emergency action report.
- (2) The local authority may recover from the licence holder or, as the case may be, the occupier of the relevant permanent site—
  - (a) expenses incurred by the authority in deciding whether to serve the notice or report,
  - (b) expenses incurred by the authority in preparing and serving the notice or report, and
  - (c) interest, at such reasonable rate as the authority may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.

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- (3) The expenses referred to in subsection (2) include in particular the costs of obtaining expert advice (including legal advice).

### **32Z3 Expenses of taking action under improvement notice or emergency action notice**

- (1) A local authority which has taken action in accordance with an improvement notice or an emergency action notice may recover from the licence holder or, as the case may be, the occupier of the relevant permanent site—
- (a) expenses incurred by the authority in deciding whether to take the action,
  - (b) expenses incurred by the authority in taking the action, and
  - (c) interest, at such reasonable rate as the authority may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid.
- (2) The expenses referred to in subsection (1) include in particular the costs of obtaining expert advice (including legal advice).

### **32Z4 Expenses of local authority in relation to Part 1A licences**

The local authority which issued a Part 1A site licence may require the licence holder to pay the amount of any expenses incurred by the authority in relation to—

- (a) inspecting a relevant permanent site for the purpose of ascertaining whether there is, or has been, any contravention of the provisions of this Act,
- (b) assessing or investigating compliance by the licence holder with the provisions of this Act following an inspection.”.

### *Miscellaneous*

VALID FROM 01/05/2017

## **81 Offences by bodies corporate etc. under Part 1A of the 1960 Act**

After section 32Z4 of the 1960 Act (inserted by section 80), insert—

### *“Miscellaneous*

#### **32Z5 Offences by bodies corporate etc.**

- (1) Where—
- (a) an offence under this Part has been committed by a body corporate or a Scottish partnership or other unincorporated association, and



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- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
- (i) a relevant individual, or
  - (ii) an individual purporting to act in the capacity of a relevant individual,
- the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate—
    - (i) a director, manager, secretary or other similar officer of the body,
    - (ii) where the affairs of the body are managed by its members, the members,
  - (b) in relation to a Scottish partnership, a partner,
  - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.”.

## 82 Part 1A of the 1960 Act: miscellaneous provision

After section 32Z5 of the 1960 Act (inserted by section 81), insert—

### “32Z6 Interpretation of Part 1A

- (1) In this Part—
- “emergency action notice” has the meaning given by section 32Z(5),
  - “emergency action report” has the meaning given by section 32Z(8),
  - “excepted permission” means a permission (by virtue of planning permission or a site licence under Part 1) to station a caravan on the land for human habitation all year round, if the caravan is, or is to be, authorised to be occupied by—
    - (a) the occupier,
    - (b) a person employed by the occupier but who does not occupy the caravan under an agreement to which section 1(1) of the Mobile Homes Act 1983 (c.34) applies,
  - “improvement notice” has the meaning given by section 32U(2),
  - “licence holder” means the person holding the Part 1A site licence,
  - “Part 1A site licence” has the meaning given by section 32A(1)(c),
  - “penalty notice” has the meaning given by section 32X(2),
  - “planning permission” means planning permission under Part 3 of the Town and Country Planning (Scotland) Act 1997 (c.8),
  - “relevant permanent site” means land in respect of which a site licence is required under Part 1, other than land for which the relevant planning permission or the site licence—
    - (a) is expressed to be granted for holiday use only,

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(b) is otherwise so expressed or subject to conditions that there are times of the year when no caravan may be stationed on the land for human habitation, or

(c) would meet the conditions in paragraph (a) or (b) if any excepted permission is disregarded,

“relevant permanent site application” means, irrespective of the conditions in the relevant planning permission, an application for the issue or renewal of a Part 1A site licence authorising the use of land as a caravan site, other than an application for a licence—

(a) to be expressed to be granted for holiday use only,

(b) to be otherwise so expressed or subject to conditions that there will be times of the year when no caravan may be stationed on the land for human habitation, or

(c) which would meet the conditions in paragraph (a) or (b) if any part of the application for excepted permission were disregarded.

(2) Any reference in this Part to the sheriff is to the sheriff having jurisdiction in the place where the relevant permanent site is situated.

(3) Otherwise, words and expressions (as modified by section 32) have the same meaning in this Part as in Part 1.

### **32Z7 Guidance**

(1) The Scottish Ministers may, after consulting such persons as they consider appropriate, publish guidance about the operation of this Part.

(2) A local authority must have regard to any guidance published when carrying out its functions under this Part.”.

VALID FROM 01/05/2017

## **83 Transitional provision for existing site licences**

(1) This section applies to a site licence issued under the 1960 Act which—

(a) was issued before the day on which section 66 comes into force in respect of land which is a relevant permanent site,

(b) is in force on that day.

(2) The site licence continues in force until the earliest of—

(a) the end of the period of 2 years beginning with the day on which section 66 comes into force,

(b) the day on which the licence is revoked under, or expires in accordance with, the provisions of the 1960 Act, or

(c) the day on which a Part 1A site licence is issued in relation to the site.

(3) During the period for which a site licence continues in force under this section, the provisions of Part 1A of the 1960 Act do not apply to the site licence or in respect of the land which is a relevant permanent site.

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(4) In this section, “Part 1A site licence” and “relevant permanent site” have the same meanings as in section 32Z6 of the 1960 Act (as inserted by section 82).

VALID FROM 01/05/2017

#### **84 Agreements to which the Mobile Homes Act 1983 applies**

In Schedule 1 to the Mobile Homes Act 1983 (c.34)—

(a) after paragraph 1, insert—

“1A (1) The right to station the mobile home under in paragraph 1 is not affected by—

- (a) the expiry of a Part 1A site licence in accordance with section 32J(1)(b)(ii) of the 1960 Act,
- (b) the refusal to issue or renew a Part 1A site licence under section 32D of the 1960 Act,
- (c) the revocation of a Part 1A site licence under section 32L of the 1960 Act, or
- (d) the expiry of a site licence in accordance with section 83(2) of the Housing (Scotland) Act 2014 (asp 14).

(2) Sub-paragraph (1) applies in relation to agreements that were made at any time before the day on which that sub-paragraph comes into force (as well as in relation to agreements made on or after that day).

(3) In this paragraph—

“the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62), and

“Part 1A site licence” has the same meaning as in section 32Z6 of the 1960 Act.”, and

(b) in paragraph 23, after sub-paragraph (1)(a) insert—

“(aa) no regard may be had to any costs paid, or to be paid, by the owner in connection with expenses recovered by a local authority under—

(i) section 32Z2(2) of the Caravan Sites and Control of Development Act 1960,

(ii) subsection (1)(a) or (c) of section 32Z3 of that Act, or

(iii) section 32Z4 of that Act,

(ab) no regard may be had to any costs paid, or to be paid, by the owner in connection with the owner being convicted of an offence under Part 1A of the Caravan Sites and Control of Development Act 1960.”.

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VALID FROM 13/11/2014

## PART 6

### PRIVATE HOUSING CONDITIONS

VALID FROM 20/11/2014

#### 85 Tenement management scheme

- (1) In the Tenements (Scotland) Act 2004 (asp 11)—
- (a) in section 4(14) (defined terms), after “section” insert “ and section 4A ”,
  - (b) after section 4, insert—

#### “4A Power of local authority to pay share of scheme costs

- (1) The local authority for the area in which a tenement is situated may pay a sum representing an owner's share of scheme costs if that owner—
    - (a) is unable or unwilling to do so, or
    - (b) cannot, by reasonable inquiry, be identified or found.
  - (2) But a local authority may not pay a sum representing an owner's share of scheme costs which are attributable to a scheme decision mentioned in rule 3.1(e) of the Tenement Management Scheme.
  - (3) For the purposes of this section an owner's share of any scheme costs is to be determined in accordance with—
    - (a) the Tenement Management Scheme as it applies to the owner's tenement, or
    - (b) where a tenement burden provides that the entire liability for those scheme costs (in so far as liability for those costs is not to be met by someone other than an owner) is to be met by one or more of the owners, that burden.
  - (4) Before making a payment under this section, the local authority must give notice to the owner who has failed to pay a share of any scheme costs.
  - (5) The local authority may recover from the owner who failed to pay a share of any scheme costs any—
    - (a) payments made under this section, and
    - (b) administrative expenses incurred by it in connection with the making of the payment.
  - (6) This section is without prejudice to any entitlement to recover sums in accordance with section 11 or 12.”,
- (c) in section 13(1)(a) (persons who may register a notice of potential liability for costs), after paragraph (ii) insert—

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- “(ia) a local authority entitled to recover costs under section 4A(5),”
- (d) in rule 5 of schedule 1 (redistribution of share of costs), after “then” insert “ (unless that share has been paid by the local authority under section 4A) ”, and
  - (e) in rule 8.4 of schedule 1 (enforcement by third party), after “concerned” insert “ and a local authority entitled to recover costs under section 4A(5) ”.
- (2) In section 172 of the 2006 Act (repayment charges)—
- (a) in subsection (1), for “or paragraph 6(1) of schedule 5” substitute “ , paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11) ”,
  - (b) in subsection (2)(a), for “or paragraph 6(1) of schedule 5” substitute “ , section 61(3A), subsection (6A) below, paragraph 6(1) of schedule 5 or section 4A(5) of the Tenements (Scotland) Act 2004 ”, and
  - (c) after subsection (6A), insert—
    - “(6B) Subsection (6A)(c) does not apply where the recoverable amount relates to a sum the local authority is entitled to recover under section 4A(5) of the Tenements (Scotland) Act 2004 (asp 11).”.
- (3) After section 174 of the 2006 Act, insert—

**“174A Repayment charges: registered social landlords**

- (1) The Scottish Ministers may by regulations make provision allowing a registered social landlord to make in favour of itself a charge to recover a sum which—
  - (a) the registered social landlord is entitled to recover from an owner of a flat in a tenement, and
  - (b) represents the owner's share of scheme costs as determined in accordance with section 4A(3) of the 2004 Act.
- (2) Regulations under subsection (1) may, in particular—
  - (a) apply (with or without modifications), or make provision similar to, any provision of or made under this Part,
  - (b) prescribe conditions which must apply before a charge can be made in relation to a sum mentioned in subsection (1), including conditions relating to—
    - (i) the registered social landlord which may make a charge,
    - (ii) the circumstances leading to the sum becoming recoverable by the registered social landlord,
  - (c) modify the Tenement Management Scheme or its operation,
  - (d) make provision about rights of appeal which apply in relation to—
    - (i) the decision to impose a charge,
    - (ii) the terms of the charge.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
  - (a) such bodies representing local authorities,
  - (b) such bodies representing registered social landlords,

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(c) such other persons,  
 as they think fit.

(4) Regulations under subsection (1) may modify any enactment (including this Act).

(5) In this section—

“owner of a flat in a tenement” is to be construed in accordance with the definition of “owner” in section 28 of the 2004 Act,

“registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 (asp 17),

“Tenement Management Scheme” has the same meaning as in the 2004 Act, and

“the 2004 Act” means the Tenements (Scotland) Act 2004 (asp 11).”.

(4) In section 191(5) of the 2006 Act (affirmative procedure for regulations), for “or 121(1)” substitute “, 121(1) or 174A(1) ”.

## 86 Notice of potential liability for costs: notice of discharge

(1) In section 10A of the Title Conditions (Scotland) Act 2003 (asp 9) (notice of potential liability for costs: further provision), after subsection (3) insert—

“(3A) The owner of a burdened property may apply to register a notice (a “notice of discharge”) if—

- (a) a notice of potential liability for costs in relation to the property has not expired,
- (b) the liability for costs under section 10(2) to which the notice of potential liability relates has, in relation to the property which is the subject of the application, been fully discharged, and
- (c) the person who registered the notice of potential liability for costs consents to the application.

(3B) A notice of discharge—

- (a) must be in the form prescribed by order made by the Scottish Ministers, and
- (b) on being registered, discharges the notice of potential liability for costs as it applies to the property which is the subject of the application.”.

(2) In the Tenements (Scotland) Act 2004—

(a) in section 13 (notice of potential liability for costs: further provision), after subsection (3) insert—

“(3A) The owner of a flat may apply to register a notice (a “notice of discharge”) if—

- (a) a notice of potential liability for costs in relation to the flat has not expired,
- (b) the liability for costs under section 12(2) to which the notice of potential liability relates has, in relation to the flat which is the subject of the application, been fully discharged, and

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- (c) the person who registered the notice of potential liability for costs consents to the application.

(3B) A notice of discharge—

- (a) must be in the form prescribed by order made by the Scottish Ministers, and
  - (b) on being registered, discharges the notice of potential liability for costs as it applies to the flat which is the subject of the application.”, and
- (b) in section 29(1) (interpretation), in the definition of “register” after “costs” insert “, a notice of discharge”.

VALID FROM 01/04/2015

## 87 Work notices

In section 30(1) of the 2006 Act (work which may be required under a work notice)—

- (a) the word “or” at the end of paragraph (a) is repealed, and
- (b) at the end of paragraph (b), insert “, or
- (c) otherwise improving the security or safety of any house (whether or not situated in an HRA).”.

VALID FROM 01/04/2015

## 88 Maintenance orders

In section 42(2) of the 2006 Act (circumstances in which a maintenance order may be made)—

- (a) the words “the local authority considers” are repealed,
- (b) before paragraph (a), insert—
  - “(za) a work notice has been served in relation to the house and no certificate has been granted under section 60 in relation to the work required by that notice,”, and
- (c) at the beginning of each of paragraphs (a) and (b), insert “ the local authority considers ”.

VALID FROM 13/07/2015

## 89 Maintenance plans

(1) In section 24 of the Building (Scotland) Act 2003 (asp 8) (information in the building standards register)—

- (a) in subsection (1)—
  - (i) the word “and” at the end of paragraph (c) is repealed, and
  - (ii) after paragraph (d), insert “, and

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- (e) decisions to approve, devise, vary or revoke maintenance plans under Part 1 of the Housing (Scotland) Act 2006.”,
  - (b) in subsection (2)(a), for “(d)” substitute “ (e) ”.
- (2) In section 47 of the 2006 Act (variation and revocation of maintenance plans)—
- (a) in subsection (3), after “if” insert “ subsection (3A) applies or if ”, and
  - (b) after subsection (3), insert—
- “(3A) This subsection applies where the local authority is satisfied that a property factor (within the meaning of section 2(1) of the Property Factors (Scotland) Act 2011 (asp 8)) has been appointed to manage or maintain the premises to which the plan relates.”.
- (3) In section 61(1) of the 2006 Act (registration in the appropriate land register), paragraphs (e) and (f) are repealed.

VALID FROM 01/04/2015

## 90 Non-residential premises: repayment charges

- (1) In section 172 of the 2006 Act (repayment charges)—
- (a) in subsection (1), for “living accommodation” in both places where it occurs substitute “ property ”,
  - (b) in subsection (5), for “living accommodation” substitute “ property ”,
  - (c) in subsection (6A), for “living accommodation” substitute “ property ”,
  - (d) in subsection (7), for “living accommodation” substitute “ property ”,
  - (e) in subsection (8), for “living accommodation” in both places where it occurs substitute “ property ”,
  - (f) after subsection (8), insert—
- “(9) In this section and in section 173, “property” means a place which is—
- (a) living accommodation, or
  - (b) non-residential premises within the meaning of section 69(3).”.

(2) In section 173 of the 2006 Act (effect of registering repayment charges etc.)—

    - (a) in subsection (1), for “living accommodation” substitute “ property ”,
    - (b) in subsection (2), for “living accommodation” in each place where it occurs substitute “ property ”,
    - (c) in subsection (3), for “living accommodation” substitute “ property ”, and
    - (d) in subsection (4), for “living accommodation” substitute “ property ”.



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VALID FROM 01/04/2015

## 91 Repayment charges: recovery of repayable amount

- (1) In section 172 of the 2006 Act (repayment charges)—
- (a) in subsection (1)—
    - (i) the word “and” immediately preceding paragraph (b) is repealed, and
    - (ii) after paragraph (b), insert—
      - “(c) providing that the repayable amount is payable in the number of equal annual instalments and on the date in each year determined under subsection (3) (a),
      - (d) providing that in default of such payment each instalment, together with any amount recoverable in respect of that instalment under subsection (6A), is to be separately recoverable as a debt, and
      - (e) providing that if immediately after the final instalment falls due any balance of the repayable amount remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.”,
  - (b) for subsection (3), substitute—
    - “(3) The local authority must—
      - (a) determine—
        - (i) the number of equal annual instalments, being no fewer than 5 and no more than 30, in which the repayable amount is to be paid, and
        - (ii) the date in each year on which the instalment becomes due, and
      - (b) notify the owner of its determination under paragraph (a).” , and
  - (c) after subsection (4), insert—
    - “(4A) The owner of a property who is liable for the repayable amount does not, by virtue only of ceasing to be such an owner, cease to be liable for the repayable amount.”.
- (2) After section 172 of the 2006 Act, insert—

### “172A Repayment charge: appeals to the sheriff

- (1) A person aggrieved by a determination under section 172(3)(a)(i) may appeal to the sheriff.
- (2) On an appeal under this section the sheriff may make such order relating to the number of annual instalments as the sheriff thinks fit.

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(3) The decision of the sheriff on appeal under this section is final.”.

VALID FROM 01/04/2015

## 92 Charging orders

(1) In Schedule 9 to the 1987 Act (recovery of expenses by charging order)—

- (a) in paragraph 2, the words “, and shall commence from the date of the order and be payable for a term of 30 years to the local authority” are repealed,
- (b) after paragraph 2, insert—

“2A

The local authority must—

- (a) determine—
  - (i) the term of the charging order, being no fewer than 5 years and no more than 30 years, and
  - (ii) the date in each year on which the annuity is payable, and
- (b) notify the owner of its determination under paragraph (a).

2B

Section 187 of the Housing (Scotland) Act 2006 (asp 1) applies to a notification under paragraph 2A(b) as if the notification were a formal communication referred to in section 187(1) of that Act.”,

- (c) after paragraph 3, insert—

“3A

A charging order must provide—

- (a) that the annuity is payable for the term and on the date in each year determined under paragraph 2A(a),
- (b) that in default of payment of an annuity, the annuity is to be separately recoverable as a debt, and
- (c) that if immediately after the final annuity falls due any balance of the expenses charged by the order remains unpaid, that balance is immediately due for repayment and is recoverable as a debt.

3B

- (1) A person aggrieved by a determination under paragraph 2A(a)(i), may appeal to the sheriff.
- (2) On an appeal under this paragraph the sheriff may make such order relating to the term of the charging order as the sheriff thinks fit.
- (3) The decision of the sheriff on appeal under this paragraph is final.”,
- (d) in paragraph 4, sub-paragraph (b)(i) is repealed,
- (e) after paragraph 5, insert—

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“5A

The owner of the premises on which an annuity has been charged by a charging order does not, by virtue only of ceasing to be such an owner, cease to be liable for each annuity charged.”, and

(f) paragraph 6 is repealed.

(2) In section 108(2) of the Civic Government (Scotland) Act 1982 (c.45) (recovery of expenses by charging order), for the words from “modifications” to “paragraph” in the last place where it appears substitute “ modification, that is to say, in subparagraph (b)(ii) of paragraph 4 of that Schedule ”.

(3) In section 19(3) of the Crofters (Scotland) Act 1993 (c.44) (priority of sums due), the words “heads (i), (ii) and (iii) of” are repealed.

## PART 7

### MISCELLANEOUS

#### 93 Right to redeem heritable security after 20 years: power to exempt

(1) In section 11 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (right to redeem heritable security after 20 years where security subjects used as a private dwelling), after subsection (3C) insert—

“(3D) The right to redeem a heritable security conferred by this section does not apply to a heritable security which is in security of a debt of a description specified in an order made by the Scottish Ministers.

(3E) An order under subsection (3D) may—

- (a) disapply the right to redeem conferred by this section subject to conditions or restrictions,
- (b) restrict the disapplication of the right to redeem conferred by this section to—
  - (i) specified descriptions of debt,
  - (ii) specified creditors, or creditors of specified descriptions,
  - (ii) specified heritable securities, or heritable securities of specified descriptions,
- (c) prescribe circumstances in which the disapplication of the right to redeem conferred by this section is to apply or cease to apply.

(3F) An order under subsection (3D) is subject to the negative procedure.”.

(2) In section 21 of the Land Tenure Reform (Scotland) Act 1974 (provisions for contracting out to be void), for “and 11(3A)” substitute “ , 11(3A) and 11(3D) ”.

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VALID FROM 20/11/2014

**94 First-tier Tribunal: disqualification of members from exercise of certain functions**

- (1) This section applies to the following functions and jurisdictions of the First-tier Tribunal—
- (a) a function or jurisdiction of the sheriff transferred to the Tribunal under section 16 or by virtue of Part 1 of schedule 1,
  - (b) a function conferred on the Tribunal, by virtue of Part 3 and Parts 2 to 4 of schedule 1, by—
    - (i) the 2004 Act,
    - (ii) the 2006 Act,
  - (c) a function conferred on the Tribunal by or under Part 4.
- (2) A member of the First-tier Tribunal is disqualified from exercising a function or jurisdiction to which this section applies if the member is—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a Minister of the Crown,
  - (e) a member of the Scottish Government.
- (3) The Scottish Ministers may by order modify subsection (2) by—
- (a) adding a disqualification to,
  - (b) varying the description of a disqualification for the time being mentioned in,
  - (c) removing a disqualification from,
- that subsection.

VALID FROM 20/11/2014

**95 Private rented housing panel: disqualification from membership**

In Schedule 4 to the Rent (Scotland) Act 1984, after paragraph 1 insert—

- “1A (1) A person is disqualified from appointment to, and from remaining a member of, the private rented housing panel if the person is or becomes—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) a Minister of the Crown,
  - (e) a member of the Scottish Government.
- (2) The Scottish Ministers may by order modify sub-paragraph (1) by—
- (a) adding a disqualification to,

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- (b) varying the description of a disqualification for the time being mentioned in,
  - (c) removing a disqualification from,
- that sub-paragraph.
- (3) An order under sub-paragraph (2) is subject to the affirmative procedure.”.

VALID FROM 20/11/2014

## 96 Delegation of certain functions

- (1) In section 21 of the 2006 Act (panel and committees), after subsection (8) insert—
- “(8A) The president may delegate the president's functions under section 23 to—
- (a) the vice-president of the panel, or
  - (b) such other member of the panel as the president thinks fit.
- (8B) A delegation under subsection (8A) does not affect the president's—
- (a) responsibility for the carrying out of delegated functions, or
  - (b) ability to carry out delegated functions.”.

(2) In section 16 of the Property Factors (Scotland) Act 2011 (asp 8) (panel and committees), after subsection (7) insert—

“(8) The president may delegate the president's functions under section 18 to—

    - (a) the vice-president of the panel, or
    - (b) such other member of the panel as the president thinks fit.

(9) A delegation under subsection (8) does not affect the president's—

    - (a) responsibility for the carrying out of delegated functions, or
    - (b) ability to carry out delegated functions.”.

VALID FROM 20/11/2014

## 97 Scottish Housing Regulator: transfer of assets following inquiries

In section 67 of the 2010 Act (transfer of assets following inquiries)—

- (a) after subsection (4), insert—
- “(4A) A duty on the Regulator to consult in accordance with paragraph (i) or (ii) of subsection (4)(a) does not apply where the Regulator considers that—
- (a) the registered social landlord's viability is in jeopardy for financial reasons,
  - (b) a person could take a step in relation to the registered social landlord which would require to be notified to the Regulator under section 73,

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- (c) the direction would substantially reduce the likelihood of a person taking such a step, and
- (d) there is insufficient time to comply with that duty and make a direction which would substantially reduce that likelihood.

(4B) The Regulator must—

- (a) issue guidance on subsection (4A), such guidance to include—
  - (i) the circumstances in which it considers that subsection (4A) is likely to apply,
  - (ii) the actions it expects to take in those circumstances, and
  - (iii) how, in those circumstances, it intends to communicate with any of the persons mentioned in paragraph (b) who are affected by its actions, and
- (b) before issuing or revising any guidance, consult—
  - (i) tenants of registered social landlords or their representatives,
  - (ii) registered social landlords or their representatives, and
  - (iii) secured creditors of registered social landlords or their representatives.

(4C) Where the Regulator proposes to direct a transfer of some (but not all) of a registered social landlord's assets, the Regulator must—

- (a) before making a direction, obtain an independent valuation of those assets, and
  - (b) when making a direction, have regard to that valuation.”,
- (b) in subsection (6), paragraph (a) and the word “and” immediately following it are repealed.

VALID FROM 20/11/2014

## 98 Registered social landlord becoming a subsidiary of another body

(1) After section 104 of the 2010 Act insert—

*“Registered social landlord becoming a subsidiary of another body*

### **104A Registered social landlord becoming a subsidiary of another body**

- (1) This section applies to a registered social landlord which is—
- (a) a registered society, or
  - (b) a registered company.

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- (2) An arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary has effect only if the Regulator consents to that arrangement before it is completed.
- (3) Chapter 3 of Part 10 makes provision for Regulator consent for the purpose of this section.”.
- (2) After section 124 of the 2010 Act insert—

### “CHAPTER 3

#### REGISTERED SOCIAL LANDLORD BECOMING A SUBSIDIARY OF ANOTHER BODY

##### **124A Regulator's consent**

- (1) The special procedure set out in sections 114 to 121 of Chapter 1 applies in relation to an arrangement to which the Regulator's consent is required under section 104A as it applies in relation to a disposal to which Chapter 1 applies.
- (2) The Regulator must determine that the special procedure is not to apply or is to cease to apply where the Regulator considers that—
- (a) the registered social landlord's viability is in jeopardy for financial reasons,
  - (b) a person could take a step in relation to the registered social landlord which would require to be notified to the Regulator under section 73, and
  - (c) the determination under this subsection would substantially reduce the likelihood of a person taking such a step.
- (3) Where the Regulator makes a determination under subsection (2), the Regulator may give or refuse consent to the arrangement.

##### **124B Purchaser protection**

Failure by the Regulator or by a registered social landlord to comply with any provision of sections 114 to 121 of Chapter 1 in relation to an arrangement under which the registered social landlord is to become a subsidiary of a body of which it is not currently a subsidiary does not invalidate the Regulator's consent to the arrangement.”.

- (3) In section 164 of the 2010 Act (connected bodies), the definition of “subsidiary” is repealed.
- (4) In section 165 of the 2010 Act (interpretation), after the definition of “social landlord” insert—
- ““subsidiary” has the same meaning as in the Companies Act 2006 (c.46) or, as the case may be, the Co-operative and Community Benefit Societies and Credit Unions Act 1968 (c.55),”.

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VALID FROM 30/07/2018

## 99 Repeal of defective designation provisions

- (1) Part 14 of the 1987 Act (assistance for owners of defective housing) is repealed.
- (2) Schedule 20 to the 1987 Act (assistance by way of repurchase) is repealed.
- (3) Schedule 21 to the 1987 Act (dwellings included in more than one designation) is repealed.

## PART 8

### GENERAL

## 100 Interpretation

In this Act—

“the 1960 Act” means the Caravan Sites and Control of Development Act 1960 (c.62),

“the 1987 Act” means the Housing (Scotland) Act 1987 (c.26),

“the 2001 Act” means the Housing (Scotland) Act 2001 (asp 10),

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),

“the 2006 Act” means the Housing (Scotland) Act 2006 (asp 1),

“the 2010 Act” means the Housing (Scotland) Act 2010 (asp 17),

“First-tier Tribunal” means the First-tier Tribunal for Scotland.

## 101 Subordinate legislation

- (1) Any power of the Scottish Ministers to make an order or regulations under this Act includes power to make—

- (a) different provision for different purposes or different areas,

- (b) incidental, supplementary, consequential, transitional, transitory or saving provision.

- (2) Orders or regulations—

- (a) under section 20(1),

- (b) under section 28(1),

- (c) under section 34(5),

- (d) under section 46(1) which set out the first code of practice or replace the code of practice,

- (e) under section 61(3)(b),

- (f) under section 94(3),

- (g) under section 102(1) containing provisions which add to, replace, or omit any part of the text of an Act,

are subject to the affirmative procedure.

- (3) All other orders and regulations under this Act are subject to the negative procedure.



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- (4) The Scottish Ministers must, before the end of the period of 18 months beginning with the day of Royal Assent, lay before the Scottish Parliament a draft Scottish statutory instrument containing regulations under section 46(1) setting out the first code of practice.
- (5) This section does not apply to an order under section 104(3).

## 102 Ancillary provision

- (1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).

VALID FROM 20/11/2014

## 103 Minor and consequential amendments

Schedule 2 contains minor amendments and amendments consequential on the provisions of this Act.

## 104 Commencement

- (1) This section and sections 100, 101, 102 and 105 come into force on the day of Royal Assent.
- (2) Section 93 comes into force at the end of the period of 2 months beginning with the day of Royal Assent.
- (3) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (4) The Scottish Ministers may not appoint a day for section 1(1) to come into force which is before the end of the period of 2 years beginning with the day of Royal Assent.
- (5) An order under subsection (3) may include transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

## 105 Short title

The short title of this Act is the Housing (Scotland) Act 2014.

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VALID FROM 20/11/2014

VALID FROM 01/12/2017

SCHEDULE 1

(introduced by sections 16 to 19)

TRANSFER OF JURISDICTION TO FIRST-TIER TRIBUNAL

.....  
.....  
.....  
.....

SCHEDULE 2

(introduced by section 103)

MINOR AND CONSEQUENTIAL AMENDMENTS

PROSPECTIVE

*Local Government, Planning and Land Act 1980 (c.65)*

1 Section 156(4) of the Local Government, Planning and Land Act 1980 is repealed.

PROSPECTIVE

*Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c.59)*

2 Section 13(11) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 is repealed.

*Rent (Scotland) Act 1984 (c.58)*

3 In Case 7 of Part 1 of Schedule 2 to the Rent (Scotland) Act 1984—  
(a) the word “either” is repealed,  
(b) paragraph (b) and the word “or” immediately preceding it are repealed.

*Housing (Scotland) Act 1987 (c.26)*

4 (1) The 1987 Act is amended as follows.  
(2) In section 19 of the 1987 Act—

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- (a) in subsection (1), for “local authority or a registered social landlord” substitute “ social landlord ”,
- (b) in subsection (2)—
  - (i) for “housing provider” substitute “ social landlord ”,
  - (ii) for “housing providers” substitute “ social landlords ”,
- (c) for subsection (3) substitute—

“(3) In this Part, “social landlord” means any local authority or any registered social landlord.”.

(3) In section 20(2)—

- (a) for “local authority and a registered social landlord” substitute “ social landlord ”,
- (b) in paragraph (b), after sub-paragraph (ii) insert—
  - “(iia) that a dissolution of a civil partnership or a decree of separation of civil partners be obtained, or”.

(4) In section 21(3), paragraph (ia) and the word “and” at the end of that paragraph are repealed.

(5) In section 24(5)(d), for “or 2” substitute “ , 2 or 2A ”.

(6) In section 31(5)(c), for “or 2” substitute “ , 2 or 2A ”.

(7) In section 82—

- (a) the words “this Part and in” are repealed, and
- (b) the definitions of “application to purchase”, “heritable proprietor”, “housing co-operative”, “offer to sell”, “police authority” and “secure tenancy” are repealed.

(8) The title to section 82 becomes “ **Interpretation of sections 14, 19 and 20** ”.

(9) In section 338(1)—

- (a) in the definition of “house”, the words “(except in relation to Part XIV)” are repealed,
- (b) the definition of “secure tenancy” is repealed.

*Housing (Scotland) Act 1988 (c.43)*

5 (1) The Housing (Scotland) Act 1988 is amended as follows.

(2) In section 42(1)(d), the words “or in pursuance of section 282(3)(b) of that Act (grant of a tenancy upon acquisition by public sector authority of defective dwelling)” are repealed.

(3) Paragraph 7 of Schedule 2 is repealed.

(4) Paragraphs 19 to 26 of Schedule 7 are repealed.

**Commencement Information**

**I5** Sch. 2 para. 5(1)(3) in force at 20.11.2014 by [S.S.I. 2014/264](#), art. 2, [Sch.](#)

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PROSPECTIVE

*Local Government and Housing Act 1989 (c.42)*

- 6 Section 166(1) to (5) of the Local Government and Housing Act 1989 is repealed.

PROSPECTIVE

*Leasehold Reform, Housing and Urban Development Act 1993 (c.28)*

- 7 Section 156 of the Leasehold Reform, Housing and Urban Development Act 1993 is repealed.

PROSPECTIVE

*Local Government etc. (Scotland) Act 1994 (c.39)*

- 8 Paragraph 152(6) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 is repealed.

PROSPECTIVE

*Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)*

- 9 Paragraph 48(3) of schedule 12 to the Abolition of Feudal Tenure etc. (Scotland) Act 2000 is repealed.

*Housing (Scotland) Act 2001 (asp 10)*

- 10 (1) The 2001 Act is amended as follows.
- (2) In section 5(4)(a), for “or 2” substitute “, 2 or 2A”.
- (3) Section 23(6)(d) is repealed.
- (4) Sections 42 to 51 are repealed.
- (5) In schedule 10—
- (a) paragraph 13(3)(c)(ii) is repealed,
  - (b) paragraph 13(6) to (20) is repealed,
  - (c) paragraph 13(36) to (40) is repealed.

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PROSPECTIVE

*Water Industry (Scotland) Act 2002 (asp 3)*

- 11 Paragraph 18(5) of schedule 7 to the Water Industry (Scotland) Act 2002 is repealed.

*Scottish Public Services Ombudsman Act 2002 (asp 11)*

- 12 Paragraph 44 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 is repealed.

*Freedom of Information (Scotland) Act 2002 (asp 13)*

- 13 (1) The Freedom of Information (Scotland) Act 2002 is amended as follows.  
(2) In schedule 1, after paragraph 18A insert—  
“18B The Scottish Housing Regulator.”.  
(3) Paragraph 85B of schedule 1 is repealed.

PROSPECTIVE

*Land Reform (Scotland) Act 2003 (asp 2)*

- 14 (1) The Land Reform (Scotland) Act 2003 is amended as follows.  
(2) Section 40(4)(g)(v) is repealed.  
(3) Section 65(2)(d) is repealed.  
(4) Section 84(2)(c) is repealed.

PROSPECTIVE

*Agricultural Holdings (Scotland) Act 2003 (asp 11)*

- 15 Section 27(1)(g)(vi) of the Agricultural Holdings (Scotland) Act 2003 is repealed.

PROSPECTIVE

*Fire (Scotland) Act 2005 (asp 5)*

- 16 Paragraph 13 of schedule 3 to the Fire (Scotland) Act 2005 is repealed.

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*Housing (Scotland) Act 2006 (asp 1)*

- 17 In section 22 of the 2006 Act—
- (a) subsection (4)(c) is repealed, and
  - (b) subsection (6) is repealed.

*Housing (Scotland) Act 2010 (asp 17)*

- 18 (1) The 2010 Act is amended as follows.
- (2) In section 58(1), for “the” where it secondly occurs substitute “ a ”.
  - (3) Section 108(1)(f) is repealed.
  - (4) In section 110(1), after paragraph (a) insert—
    - “(aa) the proposed disposal is not by way of granting security over the land or any interest in it.”.
  - (5) In section 124, for “122” substitute “ 121 ”.
  - (6) Sections 140 to 144 are repealed.
  - (7) In schedule 2—
    - (a) paragraph 3(4) is repealed,
    - (b) paragraph 9 is repealed.

PROSPECTIVE

*Police and Fire Reform (Scotland) Act 2012 (asp 8)*

- 19 Paragraph 56 of schedule 7 to the Police and Fire Reform (Scotland) Act 2012 is repealed.

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