Housing (Scotland) Act 2014

2014 asp 14

PART 4

LETTING AGENTS

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.

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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,

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

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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

(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—

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(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

(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.

Commencement Information

I1 S. 61 in force at 20.11.2014 by S.S.I. 2014/264, art. 2, **Sch.**

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.

Commencement Information

I2 S. 62 in force at 20.11.2014 for specified purposes by S.S.I. 2014/264, art. 2, **Sch.**

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