

# Housing (Scotland) Act 2014

## 2014 asp 14

### PART 4

#### LETTING AGENTS

##### *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
  - (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.

### **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).
- (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.

### **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—
    - (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”.

### **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.
- (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).

### **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.

#### *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—
  - (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.

*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.

**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.

#### *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.

*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.

**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.

#### *Offences where no registration*

#### **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,
  - (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.

#### **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
  - (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.

#### *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
    - (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.

### *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—
  - (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.

#### **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.

#### **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
- (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.

## **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.

## **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—
  - (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*

## **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.

## **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.

## **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.

## **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
      - (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
  - (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),



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*Status: This is the original version (as it was originally enacted).*

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“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.