



# Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

## PART 8

### HOUSING: REGISTRATION OF CERTAIN LANDLORDS

#### *Registration*

#### 82 Registers

- (1) Each local authority shall prepare and maintain a register for the purposes of this Part.
- (2) <sup>F1</sup> .....

#### Textual Amendments

- F1** S. 82(2) repealed (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(2)**, 195 (with s. 193); [S.S.I. 2006/14](#), **art. 2**

#### 83 Application for registration

- (1) An application by a relevant person to a local authority for entry in the register maintained by it under section 82(1) shall specify—
  - (a) the name and address of the relevant person;
  - (b) the address of each house (if any) within the area of the authority which the relevant person owns and which is subject to—
    - (i) a lease; or
    - (ii) an occupancy arrangement,by virtue of which an unconnected person may use the house as a dwelling;
  - (c) if the relevant person has a person who acts for the person in relation to the lease or occupancy arrangement to which any house specified under paragraph (b) is subject, the name and address of the person; <sup>F2</sup> . . .

*Status: Point in time view as at 01/07/2012.*

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- [<sup>F3</sup>(ca) the address to which correspondence with the relevant person should be directed; and]
- (d) such other information as the Scottish Ministers may by regulations prescribe.
- (2) Subject to subsection (3), the application shall be accompanied by such fee as the local authority may determine.
- (3) The Scottish Ministers may by regulations prescribe for the purposes of subsection (2) —
- (a) fees;
- (b) how fees are to be arrived at;
- (c) cases in which no fee shall be payable.
- (4) A person who, in an application under this section—
- (a) specifies information which the person knows is false in a material particular; or
- (b) knowingly fails to specify information required by subsection (1),
- shall be guilty of an offence.
- (5) A person guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) For the purposes of subsection (1)(b), the use of a house as a dwelling shall be disregarded if—
- (a) the house is being used for the provision of—
- (i) a care home service (as defined in [<sup>F4</sup>paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010] (asp 8));
- (ii) a school care accommodation service (as defined in [<sup>F5</sup>paragraph 3 of that schedule]);
- <sup>F6</sup>(iii) . . . . .
- (iv) a secure accommodation service (as defined in [<sup>F7</sup>paragraph 6 of that schedule]);
- [<sup>F8</sup>(v) an independent hospital (as defined in subsection (2) of section 10F of the [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#));
- (vi) a private psychiatric hospital (as defined in that section);
- (vii) an independent clinic (as defined in that section); or
- (viii) an independent medical agency (as defined in that section);]
- (b) the house is being used by a religious order the principal occupation of which is prayer, contemplation, education or the relief of suffering;
- (c) a control order under section 178 of the Housing (Scotland) Act 1987 (c. 26) is in force in respect of the house; <sup>F9</sup> . . .
- (d) the house is being used for holiday purposes.
- [<sup>F10</sup>(e) the house is the only or main residence of the relevant person;
- (f) the house is—
- (i) on agricultural land which is land comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 <sup>M1</sup> or comprised in a lease constituting a short limited duration tenancy or limited duration tenancy (within the meaning of that Act); and
- (ii) occupied by the tenant of the relevant lease;

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- (g) the house is on a croft (within the meaning of section 3 of the Crofters (Scotland) Act 1993 <sup>M2</sup>);
  - (h) the house is—
    - (i) on a holding to which any of the provisions of the Small Landholders (Scotland) Acts 1886 to 1931 applies;
    - (ii) not situated in the crofting counties (within the meaning of the Crofters (Scotland) Act 1993); and
    - (iii) occupied by the landholder;
  - (i) the house is occupied by virtue of a liferent;
  - (j) the house is—
    - (i) owned by an organisation which has the advancement of religion as its principal purpose and the regular holding of worship as its principal activity; and
    - (ii) occupied by a person whose principal responsibility is the leading of members of the organisation in worship and preaching the faith of that organisation;
  - (k) the house is part of an estate of a deceased person and has been held by an executor for a period not exceeding 6 months from the date of death; <sup>F11</sup> . . .
  - (l) the house is in the lawful possession of a heritable creditor and has been held by that creditor for a period not exceeding 6 months from the date of possession; <sup>F12</sup> or
  - (m) the house is owned by a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 <sup>M3</sup> and has been so owned by that person for a period not exceeding six months.]
- (7) The Scottish Ministers may by order modify subsection (6).
- (8) In this Part—
- “relevant person” means a person who is not—
    - (a) a local authority;
    - (b) a registered social landlord; or
    - (c) Scottish Homes; and
  - “unconnected person”, in relation to a relevant person, means a person who is not a member of the family of the relevant person.

#### Textual Amendments

- F2** Word following s. 83(1)(c) repealed (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\), ss. 176\(3\)\(a\), 195 \(with s. 193\)](#); S.S.I. 2006/14, [art. 2](#)
- F3** S. 83(1)(ca) inserted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\), ss. 176\(3\)\(b\), 195 \(with s. 193\)](#); S.S.I. 2006/14, [art. 2](#)
- F4** Words in s. 83(6)(a)(i) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\), art. 1, sch. 1 para. 14\(3\)\(a\)](#)
- F5** Words in s. 83(6)(a)(ii) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\), art. 1, sch. 1 para. 14\(3\)\(b\)](#)
- F6** S. 83(6)(a)(iii) and word repealed (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\), art. 1, sch. 2 para. 9\(b\)\(i\)\(ii\)](#)
- F7** Words in s. 83(6)(a)(iv) substituted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\), art. 1, sch. 1 para. 14\(3\)\(c\)](#)

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- F8** S. 83(6)(a)(v)-(viii) inserted (1.4.2011) by [The Public Services Reform \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2011 \(S.S.I. 2011/211\)](#), art. 1, **sch. 2 para. 9(b)(iii)**
- F9** Word following s. 83(6)(c) omitted (1.1.2006) by virtue of [The Private Landlord Registration \(Modification\) \(Scotland\) Order 2005 \(S.S.I. 2005/650\)](#), art. 2(a)
- F10** S. 83(6)(e)-(l) inserted (1.1.2006) by [The Private Landlord Registration \(Modification\) \(Scotland\) Order 2005 \(S.S.I. 2005/650\)](#), art. 2(b)
- F11** Word following s. 83(6)(k) omitted (12.2.2009) by virtue of [The Private Landlord Registration \(Modification\) \(Scotland\) Order 2009 \(S.S.I. 2009/33\)](#), art. 2(a)
- F12** S. 83(6)(m) and preceding word inserted (12.2.2009) by [The Private Landlord Registration \(Modification\) \(Scotland\) Order 2009 \(S.S.I. 2009/33\)](#), art. 2(b)

#### Commencement Information

- I1** S. 83 wholly in force at 30.4.2006; s. 83 not in force at Royal Assent see s. 145(2); s. 83 in force for specified purposes at 28.10.2004 and 9.11.2005 and for all other purposes at 30.4.2006 by [S.S.I. 2004/420](#), arts. 2, 3, Schs. 1, 6 (as amended by [S.S.I. 2005/553](#), art. 2, **Sch.** and [S.S.I. 2006/104](#), art. 2)

#### Marginal Citations

- M1** 2003 asp 11.
- M2** 1993 c. 44.
- M3** 1986 c. 45. Section 388 was amended by regulation 17 of [S.I. 2002/1240](#).

## 84 Registration

- (1) This section applies where a relevant person makes an application to a local authority in accordance with section 83.
- (2) Where, having considered the application—
- the local authority is satisfied that subsection (3) or (4) applies, the authority shall enter the relevant person in the register maintained by the authority under section 82(1);
  - the authority is not satisfied that either of those subsections applies, the authority shall refuse to enter the relevant person in the register.
- (3) This subsection applies where—
- under paragraph (b) of section 83(1), the application—
    - does not specify a house; or
    - specifies a house (or two or more houses);
  - under paragraph (c) of that section, the application does not specify the name and address of a person; and
  - the relevant person is a fit and proper person to act as landlord under—
    - a lease; or
    - an occupancy arrangement,
 by virtue of which an unconnected person may use a house as a dwelling.
- (4) This subsection applies where—
- under paragraph (b) of section 83(1), the application specifies at least one house;
  - under paragraph (c) of that section, the application specifies the name and address of a person;
  - subsection (3)(c) applies; and

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- (d) the person is a fit and proper person to act for a landlord such as is mentioned in that subsection in relation to the lease or, as the case may be, arrangement.
- (5) An entry in a register under subsection (2)(a) shall state, in relation to the relevant person, the information specified by virtue of paragraphs (a) to [F13(ca)] of section 83(1) in the application made by the relevant person.
- (6) Subject to sections 88(8) and 89(1), where a local authority makes an entry in a register under subsection (2)(a), the authority shall remove the entry from the register on the expiry of the period of 3 years beginning with the day on which the entry is made.

#### Textual Amendments

**F13** Words in s. 84(5) substituted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(4), 195** (with s. 193); [S.S.I. 2006/14](#), **art. 2**

## 85 Section 84: considerations

- (1) In deciding for the purposes of section 84(3) or (4) whether the relevant person or, as the case may be, the person is a fit and proper person, the local authority shall have regard (among other things) to any material falling within subsections (2) to (4).
- (2) Material falls within this subsection if it shows that the relevant person or, as the case may be, the person has—
  - (a) committed any offence involving—
    - (i) fraud or other dishonesty;
    - [F14(ia) firearms (within the meaning of section 57(1) of the Firearms Act 1968 (c. 27));]
    - (ii) violence; or
    - (iii) drugs;
  - [F15(aa) committed a sexual offence (within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995 (c. 46));]
  - (b) practised unlawful discrimination <sup>F16</sup> . . . in, or in connection with, the carrying on of any business; or
  - (c) contravened any provision of—
    - [F17(zi) any Letting Code issued under section 92A;]
    - (i) the law relating to housing; or
    - (ii) landlord and tenant law.
- (3) Material falls within this subsection if it relates to any actings of the relevant person or, as the case may be, the person as respects antisocial behaviour affecting a house—
  - (a) subject to a lease or occupancy arrangement such as is mentioned in section 84(3)(c); and
  - (b) in relation to which the relevant person was (or is) the landlord under the lease or arrangement or, as the case may be, the person was (or is) acting for the landlord in relation to the lease or arrangement.
- [F18(3A) Material falls within this subsection if it relates to any agreement between the relevant person and any person in terms of which that person acts for the relevant person in relation to a lease or occupancy arrangement such as is mentioned in section 84(3)(c).]

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- (4) Material falls within this subsection if it appears to the authority that the material is relevant to the question of whether the relevant person or, as the case may be, the person is a fit and proper person.
- [<sup>F19</sup>(4A) A local authority need not, despite subsection (1), have regard to any material falling within subsection (3A) in deciding for the purposes of section 84(4) whether a person specified in an application by virtue of section 83(1)(c) is a fit and proper person to act for a landlord.]
- (5) In subsection (3), “actings” includes failure to act.
- [<sup>F20</sup>(6) Examples of material which falls within subsection (2) (as mentioned in paragraph (c) (i) or (ii)) are (without prejudice to the generality of that provision)—
- (a) an offence or disqualification under—
    - (i) this Part;
    - (ii) Part 5 of the Housing (Scotland) Act 2006 (asp 1);
  - (b) a repairing standard enforcement order made under section 24(2) of that Act.
- (7) Examples of material which falls within subsection (3) are (without prejudice to the generality of that provision)—
- (a) an antisocial behaviour order (or any interim order) within the meaning of Part 2;
  - (b) an antisocial behaviour notice within the meaning of Part 7.
- (8) Examples of material which falls within subsection (4) are (without prejudice to the generality of that provision)—
- (a) complaints and other information which come to the attention of the local authority concerning the relevant person or, as the case may be the person, in relation to the fulfilment of any financial obligation in respect of any house which is included in the application;
  - (b) concerns and other information which come to the attention of the local authority in the exercise of any of its functions in connection with any house which is included in the application;
  - (c) where section 85A(3)(b) applies, the relevant person fails to provide the certificate within the period the local authority directs.
- (9) The Scottish Ministers may by order modify subsection (2).]

#### Textual Amendments

- F14** S. 85(2)(a)(ia) inserted (1.7.2012) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 1(1)(a)(i)**, 41(3); S.S.I. 2012/150, **art. 2(1)**
- F15** S. 85(2)(aa) inserted (1.7.2012) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 1(1)(a)(ii)**, 41(3); S.S.I. 2012/150, **art. 2(1)**
- F16** Words in s. 85(2)(b) repealed (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(5)**, 195 (with s. 193); S.S.I. 2006/14, **art. 2**
- F17** S. 85(2)(c)(zi) inserted (5.7.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 175(2)(a)**, 195 (with s. 193); S.S.I. 2006/395, **art. 2**, Table
- F18** S. 85(3A) inserted (5.7.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 175(2)(b)**, 195 (with s. 193); S.S.I. 2006/395, **art. 2**, Table
- F19** S. 85(4A) inserted (5.7.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 175(2)(c)**, 195 (with s. 193); S.S.I. 2006/395, **art. 2**, Table

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**F20** S. 85(6)-(9) inserted (1.7.2012) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 1(1)(b), 41(3)**; [S.S.I. 2012/150](#), art. 2(1)

**Modifications etc. (not altering text)**

**C1** S. 85 applied (31.8.2011) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 130(3), 195(3)** (with s. 193); [S.S.I. 2010/159](#), art. 3

**[<sup>F21</sup>85A Fit and proper person: criminal record certificate**

- (1) A local authority may, in deciding for the purposes of section 84(3) or (4) whether a relevant person is, or is no longer, a fit and proper person, require the relevant person to provide the local authority with a criminal record certificate (within the meaning of section 113A of the Police Act 1997 (c. 50)).
- (2) A local authority may require a criminal record certificate to be provided under subsection (1) only if it has reasonable grounds to suspect that the information provided with an application for entry in the register maintained under section 82(1) in relation to material falling within subsection (2), (3) or (4) of section 85 is, or has become, inaccurate.
- (3) Where a local authority has required a criminal record certificate to be provided under subsection (1)—
  - (a) in the case of an application for entry in the register maintained under section 82(1), a relevant person may not be entered in the register until the certificate has been received by the local authority;
  - (b) in the case of a relevant person entered in the register, the relevant person must provide the certificate within such reasonable period as the local authority directs.]

**Textual Amendments**

**F21** **S. 85A** inserted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 2, 41(3)**; [S.S.I. 2011/270](#), art. 2, sch.

**86 Notification of registration or refusal to register**

- (1) Where a local authority—
  - (a) enters a person in its register under paragraph (a) of section 84(2); or
  - (b) refuses to enter a person in its register under paragraph (b) of that section, the authority shall, as soon as practicable after doing so, give notice of the fact to the person.
- (2) Where a local authority refuses to enter a person in its register under section 84(2)(b), the authority shall, as soon as practicable after doing so, send notice of the fact to—
  - (a) each address specified by virtue of paragraph (b) of section 83(1) in the application for registration; and
  - (b) if, by virtue of paragraph (c) of section 83(1), the application specified the name and address of a person, that person.



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## **87 Duty of registered person to provide information to local authority**

- (1) This section applies where a person is registered by a local authority.
- (2) If in consequence of a change in circumstances any information provided by the person to the local authority by virtue of section 83(1) or, as the case may be, this subsection, becomes inaccurate, the person shall, as soon as practicable after the inaccuracy arises, give notice in writing to the authority of the change that has occurred.
- (3) Subject to subsection (4), any notice given under subsection (2) shall be accompanied by such fee as the local authority may determine.
- (4) The Scottish Ministers may by regulations prescribe for the purposes of subsection (3)
  - (a) fees;
  - (b) how fees are to be arrived at;
  - (c) cases in which no fee shall be payable.
- (5) A person who, without reasonable excuse, fails to comply with subsection (2) shall be guilty of an offence.
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Commencement Information**

- I2** S. 87 wholly in force at 30.4.2006; s. 87 not in force at Royal Assent see s. 145(2); s. 87 in force for specified purposes at 28.10.2004 and 9.11.2005 and for all other purposes at 30.4.2006 by [S.S.I. 2004/420](#), arts. 2, 3, Schs. 1, 6 (as amended by [S.S.I. 2005/553](#), art. 2, [Sch.](#) and [S.S.I. 2006/104](#), art. 2)

## **[<sup>F22</sup>87A Duty of local authority to note decisions of private rented housing committee**

- (1) This section applies where a local authority receives notice under paragraph 6 of schedule 2 to the Housing (Scotland) Act 2006 (asp 1) that a private rented housing committee has, in pursuance of a decision of the committee—
  - (a) made or varied a repairing standard enforcement order;
  - (b) revoked a repairing standard enforcement order;
  - (c) consented under section 28(6) of that Act to the landlord entering into a tenancy or occupancy arrangement; or
  - (d) granted a certificate under section 60 of that Act;
 and the landlord to whom the notice relates is a person registered by the local authority.
- (2) Where paragraph (a) or (c) of subsection (1) applies, the local authority must note the decision of the committee in the person's entry in the register.
- (3) Where paragraph (b) or (d) of subsection (1) applies, the local authority must remove any information noted in the register by virtue of subsection (2) which relates to the order revoked or to the order in relation to which the certificate was granted, as the case may be.]



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### Textual Amendments

**F22** S. 87A inserted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(6), 195** (with s. 193); [S.S.I. 2006/14, art. 2](#)

## 88 Registered person: appointment of agent

- (1) Subsection (2) applies where—
  - (a) a person is registered by a local authority (the “registered person”); and
  - (b) the registered person appoints a person to act for the person in relation to—
    - (i) a lease; or
    - (ii) occupancy arrangement,by virtue of which an unconnected person may use as a dwelling a house within the area of the authority which the registered person owns.
- (2) The registered person shall, as soon as practicable after appointing the person, give notice in writing to the local authority of the appointment.
- [<sup>F23</sup>(2A) Subject to subsections (2B) and (2C), the notice shall be accompanied by such fee as the local authority may determine.
- (2B) No fee shall be payable under subsection (2A) if, when the notice is given—
  - (a) the person appointed is entered in the register as a relevant person; or
  - (b) another relevant person's entry in the register states that the person appointed acts for the other relevant person.
- (2C) The Scottish Ministers may by regulations prescribe for the purposes of subsection (2A)—
  - (a) fees;
  - (b) how fees are to be arrived at;
  - (c) other cases in which no fee shall be payable.]
  - (3) The local authority shall, as soon as practicable after being given notice under subsection (2), determine whether the condition in subsection (4) is satisfied in relation to the person appointed.
  - (4) The condition is that 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).
  - (5) Subsections (2) to (5) of section 85 shall apply for the purposes of subsection (4) as those subsections apply for the purposes of subsection (1) of that section.
  - (6) If the local authority determines that the condition in subsection (4) is satisfied—
    - (a) the registered person shall be deemed, with effect from the date of the determination, to be registered by virtue of subsection (4) of section 84; and
    - (b) the local authority shall give the registered person notice in writing of that fact.
  - (7) Subsection (6)(a) shall not affect the calculation of the period mentioned in section 84(6).
  - (8) If the local authority determines that the condition in subsection (4) is not satisfied, the authority shall remove the registered person from the register.

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- [<sup>F24</sup>(9) A registered person is guilty of an offence who, without reasonable excuse—
- (a) in giving notice under subsection (2), specifies information which is false in a material particular; or
  - (b) fails to comply with subsection (2).
- (10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

#### Textual Amendments

- F23** S. 88(2A)-(2C) inserted (31.8.2011 for specified purposes, 1.7.2012 in so far as not already in force) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 4(a)**, 41(3); S.S.I. 2011/270, art. 2, sch.; S.S.I. 2012/150, art. 2(2)
- F24** S. 88(9)(10) inserted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 4(b)**, 41(3); S.S.I. 2011/270, art. 2, sch.

#### [<sup>F25</sup>88A Access to register

- (1) Each local authority shall, on the application of any person (“the applicant”), in relation to—
- (a) a particular house, provide the applicant with—
    - (i) the name of the owner included in its register by virtue of section 83(1)(a) or 87(2);
    - (ii) the name of any person who acts for the owner in relation to a lease or occupancy arrangement to which the house is subject included in its register by virtue of section 83(1)(c), 87(2) or 88(2);
    - (iii) the address to which correspondence with the relevant person should be directed included in its register by virtue of section 83(1)(ca) or 87(2); and
    - (iv) any information included in its register by virtue of section 87A(2).
  - (b) a particular person, confirm to the applicant whether that other person is registered in its register.
- (2) A local authority may, on the application of any person, provide that person with such other information from its register as it thinks appropriate.
- (3) Information provided under subsection (2) may be provided subject to such conditions as the local authority thinks appropriate.
- (4) Despite subsection (1), a local authority may withhold information where it considers that providing the information would be likely to jeopardise—
- (a) the safety or welfare of any person; or
  - (b) the security of any premises.]

#### Textual Amendments

- F25** S. 88A inserted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(7)**, 195 (with s. 193); S.S.I. 2006/14, art. 2

*Status: Point in time view as at 01/07/2012.*

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## **89 Removal from register**

- (1) Where—
  - (a) a person is registered by a local authority; and
  - (b) subsection (2) or (3) applies,the authority shall remove the person from its register.
- (2) This subsection applies where—
  - (a) the person was registered by virtue of section 84(3); and
  - (b) paragraph (c) of that section no longer applies.
- (3) This subsection applies where—
  - (a) the person was registered by virtue of section 84(4); and
  - (b) paragraph (c) or (d) of that section no longer applies.

## **90 Notification of removal from register: registered person**

- (1) Subsection (2) applies where under section 88(8) or 89(1) a local authority removes a person from the register maintained by it under section 82(1).
- (2) As soon as practicable after the removal, the local authority shall give the person notice in writing of—
  - (a) the removal; and
  - (b) the date of the removal.
- (3) Notice under subsection (2) shall be given to the person at the address which, immediately before the removal, was specified as being the address of the person in the entry for the person in the register.
- (4) For the purposes of subsection (2), notice is given by being sent by the recorded delivery service.

## **91 Notification of removal from register: other persons**

- (1) Subsection (2) applies where under section 88(8) or 89(1) a local authority removes a person from the register maintained by it under section 82(1).
- (2) As soon as practicable after the removal, the local authority shall give notice of the removal and the date of the removal to—
  - (a) the address of each house that, immediately before the removal, was entered in the person's entry in the register; and
  - (b) if the authority is aware of the name and address of a person who acts for the person whose name was removed from the register in relation to a lease or occupancy arrangement such as is mentioned in section 88(1)(b), that person.

## **92 Appeal against refusal to register or removal from register**

- (1) Subsection (2) applies where—
  - (a) under section 84(2)(b) a local authority refuses to enter a person in the register maintained by it under section 82(1); or
  - (b) under section 88(8) or 89(1) an authority removes a person from the register.
- (2) The sheriff may, on the application of the person, make an order—

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- (a) requiring the authority to enter the person in the register; and
  - (b) specifying whether the entry shall be deemed to be made by virtue of subsection (3) or (4) of section 84.
- (3) Where by virtue of subsection (2) a local authority enters a person in the register maintained by it under section 82(1), the entry shall be deemed to have been made under subsection (2)(a) of section 84 by virtue of the subsection specified in the order.
- (4) An application such as is mentioned in subsection (2) shall be made by summary application.
- (5) An appeal against the decision of a sheriff granting or refusing an application under subsection (2) shall be made to the sheriff principal and shall be made within the period of 21 days beginning with the day on which the decision appealed against was made.
- (6) The decision of the sheriff principal on an appeal under this section shall be final.

#### [<sup>F26</sup>92A The Letting Code

- (1) The Scottish Ministers may prepare and issue a code of practice, to be known as the Letting Code, making provision about the standards of management of—
- (a) any relevant person who enters into, or who seeks to enter into, a lease or occupancy arrangement by virtue of which an unconnected person may use a house as a dwelling, and
  - (b) any other person who acts for such a relevant person in relation to such a lease or occupancy arrangement.
- (2) The Scottish Ministers must, from time to time, review any Letting Code issued under subsection (1) and may, following such a review—
- (a) vary it, or
  - (b) revoke and replace it.
- (3) The Scottish Ministers must, before preparing, varying or replacing any Letting Code—
- (a) publish, in such manner as they think fit, an assessment of the effectiveness of any existing obligations and voluntary arrangements which relate to any standards of management which a Letting Code may make provision about, and
  - (b) consult—
    - (i) such bodies representing local authorities,
    - (ii) such bodies representing private sector landlords, and
    - (iii) such other persons,
 as they think fit about the need for, and the terms of, the Letting Code or variation proposed.
- (4) An assessment under subsection 3(a) above must, in particular, assess the effectiveness of—
- (a) the Rent (Scotland) Act 1984 (c. 58), and
  - (b) registration under this Part,
- in dealing with harassment, unlawful eviction or unlawful management practices.]

*Status: Point in time view as at 01/07/2012.*

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### Textual Amendments

**F26** S. 92A inserted (5.7.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 175(3)**, 195 (with s. 193); [S.S.I. 2006/395](#), **art. 2**, Table

## Enforcement

### 93 Offences

- (1) Where—
- (a) a relevant person owns a house within the area of a local authority which is subject to—
    - (i) a lease; or
    - (ii) an occupancy arrangement,by virtue of which an unconnected person may use the house as a dwelling; and
  - (b) the relevant person is not registered by that authority,
- the relevant person shall be guilty of an offence.
- (2) Where—
- (a) a relevant person is not registered by a local authority; and
  - (b) in relation to a house that the relevant person owns in the area of the authority, the relevant person communicates with another person with a view to entering into a lease or an occupancy arrangement such as is mentioned in subsection (1)(a),
- the relevant person shall be guilty of an offence.
- (3) Where subsection (5) applies, nothing in subsection (1) makes it an offence for a relevant person to own a house which is subject to a lease or, as the case may be, occupancy arrangement such as is mentioned in subsection (1).
- (4) Where subsection (5) applies, nothing in subsection (2) makes it an offence for a relevant person to communicate with another person with a view to entering into a lease or, as the case may be, occupancy arrangement such as is mentioned in subsection (2).
- (5) This subsection applies where—
- (a) the relevant person has made an application under section 83 to the local authority within whose area the house is situated; <sup>F27</sup> . . .
  - [<sup>F28</sup>(aa) the local authority has not, during the year which immediately preceded the making of the application, refused to enter the relevant person in pursuance of an earlier application under section 83;
  - (ab) the application is accompanied by the fee determined under section 83(2); and]
  - (b) the application has not been determined under section 84 by the authority.
- (6) It shall be a defence for a person charged with an offence under subsection (1) or (2) to show that there was a reasonable excuse for acting in the way charged.
- (7) A person guilty of an offence under subsection (1) or (2) shall be liable on summary conviction to a fine not exceeding [<sup>F29</sup>£50,000].

*Status: Point in time view as at 01/07/2012.*

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#### Textual Amendments

- F27** Word following s. 93(5)(a) repealed (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(8)(a)**, 195 (with s. 193); S.S.I. 2006/14, **art. 2**
- F28** S. 93(5)(aa)(ab) inserted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(8)(b)**, 195 (with s. 193); S.S.I. 2006/14, **art. 2**
- F29** Sum in s. 93(7) substituted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 7, 41(3)**; S.S.I. 2011/270, **art. 2**, sch. (with art. 3)

## 94 Circumstances in which no rent to be payable

- (1) Where a local authority is satisfied that the conditions in subsection (2) are met in relation to a house within its area, the authority may serve a notice under this section on the persons mentioned in subsection (5).
- (2) Those conditions are—
  - (a) that the owner of the house is a relevant person;
  - (b) that the house is subject to—
    - (i) a lease; or
    - (ii) an occupancy arrangement,
 

by virtue of which an unconnected person may use the house as a dwelling;
  - (c) that the relevant person is not registered by the local authority; and
  - (d) that, having regard to all the circumstances relating to the relevant person, it is appropriate for a notice to be served under this section.
- (3) Where a notice is served under this section, during the relevant period—
  - (a) no rent shall be payable under any lease or occupancy arrangement in respect of the house to which the notice relates;
  - (b) no other consideration shall be payable or exigible under any such lease or occupancy arrangement.
- (4) A notice served under this section shall specify—
  - (a) the name of the relevant person to whom it relates;
  - (b) the address of the house to which it relates;
  - (c) the effect of subsection (3); and
  - (d) the date on which it takes effect (which must not be earlier than the day after the day on which it is served).
- (5) Those persons are—
  - (a) the relevant person;
  - (b) if the local authority is aware of the name and address of a person who has, by virtue of a lease or an occupancy arrangement such as is mentioned in subsection (2)(b), the use of the house to which the notice relates, that person; and
  - (c) if the local authority is aware of the name and address of a person who acts for the relevant person in relation to such a lease or an occupancy arrangement, that person.
- (6) If—

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- (a) the local authority is unable to identify the relevant person, it may serve the notice under this section by publishing it in two or more newspapers (of which one shall, if practicable, be a local newspaper) circulating in the locality of the house to which the notice relates;
  - (b) the local authority is aware of the relevant person's identity but is unable to ascertain the relevant person's current address, it may serve the notice under this section by serving it on the landlord—
    - (i) at the house to which the notice relates; and
    - (ii) if it is aware of a previous address of the relevant person, at that address.
- (7) The condition mentioned in subsection (2)(c) shall not be taken to be met where—
- (a) the relevant person has made an application under section 83 to the local authority in whose area the house is situated; but
  - (b) the application has not been determined under section 84 by the authority.
- (8) Except as provided in subsection (3), nothing in this Part affects the validity of any lease or occupancy arrangement under which an unconnected person has the use as a dwelling of a house during the relevant period.
- (9) Where a local authority is aware of the name and address of a person mentioned in paragraph (b) or, as the case may be, (c) of subsection (5), failure to serve a notice on the person shall not affect the validity of the notice.
- (10) In this section, “relevant period” means the period beginning with the date specified in the notice and ending with the earlier of—
- (a) the revocation of the notice under section 95(2); or
  - (b) where the effect of the decision made on an appeal under section 97 is that rent or, as the case may be, other consideration is payable or exigible, that decision.

## **95 Notices under section 94: revocation**

- (1) Subsection (2) applies where a local authority serves a notice under section 94 in relation to a house.
- (2) If (whether on the application of a person having an interest in the case or otherwise) the local authority which served the notice is satisfied that the conditions mentioned in section 94(2) are no longer met in relation to the house, the authority shall, with effect from such day as it may specify, revoke the notice.
- (3) The revocation of a notice under subsection (2) shall not operate so as to make a person liable to pay any rent or other consideration in respect of the period during which the notice was in force.

## **96 Notification of revocation of notice**

- (1) Subsection (2) applies where a local authority revokes a notice under section 95 in relation to a house.
- (2) As soon as practicable after revoking the notice, the local authority shall give notice of the fact to—
  - (a) the relevant person;



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- (b) if the local authority is aware of the name and address of a person who has, by virtue of a lease or an occupancy arrangement such as is mentioned in section 94(2)(b), the use of the house to which the notice relates, that person; and
  - (c) if the local authority is aware of the name and address of a person who acts for the relevant person in relation to such a lease or an occupancy arrangement, that person.
- (3) Where a local authority is aware of the name and address of a person mentioned in paragraph (b) or, as the case may be, (c) of subsection (2), failure to serve a notice on the person may not be founded on in any proceedings.

## 97 Appeals

- (1) A relevant person on whom a notice under section 94 is served may, before the expiry of the period of 21 days beginning with the date specified by virtue of subsection (4) (d) of that section in the notice, appeal to the sheriff against the decision of the local authority to serve the notice.
- (2) Where, on the application of a person having an interest, a local authority makes a decision refusing to revoke a notice under section 95(2), the person may, before the expiry of the period of 21 days beginning with the day on which the decision is made, appeal to the sheriff against the decision.
- (3) Subsection (4) applies where a person appeals against a decision such as is mentioned in subsection (1) or (2).
- (4) The person shall (in addition to complying with any other requirements as to notification imposed by virtue of any enactment) give notice to the person who has the use as a dwelling of the house to which the notice relates (the “tenant”) of such matters as may be prescribed by the Scottish Ministers by regulations.
- (5) Regulations under subsection (4) may include provision for or in connection with—
  - (a) the form of the notice;
  - (b) the manner and timing of service of the notice.
- (6) If a person fails to comply with subsection (4), the court hearing the appeal may not require the tenant to pay any sums that, but for the making of the [F30 decision], would have been due by the tenant.
- (7) The Scottish Ministers may by regulations make provision for or in connection with specifying other circumstances in which the [F31 court hearing the appeal] shall not require a tenant to pay any sums that, but for the making of the [F32 decision], would have been due by the tenant.
- (8) Regulations under subsection (7) may in particular include provision—
  - (a) specifying procedures;
  - (b) imposing obligations on landlords.

### Textual Amendments

**F30** Word in s. 97(6) substituted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), ss. 176(9), 195 (with s. 193); S.S.I. 2006/14, art. 2

*Status: Point in time view as at 01/07/2012.*

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**F31** Words in s. 97(7) substituted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(10)(a)**, 195 (with s. 193); [S.S.I. 2006/14](#), **art. 2**

**F32** Word in s. 97(7) substituted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(10)(b)**, 195 (with s. 193); [S.S.I. 2006/14](#), **art. 2**

#### Commencement Information

**I3** S. 97 wholly in force at 30.4.2006; s. 97 not in force at Royal Assent see s. 145(2); s. 97 in force for specified purposes at 28.10.2004 and 9.11.2005 and for all other purposes at 30.4.2006 by [S.S.I. 2004/420](#), **arts. 2, 3**, **Schs. 1, 6** (as amended by [S.S.I. 2005/553](#), **art. 2**, **Sch.** and [S.S.I. 2006/104](#), **art. 2**)

### Grants

#### 98 Grants to local authorities

- (1) The Scottish Ministers may make a grant to a local authority in respect of costs incurred by the authority by virtue of this Part.
- (2) The payment of a grant under subsection (1) may be made subject to such conditions (including conditions as to repayment) as the Scottish Ministers may determine.

### Regulations

#### 99 Regulations about advice and assistance: Part 8

For the purposes of this Part, the Scottish Ministers may by regulations make provision requiring local authorities to provide advice and assistance of such description as may be specified in the regulations to persons of such description as may be so specified.

#### Commencement Information

**I4** S. 99 wholly in force at 30.4.2006; s. 99 not in force at Royal Assent see s. 145(2); s. 99 in force for specified purposes at 28.10.2004 and 9.11.2005 and for all other purposes at 30.4.2006 by [S.S.I. 2004/420](#), **arts. 2, 3**, **Schs. 1, 6** (as amended by [S.S.I. 2005/553](#), **art. 2**, **Sch.** and [S.S.I. 2006/104](#), **art. 2**)

### <sup>F33</sup>Guidance

#### Textual Amendments

**F33** [S. 99A](#) and cross-heading inserted (31.8.2011) by [Private Rented Housing \(Scotland\) Act 2011 \(asp 14\)](#), **ss. 10, 41(3)**; [S.S.I. 2011/270](#), **art. 2**, **sch.**

#### 99A Guidance

- (1) A local authority must have regard to any guidance issued by the Scottish Ministers about—
  - (a) the discharge of its functions under this Part; and
  - (b) matters arising in connection with the discharge of those functions.
- (2) Before issuing any such guidance the Scottish Ministers must consult—

*Status: Point in time view as at 01/07/2012.*

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- (a) local authorities; and
- (b) such other persons as they think fit.]

*Amendment of Housing (Scotland) Act 1988*

**100 Amendment of Housing (Scotland) Act 1988**

In subsection (6)(a) of section 18 of the Housing (Scotland) Act 1988 (c. 43) (orders for possession)—

- (a) the word “or”, where it thirdly occurs, shall be repealed; and
- (b) after “10” there shall be inserted “ , Ground 15 ”.

*Interpretation*

**101 Interpretation of Part 8**

(1) In this Part—

“house” means, subject to subsection (2), a building or part of a building occupied or intended to be occupied as a dwelling;

“landlord”, in relation to an occupancy arrangement, means the person who under the arrangement permits another to occupy the building or, as the case may be, the part of the building;

“occupancy arrangement” means any arrangement under which a person having the lawful right to occupy a house permits another, by way of contract or otherwise, to occupy the house or, as the case may be, part of it; but does not include a lease;

“registered”, in relation to a relevant person and a local authority, means entered by virtue of section 84(2)(a) in the register maintained by the authority under section 82(1); and cognate expressions shall be construed accordingly;

“relevant person” has the meaning given by section 83(8);

“unconnected person” has the meaning given by section 83(8); and

“use as a dwelling” shall be construed in accordance with section 83(6).

[<sup>F34</sup>(1A) This subsection applies where—

- (a) a person other than the owner of a house is the landlord in relation to a lease or occupancy arrangement by virtue of which another person uses the house as a dwelling; and
- (b) that other person is not a member of the family of the owner or of the person who is the landlord.

(1B) Where subsection (1A) applies, both—

- (a) the person who is the landlord; and
- (b) any other person who acts for that person in relation to the lease or occupancy arrangement,

shall, for the purposes of this Part, be treated as having been appointed by the owner to act for, and as acting for, the owner in relation to a lease or occupancy arrangement by virtue of which a person who is not a member of the family of the owner may use the house as a dwelling.]

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- (2) If two or more dwellings within a building share the same toilet, washing or cooking facilities, then those dwellings shall be deemed to be a single house for the purposes of this Part.
- (3) For the purposes of this Part, any reference to a person’s being a member of another’s family shall be construed in accordance with section 108(1) and (2) of the Housing (Scotland) Act 2001 (asp 10).
- (4) For the purposes of this Part, a person engages in antisocial behaviour if the person—
  - (a) acts in a manner that causes or is likely to cause alarm, distress, nuisance or annoyance; or
  - (b) pursues a course of conduct that causes or is likely to cause alarm, distress, nuisance or annoyance,to a person residing in, visiting or otherwise engaging in lawful activity at, or in the locality of, a house; and “antisocial behaviour” shall be construed accordingly.

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**Textual Amendments**

**F34** S. 101(1A)(1B) inserted (29.1.2006) by [Housing \(Scotland\) Act 2006 \(asp 1\)](#), **ss. 176(11)**, 195 (with s. 193); S.S.I. 2006/14, **art. 2**

**Status:**

Point in time view as at 01/07/2012.

**Changes to legislation:**

Antisocial Behaviour etc. (Scotland) Act 2004, Part 8 is up to date with all changes known to be in force on or before 27 February 2024. 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.