

EXECUTIVE NOTE

DRAFT : THE ANTISOCIAL BEHAVIOUR NOTICES (HOUSES USED FOR HOLIDAY PURPOSES) (SCOTLAND) ORDER 2011

The above instrument will be made in exercise of the powers conferred by section 68(6) of the Antisocial Behaviour etc. (Scotland) Act 2004. The instrument is subject to affirmative resolution procedure.

Policy Objectives

Some Scottish communities have been reporting problems with persistent antisocial behaviour associated with short term holiday lets, so-called 'party flats' which are frequently let out for e.g. stag or hen weekends. Nearby residents complain, in particular, of issues of late night noise and party making from such properties. They are not controlled by the system of landlord registration, nor are they licensed as Housing in Multiple Occupation (HMO). These systems are not designed to regulate holiday lets and would not be an effective route for tackling such complaints.

Part 7 of the Antisocial Behaviour etc. (Scotland) Act 2004 provides powers for a local authority to serve an antisocial behaviour notice on a private landlord where an occupant of, or visitor to, a house engages in antisocial behaviour at or in the locality of the house. The notice specifies actions the landlord must take to address the antisocial behaviour. Such a notice can be used at present where a property is being used for holiday purposes, but local authorities have found that the provisions of Part 7 do not fit well with the action they would like to take, largely because of the transient nature of the occupation that causes the problems.

This instrument uses powers to modify Part 7, to assist local authorities in taking action to address complaints. It creates a different type of antisocial behaviour notice. Rather than focusing on the behaviour of a particular tenant or occupier, the notice will describe the antisocial behaviour that has taken place and require a landlord to take action to deal with anticipated future antisocial behaviour. These actions would be determined by the local authority and could include, for example, controls on numbers of persons who can occupy a property. A landlord who does not carry out the actions in the notice is guilty of an offence (carrying a level 5 fine, up to £5,000) and the local authority may also apply to the sheriff court for an order that no rent is payable or even for an order transferring management control of the property to the local authority. The local authority may also take steps to deal with the behaviour described in the notice at the landlord's expense.

Although this measure will potentially affect the tourism sector, we do not envisage that there would be any additional costs upon businesses, and local authority enforcement action would only be triggered where there was repeated antisocial behaviour by occupiers of, or visitors to, premises. This approach will allow local authorities to target their action against the small minority of premises that are responsible for persistent antisocial behaviour.

Consultation

Part 7 of the Antisocial Behaviour etc. (Scotland) Act 2004 allows Scottish Ministers to make by order such modifications to the Part as they consider necessary or expedient for the purpose of applying the Part in relation to relevant houses which are used for holiday purposes.

The issue of 'party flats' is a long standing one, Public Petition PE1249 by Stanley Player was lodged in April 2009 calling on the Scottish Parliament to urge the Scottish Government to introduce a statutory duty on landlords offering short-term holiday and party flats leases to register the property as such and comply with all necessary House in Multiple Occupation, noise, safety and environmental regulations. In considering the petition the Committee engaged with the petitioner and also drew upon submissions from the Scottish Government, local authorities, the police and concerned MSPs. Chief Constables reported that their current legislative powers under the Antisocial Behaviour etc. (Scotland) Act 2004 and the common law were sufficient to address concerns, from a policing perspective.

The Scottish Government has engaged with partners at a local and national level to assess the nature and scale of the problems relating to short term and holiday lets, and to ask whether existing local authority powers are adequate to allow them also to provide a solution. All agencies agreed, that while seriously affecting some individuals, this is a relatively small scale problem. For example, in the apparently worst affected area – Edinburgh – Lothian and Borders Police and City of Edinburgh Council indicate that they typically receive around 11,000 noise complaints every year. From 1 May 2008 to 30 April 2009, 41 complaints were received which may relate to 'party flats' or similar, of these, 22 complaints relate to only one property, and the only formal action taken in fact relates to a previous student tenancy.

This Order therefore follows on from the extensive and effective engagement carried out by the Public Petitions Committee over a number of years and the evidence that they have gathered. Further it has been prepared in close co-operation with relevant officials from City of Edinburgh Council.

Finally the Minister for Housing and Communities has written to all Scottish Community Safety Partnerships, the Scottish Tourism Forum, and VisitScotland to advise them of these proposals. He has also continued to update MSPs who have presented local constituents concerns on this issue over a number of years.

Impact Assessments

An equality impact assessment has been completed on The Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 within the Scottish Government EQIA database. There are no equality impact issues.

Financial Effects

Alex Neil, Minister for Housing and Communities confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Housing, Regeneration and Commonwealth Games Directorate
20 January 2011