



# Housing (Scotland) Act 1987

## 1987 CHAPTER 26

### PART VIII

#### HOUSES IN MULTIPLE OCCUPATION

##### *Control orders*

#### **178 Making of control order**

- (1) A local authority may make a control order in respect of a house in their district which, or a part of which, is let in lodgings, or which is occupied by members of more than one family if—
  - (a) a notice has been served in respect of the house under section 160 or 161 (notices requiring the execution of works),
  - (b) a direction has been given in respect of the house under section 166 (direction limiting number of occupants),
  - (c) an order under section 157 is in force in respect of the house (order applying management code), or
  - (d) it appears to the local authority that the state or condition of the house is such as to call for the taking of action under any of those sections,and if it appears to the local authority that the living conditions in the house are such that it is necessary to make the control order in order to protect the safety, welfare or health of persons living in the house.
- (2) A local authority may exclude from the provisions of a control order any part of the house which, when the control order comes into force, is occupied by a person who has an estate or interest in the whole of the house, and, except where the context otherwise requires, references in this Part to the house do not include references to any part of the house so excluded from the provisions of the control order.
- (3) A control order shall come into force when it is made, and as soon as practicable after making a control order the local authority shall, in exercise of the power conferred in the following provisions of this Part and having regard to the duties imposed on

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them by the said provisions, enter on the premises and take all such immediate steps as appear to them to be required to protect the safety, welfare or health of persons living in the house.

- (4) As soon as practicable after making a control order the local authority shall—
- (a) post a copy of the control order, together with a notice as described in subsection (5), in some position in the house where it is accessible to those living in the house; and
  - (b) serve a copy of the control order, together with such a notice, on every person who, to the knowledge of the local authority—
    - (i) was, immediately before the coming into force of the control order, a person managing the house or a person having control of the house, or
    - (ii) is an owner or lessee of the house or a person holding a heritable security over the house.
- (5) The notice referred to in subsection (4) shall set out the effect of the control order in general terms, referring to the rights of appeal against control orders conferred by this Part and stating the principal grounds on which the local authority consider it necessary to make a control order.
- (6) As soon as practicable after making a control order the local authority shall cause the control order to be recorded in the General Register of Sasines or registered in the Land Register, as the case may be.

## **179 General effect of control order**

- (1) While a control order is in force the local authority—
- (a) have the right to possession of the premises, and
  - (b) have the right to do, and to authorise others to do, in relation to the premises anything which any person having an estate or interest in the premises would, but for the making of the control order, be entitled to do, without incurring any liability to any such person except as expressly provided by this Part.
- (2) Subject to subsection (3), the local authority may, notwithstanding that they do not, under this section, have an interest amounting to an estate in the premises, create an interest in the premises which, as near as may be, has the incidents of a lease and, subject to the provisions of section (4) and to any other express provision of this Part, any enactment or rule of law relating to landlords and tenants or leases shall apply in relation to any interest created under this section as if the local authority were the owner of the premises.
- (3) Subject to the provisions of paragraphs 5(6) and 6(1) of Schedule 11, the local authority shall not, in exercise of the power conferred by this section, create any right in the nature of a lease or licence which is for a fixed term exceeding one month, on which is terminable by notice to quit (or an equivalent notice) of more than 4 weeks:
- Provided that this subsection shall not apply to a right created with the consent in writing of the person or persons who would have power to create that right if the control order were not in force.
- (4) On the coming into force of a control order any order under section 157, and any notice or direction under sections 160, 161, 162 or 166, shall cease to have effect as respects the house to which the control order applies, but without prejudice to any criminal

liability incurred before the coming into force of the control order, or to the right of the local authority to recover any expenses incurred in carrying out any works.

- (5) References in this Act or in any other enactment to housing accommodation provided or managed by a local authority shall not include references to any house which is subject to a control order, but this subsection shall not be taken as restricting the powers of acquiring land by agreement or compulsorily conferred on local authorities by Part I.

### **180 Effect of control order on persons occupying house**

- (1) This section applies to a person who at the time a control order comes into force—
- (a) is occupying any part of the house, and
  - (b) does not have an estate or interest in the whole of the house.
- (2) Section 179 (general effect of control order) does not affect the rights or liabilities of such a person under any lease, licence or agreement, whether in writing or not, under which that person is occupying any part of the house at the time when the control order comes into force, and—
- (a) any such lease, licence or agreement has effect, while the control order is in force, as if the local authority were substituted in it for any party to it who has an estate or interest in the house and who is not a person to whom this section applies; and
  - (b) any such lease continues to have effect as near as may be as a lease notwithstanding that the rights of the local authority, as substituted for the lessor, do not amount to an estate in the premises.
- (3) Subject to the provisions of subsection (4) and to any other express provision of this Part, any enactment or rule of law relating to landlords and tenants or leases shall apply in relation to any lease to which the local authority become a party under this section as if the authority were the owner of the premises.
- (4) Section 5 of the Rent (Scotland) Act 1984 (which excludes lettings by local authorities from being protected tenancies within the meaning of the Act) shall not apply to any lease or agreement under which a person to whom this section applies is occupying any part of the house, and if immediately before the control order came into force any person to whom this section applies was occupying part of the house under a protected or statutory tenancy, within the meaning of the Rent (Scotland) Act 1984, nothing in this Part relating to control orders shall prevent the continuance of that protected or statutory tenancy nor affect the continued operation of that Act in relation to that protected or statutory tenancy after the coming into force of the control order.
- (5) So much of the regulations made under section 156 as imposes duties on persons who live in a house to which the regulations apply (regulations prescribing management code) also applies to persons who live in a house as respects which a control order is in force.
- (6) Without prejudice to the rights conferred on the local authority by section 179, the authority and any person authorised in writing by them, shall have the right at all reasonable times, as against any person having an estate or interest in a house which is subject to a control order, to enter any part of the house for the purpose of—
- (a) survey and examination, and
  - (b) carrying out any works.

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- (7) The rights conferred by subsection (6) shall, so far as reasonably required for the purpose of survey and examination of a part of a house subject to a control order, or for the purpose of carrying out any works in that part of a house, be exercisable as respects the part of the house which, by virtue of section 178(2), is not subject to the control order.

### **181 Effect of control order in relation to furniture in furnished lettings**

- (1) Subject to this section, if on the date on which a control order comes into force there is any furniture in the house which a resident in the house has the right to use in consideration of periodical payments to the dispossessed proprietor (whether included in the rent payable by the resident or not), the right to possession of the furniture shall, on that date and as against all persons other than the resident, vest in the local authority and remain vested in the authority while the control order remains in force.
- (2) The local authority may, on the application in writing of the person owning any furniture to which subsection (1) applies, by notice served on that person not less than 2 weeks before the notice takes effect, renounce the right to possession of the furniture conferred by subsection (1).
- (3) In respect of the period during which the local authority have the right to possession of any furniture in pursuance of subsection (1), the authority shall be liable to pay to the dispossessed proprietor compensation in respect of the use of any furniture the right to possession of which vests under that subsection at such rate as the parties may agree or as may be determined by the rent assessment committee constituted under section 44 of the Rent (Scotland) Act 1984 or under any corresponding enactment repealed by that Act for the area in which the house is situated.
- (4) If the local authority's right to possession of any furniture conferred by subsection (1) is a right exercisable as against more than one person interested in the furniture, any such person may apply to the sheriff for an adjustment of the rights and liabilities of those persons as regards the furniture, and the sheriff may make an order for any such adjustment of rights and liabilities either unconditionally or subject to such terms and conditions (including terms or conditions with respect to the payment of money by any party to the proceedings to any other party to the proceedings by way of compensation, damages or otherwise) as he thinks just and equitable.
- (5) Compensation due under this section—
- (a) shall be payable by quarterly instalments, the first instalment being payable 3 months after the date when the control order comes into force;
  - (b) is to be considered as accruing due from day to day and shall be apportionable in respect of time accordingly.
- (6) In this Part "dispossessed proprietor" means the person by whom the rents or other periodical payments to which a local authority become entitled on the coming into force of a control order would have been receivable but for the making of the control order, and the successors in title of that person; and in this section "furniture" includes fittings and other articles.

### **182 General duties of local authority when control order in force**

- (1) The local authority shall—

- (a) exercise the powers conferred on them by a control order so as to maintain proper standards of management in the house,
  - (b) take such action as is needed to remedy all the matters which they would have considered it necessary to remedy by the taking of action under any other provision of this Part if they had not made a control order.
- (2) The local authority may fit out, furnish and supply any house subject to a control order with such furniture, fittings and conveniences as appear to them to be required.
- (3) The local authority shall make reasonable provision for insurance of any premises subject to a control order, including any part of the premises which, by virtue of section 178(2), is excluded from the provisions of the control order, against destruction or damage by fire or other cause, and premiums paid for the insurance of the premises shall, for the purposes of the provisions of this Part, be treated as expenditure incurred by the local authority in respect of the premises.
- (4) The local authority shall keep full accounts of their income and expenditure in respect of a house which is subject to a control order, and afford to the dispossessed proprietor, or any other person having an estate or interest in the house, all reasonable facilities for inspecting, taking copies of and verifying those accounts.
- (5) While a control order is in force the local authority shall afford to the dispossessed proprietor, or any other person having an estate or interest in the house, any reasonable facilities requested by him for inspecting and examining the house.

### **183 Compensation payable to dispossessed proprietor**

- (1) The local authority shall be liable to pay the dispossessed proprietor compensation in respect of the period during which the control order is in force at an annual rate of an amount equal to one half of the gross annual value for rating purposes of the house as shown in the valuation roll on the date when the control order comes into force.
- (2) Compensation due under this section—
  - (a) shall be payable by quarterly instalments, the first instalment being payable 3 months after the date when the control order comes into force;
  - (b) is to be considered as accruing due from day to day and shall be apportionable in respect of time accordingly.
- (3) If at the time when compensation under this section accrues due the estate or interest of the dispossessed proprietor is subject to any heritable security or charge, the compensation shall be deemed to be comprised in that heritable security or charge.
- (4) For the purposes of the references in this section to the gross annual value of a house—
  - (a) where after the date on which the control order comes into force the valuation roll is altered so as to vary the gross annual value of the house or of the lands and heritages of which house forms part, and the alteration has effect from a date not later than the date on which the control order comes into force, compensation shall be payable under this section as if the gross annual value of the house or lands and heritages shown in the valuation roll on the date when the control order came into force had been the amount of the value shown on the roll as altered; and
  - (b) if the house forms part only of any lands and heritages, such proportion of the gross annual value shown in the valuation roll for those lands and heritages as

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may be agreed in writing between the local authority and the person claiming the compensation shall be the gross annual value of the house;  
and any dispute arising under paragraph (b) shall be determined by the sheriff on the application of either party.

- (5) If different persons are the dispossessed proprietors of different parts of any house, compensation payable under this section shall be apportioned between them in such manner as they may agree (or as may, in default of agreement, be determined by the sheriff on the application of any of such persons) according to the proportions of the gross annual value of the house properly attributable to the parts of the house in which they are respectively interested.
- (6) In the application of this section to any lands and heritages whose net annual value is ascertained under subsection (8) of section 6 of the Valuation and Rating (Scotland) Act 1956 ( and for which there is therefore no gross annual value shown in the valuation roll)—
  - (a) in subsection (1), for the words "one half of the gross" there shall be substituted the words "0.625 of the net", and
  - (b) in each of subsections (4) and (5), for the word "gross", whenever it occurs, there shall be substituted the word "net".

#### **184 Duty to prepare management scheme**

- (1) After a control order has been made, the local authority shall prepare a management scheme and shall, not later than 8 weeks after the date on which the control order comes into force, serve a copy of the scheme on—
  - (a) every person who is to the knowledge of the authority—
    - (i) a dispossessed proprietor, or
    - (ii) an owner or lessee of the house, or
a person holding a heritable security over the house, and
  - (b) on any other person on whom the local authority served a copy of the control order.
- (2) Part I of Schedule 11 has effect with respect to the matters to be provided for in a management scheme and for related matters.
- (3) This section does not affect the powers conferred on a local authority by section 179 and, accordingly, a local authority may carry out any works in a house which is subject to a control order whether or not particulars of those works have been included in a management scheme.

#### **185 Power of sheriff to modify or determine lease**

- (1) Either the lessor or the lessee under any lease of premises which consist of or comprise a house which is subject to a control order, other than a lease to which section 180(2) applies, may apply to the sheriff for an order under this section.
- (2) On any such application, the sheriff may make an order for the determination of the lease, or for its variation, and, in either case, either unconditionally or subject to such terms and conditions or subject to such terms and conditions (including terms or conditions with respect to the payment of money by any party to the proceedings to any other party to the proceedings by way of compensation, damages or otherwise) as the sheriff may think just and equitable to impose, regard being had to the respective

rights, obligations and liabilities of the parties under the lease and to the other circumstances of the case.

(3) If on any such application the sheriff is satisfied that—

- (a) if the lease is determined and control order is revoked the lessor will be in a position, and intends, to take all such action to remedy the condition of the house as the local authority consider would have to be taken in pursuance of the powers conferred on them under this Part (other than those relating to control orders); and
- (b) the local authority intend, if the lease is determined, to revoke the control order,

the sheriff shall exercise the jurisdiction conferred by this section so as to determine the lease.