

*Status: Point in time view as at 01/12/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Housing (Scotland) Act 2006, SCHEDULE 5. (See end of Document for details)*

## SCHEDULE 5

*(introduced by section 150)*

### HMO AMENITY NOTICES: ENFORCEMENT ETC.

#### *Carrying out of work by local authority*

- 1 (1) If the owner of living accommodation fails to comply with an HMO amenity notice, the local authority may carry out the work required by the notice.
- (2) The local authority may not carry out any work authorised by sub-paragraph (1) unless—
- (a) the period within which the work requires to be carried out has ended, or
  - (b) the owner has given notice to the local authority—
    - (i) of being unable to comply with the HMO amenity notice because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
    - (ii) stating that the owner considers that carrying out the work required is likely to endanger any person.

#### **Commencement Information**

**11** [Sch. 5 para. 1](#) in force at 31.8.2011 by [S.S.I. 2010/159](#), [art. 3](#)

#### *Evacuation*

- 2 (1) Where the local authority—
- (a) is authorised by this schedule to carry out work in living accommodation, and
  - (b) considers that doing so is likely to endanger the occupant of any land or premises,
- it must require that occupant to move from the land or premises.
- (2) A requirement under sub-paragraph (1) must be made by serving a notice on the occupant specifying—
- (a) by reference to the work which the local authority is authorised to carry out, the reason why the occupant is required to move, and
  - (b) the period, beginning not less than 14 days after the date on which the notice is served, within which the occupant must move.
- (3) A requirement under sub-paragraph (1) ceases to have effect if—
- (a) the sheriff refuses to grant a warrant under paragraph 3(4) in relation to it, or
  - (b) the work concerned is completed.

#### **Commencement Information**

**12** [Sch. 5 para. 2](#) in force at 31.8.2011 by [S.S.I. 2010/159](#), [art. 3](#)

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### *Warrants for ejection*

- 3 (1) Where an occupant has not complied with a requirement under paragraph 2, the local authority may, by summary application, apply to the sheriff for a warrant for the ejection of the occupant from the land or premises in question.
- (2) No such application may be made before the expiry of the period specified in the notice served under paragraph 2(2).
- (3) On such an application, the sheriff may require the service of a further notice on the occupant.
- (4) The sheriff may, if satisfied that the occupant is likely to be endangered by the carrying out of the work concerned, grant a warrant of ejection requiring the occupant to move from the land or premises in question, within such period as the sheriff may determine, until the work is completed.
- (5) Such a warrant—
- (a) may be made subject to such other conditions (including conditions with respect to payment of rent) as the sheriff thinks just and equitable, but
  - (b) where a further notice is served under sub-paragraph (3), may not require the occupant to move before the day which is 14 days after service of that notice.
- (6) No such warrant may require a person to move from any living accommodation which is that person's only or main residence unless the sheriff is satisfied that suitable alternative living accommodation on reasonable terms will be available to that person.
- (7) The reference in sub-paragraph (6) to suitable alternative living accommodation is a reference to accommodation which is suitable for occupation by the resident and any other person whose only or main residence would, but for the location of that other person's place of work or of any educational institution which the person attends, be the accommodation concerned.
- (8) The sheriff's decision on the application is final.
- (9) Refusal by the sheriff to grant any warrant sought under this paragraph does not affect the validity of the HMO amenity notice in relation to which the warrant was sought.
- (10) Nothing in [<sup>F1</sup>an enactment mentioned in sub-paragraph (11)] restricts the power of a local authority to apply for, or the power of the sheriff to grant, a warrant under sub-paragraph (4).
- [<sup>F2</sup>(11) The enactments referred to in sub-paragraph (10) are—
- (a) the Rent (Scotland) Act 1984,
  - (b) Part 2 of the Housing (Scotland) Act 1988,
  - (c) the Private Housing (Tenancies) (Scotland) Act 2016.]

#### **Textual Amendments**

- F1** Words in sch. 5 para. 3(10) substituted (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#) (asp 19), s. 79(2), [sch. 4 para. 9\(3\)\(a\)](#); S.S.I. 2017/346, reg. 2, sch.
- F2** Sch. 5 para. 3(11) inserted (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#) (asp 19), s. 79(2), [sch. 4 para. 9\(3\)\(b\)](#); S.S.I. 2017/346, reg. 2, sch.

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

- C1** Sch. 5 para. 3(1) power to disapply conferred (20.11.2014) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), [ss. 20\(2\)\(a\)\(iv\)](#), 104(3); [S.S.I. 2014/264](#), [art. 2](#), Sch.

**Commencement Information**

- I3** Sch. 5 para. 3 in force at 31.8.2011 by [S.S.I. 2010/159](#), [art. 3](#)

*Unlawful occupation etc.*

- 4 (1) A person commits an offence if the person, knowing that a requirement under paragraph 2(1) has effect in relation to any land or premises—
- (a) occupies it or them, or
  - (b) permits such occupation.
- (2) A person guilty of an offence under sub-paragraph (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.
- (3) It is not an offence under sub-paragraph (1)—
- (a) for a person to continue to occupy any land or premises which that person occupied on the day on which the requirement under paragraph 2(1) is made, or
  - (b) to permit such a person to continue occupation.

**Commencement Information**

- I4** [Sch. 5 para. 4](#) in force at 31.8.2011 by [S.S.I. 2010/159](#), [art. 3](#)

*Listed buildings etc.*

- 5 (1) This paragraph applies to a building which is—
- (a) included in a list of buildings of special architectural or historic interest, being a list compiled or approved under section 1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c. 9) (“the 1997 Act”),
  - (b) subject to a building preservation notice under section 3 of the 1997 Act, or
  - (c) one to which section 66 of the 1997 Act (control of demolition in conservation areas) applies.
- (2) The local authority must, before it carries out any work in any living accommodation which is, or which forms part of, a building to which this paragraph applies in pursuance of paragraph 1, consult—
- [<sup>F3</sup>(a) Historic Environment Scotland,]
  - (b) the planning authority (where the planning authority is not the local authority), and
  - (c) such other persons as the local authority thinks fit.
- (3) Any requirement under section 146(2) to carry out work in or in relation to a building to which this paragraph applies has effect only in so far as it is not inconsistent with any provision of the 1997 Act.

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**Textual Amendments**

- F3** Sch. 5 para. 5(2)(a) substituted (1.10.2015) by [The Historic Environment Scotland Act 2014 \(Ancillary Provision\) Order 2015 \(S.S.I. 2015/271\)](#), arts. 1, **6(1)** (with art. 6(2))

**Commencement Information**

- I5** Sch. 5 para. 5 in force at 31.8.2011 by [S.S.I. 2010/159](#), **art. 3**

*Recovery of expenses etc.*

- 6 (1) The local authority may recover any expenses it incurs in carrying out any work authorised by this schedule from the owner of the living accommodation concerned.
- (2) Sub-paragraph (1) entitles the local authority to recover—
- (a) any administrative expenses incurred by it in connection with the act to which the expenses relate or, as the case may be, with the making of the payment, and
  - (b) interest, at such reasonable rate as it may determine, from the date when a demand for payment is served until the whole amount is paid.
- (3) Notice of any decision to demand recovery of expenses under this paragraph must be given in accordance with section 158.
- (4) That notice may include, in addition to the matters specified in section 158(12)(a) and (b), a declaration by the local authority that any sums recoverable under this paragraph are to be payable by instalments.

**Commencement Information**

- I6** Sch. 5 para. 6 in force at 31.8.2011 by [S.S.I. 2010/159](#), **art. 3**

*Certification*

- 7 (1) A person who is required to carry out work by an HMO amenity notice may apply to the local authority for certification that the work has been completed.
- (2) An application under this paragraph is not competent unless the applicant has paid any expenses demanded by the local authority under paragraph 6 in relation to that work.
- (3) The local authority must grant the certificate applied for if satisfied that the work required by the notice has been completed.
- (4) Notice of any decision to refuse such an application must be given in accordance with section 158.

**Commencement Information**

- I7** Sch. 5 para. 7 in force at 31.8.2011 by [S.S.I. 2010/159](#), **art. 3**

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### *Registration*

- 8 The local authority must keep a written record of each HMO amenity notice which relates to living accommodation which is not a building.

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#### **Commencement Information**

**18** Sch. 5 para. 8 in force at 31.8.2011 by S.S.I. 2010/159, art. 3

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