

Status: Point in time view as at 28/11/2004.

Changes to legislation: Housing (Scotland) Act 1987, PART II is up to date with all changes known to be in force on or before 19 June 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. (See end of Document for details)

SCHEDULES

SCHEDULE 11

HOUSES IN MULTIPLE OCCUPATION: CONTROL ORDERS

PART II

APPEAL AND REVIEW

- 3 (1) Within 6 weeks from the date on which a copy of the relevant scheme is served in accordance with section 184(1), any person having an estate or interest in the house may appeal to the sheriff against the scheme on all or any of the following grounds, that is to say—
- (a) that having regard to the condition of the house and to the other circumstances, any of the works of which particulars are given in the scheme (whether already carried out or not) are unreasonable in character or extent, or are unnecessary;
 - (b) that any of the works do not involve expenditure which ought to be regarded as capital expenditure;
 - (c) that the number of individuals or households living in the house, as specified by the local authority in the scheme, is unreasonably low;
 - (d) that the estimate of the surpluses on revenue account in the scheme is unduly low on account of some assumptions, whether as to rents charged by the local authority or otherwise, made by the authority in arriving at the estimate as to matters, which are within the control of the authority.
- (2) On an appeal under this paragraph the sheriff may, as he thinks fit, confirm or vary the scheme.
- (3) If an appeal has been brought against the control order and the sheriff decides on the appeal to revoke the control order, the sheriff shall not proceed with any appeal against the scheme relating to that control order.
- (4) Proceedings on an appeal against a scheme shall, so far as practicable, be combined with proceedings on any appeal against the control order to which the scheme relates.
- 4 (1) Without prejudice to the right of appeal against a scheme conferred by paragraph 3, either the local authority or any person having ^[F1]a right] or interest in the house to which the scheme relates may at any time apply to the sheriff for a review of the estimate of the surpluses on revenue account in the scheme.
- (2) On an application under this paragraph, the sheriff may, as he thinks fit, confirm or vary the scheme, but the sheriff shall not on such an application vary the scheme so as to affect the provisions thereof relating to the works.
- (3) On an application under this paragraph the surpluses on revenue account as settled by the scheme may be varied for all or any periods including past periods, and the sheriff shall take into consideration whether in the period since the control order

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came into force the actual balances mentioned in paragraph 1(2)(c) have exceeded, or been less than, the surpluses on revenue account as settled by the scheme as for the time being in force, and shall also take into consideration whether there has been any change in circumstances such that the number of persons or households who should live in the house, or the net amount of the rents and other payments receivable by the local authority from persons occupying the house, ought to be greater or less than was originally estimated.

Textual Amendments

F1 Words in [Sch. 11 para. 4\(1\)](#) substituted (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), [sch. 12 para. 48\(16\)\(a\)](#) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

- 5 (1) If a local authority refuse an application to revoke a control order under section 188(4) or do not within 42 days from the making of the application or within such further period as the applicant may in writing allow, inform the applicant of their decision on the application, the applicant may appeal to the sheriff, and the sheriff may revoke the control order:

Provided that, if an appeal has been brought under this paragraph then, except with the leave of the sheriff, another appeal shall not be so brought, whether by the same or a different appellant, in respect of the same control order until the expiry of a period of 6 months beginning with the final determination of the first-mentioned appeal.

- (2) If on an appeal under this paragraph the local authority represent to the sheriff that revocation of the control order would unreasonably delay completion of any works of which particulars were given in the relevant scheme under Part VIII and which the authority have begun to carry out, the sheriff shall take the representations into account and may, if he thinks fit, revoke the control order as from the time when the works are completed.
- (3) If an appellant under this paragraph has [^{F2}a right] or interest in the house which, apart from the rights conferred on the local authority by the provisions of Part VIII relating to control orders, and apart from the rights of persons occupying any part of the house, would give him the right to possession of the house, and [^{F2}that right] or interest was, when the control order came into force, subject to a lease for a term of years which has subsequently expired, then, if that person satisfies the sheriff that he is in a position and intends, if the control order is revoked, to demolish or reconstruct the house or to carry out substantial work of construction on the site of the house, the sheriff shall revoke the control order.
- (4) Where in a case falling under sub-paragraph (3), the sheriff is not satisfied as therein mentioned, but would be so satisfied if the date of revocation of the control order were a date later than the date of the hearing of the appeal, the sheriff shall, if the appellant so requires, make an order for the revocation of the control order on that later date.
- (5) Where the sheriff on an appeal under sub-paragraph (1) decides to revoke a control order in respect of a house from the dispossessed proprietor of which any amount will be recoverable by virtue of Part VIII, the sheriff may make it a condition of the revocation of the control order that the appellant first pays off to the local authority that amount, or such part of that amount, as the sheriff may specify.

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- (6) Where the sheriff on an appeal under sub-paragraph (1) revokes a control order, he may authorise the local authority to create under section 179(2) interests which expire, or which the dispossessed proprietor can terminate, within 6 months from the time when the control order ceases to have effect being interests which, notwithstanding subsection (3) of that section, are for a fixed term exceeding one month, or are terminable by notice to quit (or an equivalent notice) of more than 4 weeks.
- (7) Where a control order is revoked by the local authority under section 188(2), or by the sheriff on an appeal under sub-paragraph (1), the local authority shall as soon as practicable thereafter cause to be recorded in the General Register of Sasines or registered in the Land Register, as the case may be, the revocation order made by them or, as the case may be, a notice stating that the control has been revoked by the sheriff as aforesaid.

Textual Amendments

F2 Words in Sch. 11 para. 5(3) substituted (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), sch. 12 para. 48(16)(b) (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

- 6 (1) A sheriff who revokes a control order on appeal may authorise the local authority to create under section 179(2) interests which expire, or which the dispossessed proprietor can terminate, within 6 months from the time when the control order ceases to have effect, being interests which, notwithstanding subsection (3) of section 179, are for a fixed term exceeding one month, or are terminable by notice to quit (or an equivalent notice) of more than 4 weeks.
- (2) The sheriff shall take into consideration whether the state or condition of the house is such that any action ought to be taken by the local authority under the provisions of Part VIII (other than those relating to control orders) and shall take all or any of the following steps accordingly, that is to say—
- (a) approve the making of an order under section 157;
 - (b) approve the giving of a notice under section 160 or section 161 or section 162; or
 - (c) approve the giving of a direction under section 166;
- and no appeal against any order or notice so approved shall lie under section 158 or section 163.
- (3) In respect of the period from the coming into force of the control order until its revocation by the sheriff, the local authority shall, subject to this paragraph, be liable to pay to the dispossessed proprietor the balances which from time to time accrued to the authority out of the net amount of the rent and other payments received by the authority while the control order was in force from persons occupying the house after deducting—
- (a) compensation payable by the local authority under section 181 and section 183, and
 - (b) all expenditure, other than capital expenditure, incurred by the local authority in respect of the house while the control order was in force, together with the appropriate establishment charges.
- (4) If the sheriff is satisfied that the balances which the local authority are, under sub-paragraph (3), liable to pay to the dispossessed proprietor are unduly low for

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any reason within the control of the authority, having regard to the desirability of observing the standards of management contained in regulations made under section 156 and to the other standards which the authority ought to observe as to the number of persons living in the house and the rents which they ought to charge, the sheriff shall direct that, for the purposes of the authority's liability to the dispossessed proprietor under this paragraph, the balances under sub-paragraph (3) shall be deemed to be such greater sums as the sheriff may direct:

Provided that the sheriff shall not under this sub-paragraph give a direction which will afford to the dispossessed proprietor a sum greater than what he may, in the opinion of the sheriff, have lost by the making of the control order.

- (5) If different persons are dispossessed proprietors in relation to different parts of the house, sums payable under this paragraph by the local authority shall be apportioned between them in the manner provided by section 183(5).
- (6) For the purpose of enabling the local authority to recover capital expenditure incurred by them in carrying out works in the house in the period before the control order is revoked, the authority may on the hearing of the appeal apply to the sheriff for approval of those works on the ground that they were works which, if a control order had not been in force, the authority could have required some other person to carry out under the foregoing provisions of Part VIII (other than those relating to control orders), or under any other enactment relating to housing or public health, and that the carrying out of the works could not be postponed until after the determination of the appeal because the works were urgently required for the sake of the safety, welfare or health of the persons living in the house, or other persons.
- (7) Any expenditure reasonably incurred by the local authority in carrying out works approved under sub-paragraph (6)—
 - (a) may be deducted by the local authority out of the balances which the authority are, under sub-paragraph (3), liable to pay to the dispossessed proprietor;
 - (b) so far as not so deducted, shall be recoverable from the dispossessed proprietor.
- (8) Any expenditure recoverable by the local authority from the dispossessed proprietor by virtue of sub-paragraph (7)(b) shall carry interest at such reasonable rate as the local authority may determine from the date when the control order is revoked; and sub-paragraphs (6) to (8) of paragraph 2 shall, with any necessary modifications, apply for the purpose of enabling the authority to recover any such expenditure.

Powers of court to restrict recovery of possession

- 7 (1) The provisions of this paragraph apply where—
 - (a) a local authority have made an order under Part I of Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, as applied to the acquisition of land under this Act (other than section 121) authorising the compulsory acquisition of a house which is let in lodgings or which is occupied by members of more than one family; and
 - (b) any premises forming part of that house are at a time in the relevant period occupied by a person (in this paragraph referred to as “the former lessee”) who was the lessee of those premises when the order was made or became the lessee thereof after the order was made, but who is no longer the lessee thereof.

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- (2) In this paragraph “the relevant period” means the period beginning with the making of that order and ending on the third anniversary of the date on which the order becomes operative or, if at a time before the expiration of the said period, the Secretary of State notifies the local authority that he declines to confirm the order, or the order is quashed by a court, the period beginning with the making of the order and ending with that time.
- (3) Subject to the provisions of this paragraph, in proceedings in any court of competent jurisdiction instituted during the relevant period to enforce against the former lessee the right to recover possession of the premises the court may if it thinks fit—
 - (a) suspend the execution of any decree of removing or warrant of ejection or other like order made in the proceedings for such period, not extending beyond the end of the period of three years beginning on the relevant date and subject to such conditions, if any, as the court thinks fit; and
 - (b) from time to time vary the period of suspension (but not so as to enlarge that period beyond the end of the said period of 3 years, or terminate it), and vary the terms of the said decree, warrant or other like order in other respects.
- (4) For the purposes of sub-paragraph (3), “the relevant date” means—
 - (a) if the compulsory purchase order concerned has become operative before the date on which the court exercises its power under that sub-paragraph, the date on which the order became operative; and
 - (b) in any other case the date on which the court exercises or, as the case may be, exercised its power under paragraph (a) of that sub-paragraph in relation to the decree of removing or warrant of ejection or other like order in question.
- (5) If at any time the Secretary of State notifies the local authority that he declines to confirm the compulsory purchase order, or that order is quashed by a court, or, whether before or after that order has been submitted to the Secretary of State for confirmation, the authority decide not to proceed with it, it shall be the duty of the authority to notify the person entitled to the benefit of the decree of removing or warrant of ejection or other like order, and that person shall be entitled, on applying to the court, to obtain an order terminating the period of suspension, but subject to the exercise of such discretion in fixing the date on which possession is to be given as the court might exercise apart from this sub-paragraph if it were then making such a decree, warrant or other like order for the first time.
- (6) Sub-paragraphs (3) to (5) shall not apply where the person entitled to possession of the premises is the local authority.

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