

Private Rented Housing (Scotland) Bill

[AS AMENDED AT STAGE 2]

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Private Rented Housing (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about private rented housing.

PART 1

REGISTRATION OF PRIVATE LANDLORDS

1 Fit and proper person: considerations

- 5 (1) In section 85 of the 2004 Act (section 84: considerations)—
- (a) in subsection (2)—
- (i) in paragraph (a), after sub-paragraph (i) insert—
- “(ia) firearms (within the meaning of section 57(1) of the Firearms Act
1968 (c. 27));”,
- 10 (ii) after that paragraph, insert—
- “(aa) committed a sexual offence (within the meaning of section 210A(10) of
the Criminal Procedure (Scotland) Act 1995 (c. 46));”,
- (b) after subsection (5) insert—
- “(6) Examples of material which falls within subsection (2) (as mentioned in
15 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);
- 20 (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
25 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;
- 5 (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.
- 10 (9) The Scottish Ministers may by order modify subsection (2).”.
- (2) In section 141(4)(a) of that Act (orders and regulations), after “83(7),” insert “85(9),”.

2 **Fit and proper person: criminal record certificate**

After section 85 of the 2004 Act insert—

“85A **Fit and proper person: criminal record certificate**

- 15 (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)).
- 20 (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.
- 25 (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;
- 30 (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.”.

3 **Landlord registration number**

- (1) In section 84 of the 2004 Act (registration), after subsection (5) insert—
- 35 “(5A) An entry in a register under subsection (2)(a) shall state, in relation to the relevant person, a registration number (to be known as the “landlord registration number”).”.
- (2) In section 86 of that Act (notification of registration or refusal to register), after subsection (1) insert—
- 40 “(1A) Where a local authority gives notice of the fact of registration under subsection (1)(a) it must, in doing so, give notice of the landlord registration number.”.
- (3) In section 101 of that Act (interpretation of Part 8), after the definition of “landlord” insert—

““landlord registration number” has the meaning given by section 84(5A);”.

4 Appointment of agents

In section 88 of the 2004 Act (registered person: appointment of agent)—

5 (a) after subsection (2) insert—

“(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

10 (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;

15 (b) how fees are to be arrived at;

(c) other cases in which no fee shall be payable.”,

(b) after subsection (8) insert—

“(9) A registered person is guilty of an offence who, without reasonable excuse—

20 (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.”.

5 Access to register: additional information

25 (1) In section 88A(1) of the 2004 Act (access to register)—

(a) in paragraph (a), before sub-paragraph (i) insert—

“(zi) confirmation of whether any application relating to the house has been made in accordance with section 83 but has not yet been determined;”,

30 (b) in paragraph (a)(i), for “the owner” substitute “any owner of the house”,

(c) in paragraph (b)—

(i) after “applicant” insert “—

(i)”,

(ii) after “register” insert “; and

35 (ii) whether its register includes a note under section 92ZA of a decision to refuse that other person’s entry in, or to remove that other person from, the register.”.

(2) After section 92 of the 2004 Act insert—

“92ZA Duty to note refusals and removals

- (1) Subsection (4) applies where—
- (a) a local authority decides to—
- (i) refuse to enter a person in its register under section 84(2)(b) or (7);
or
- (ii) remove a person from its register under section 88(8) or 89(1) or (4); and
- (b) either—
- (i) the period for making an application to the sheriff in relation to the decision for the purposes of section 92(2) expires without an application being made; or
- (ii) such application is refused by the sheriff and—
- (A) the period for appealing against the sheriff’s decision expires without an appeal being made; or
- (B) such an appeal is refused by the sheriff principal.
- (2) Subsection (4) applies where—
- (a) a local authority refuses to enter a person in its register under section 84(8); and
- (b) either—
- (i) the period for making an application to the sheriff in relation to the decision for the purposes of section 92(2) expires without an application being made; or
- (ii) such application is refused by the sheriff and—
- (A) the period for appealing against the sheriff’s decision expires without an appeal being made; or
- (B) such an appeal is refused by the sheriff principal.
- (3) Subsection (4) applies where a local authority removes a person from its register under section 89(5).
- (4) Where this subsection applies, the local authority must note the fact in its register that the person has been refused entry to, or removed from, its register.
- (5) Where a fact is noted by virtue of subsection (1) it must, subject to subsection (6)—
- (a) remain on the register for 12 months from the date on which the local authority is required to note it in its register; and
- (b) be removed from the register at the end of that period.
- (6) Where a person in respect of whom a local authority notes a fact in its register by virtue of subsection (1) is subsequently entered in the register before the end of the period mentioned in subsection (5)(a), the local authority must remove the fact from the register when the person is so registered.
- (7) Where a fact is noted by virtue of subsection (2) or (3) it must—

- (a) remain on the register for the period of disqualification specified in the order made under section 93A(2); and
- (b) be removed from the register at the end of that period.”.

6 Duty to include certain information in advertisements

After section 92A of the 2004 Act insert—

“92B Duty of certain persons to include landlord registration number in advertisements

(1) Where—

- (a) a person who is registered by a local authority (“the registered person”), in relation to a house that the person owns in the area of the authority, communicates with another person with a view to entering into a lease or an occupancy arrangement such as is mentioned in section 93(1)(a); and

(b) the communication is by way of an advertisement in writing,

the registered person must ensure the advertisement includes the landlord registration number given by the authority.

(1A) Where the house is owned jointly by two or more persons registered by the local authority, the duty in subsection (1) is complied with if the advertisement includes the landlord registration number given by the authority in relation to one of the persons.

(2) Where—

(a) subsections (2) and (5) of section 93 apply; and

(b) the communication referred to in subsection (2)(b) of that section is by way of an advertisement in writing,

the relevant person must ensure the advertisement includes the words “landlord registration pending”.

(2A) Subsection (2B) applies where the house is owned jointly by—

(a) one or more persons who are registered by the local authority (“the registered persons”), and

(b) one or more relevant persons in relation to whom subsections (2) and (5) of section 93 apply.

(2B) The duties in subsections (1) and (2) are complied with if the advertisement includes either—

(a) the landlord registration number given by the local authority in relation to one of the registered persons, or

(b) the words “landlord registration pending”.

(3) In this section, “advertisement”—

(a) includes any form of advertising whether to the public generally, to any section of the public or individually to selected persons; but

(b) does not include a notice board at or near the house concerned.”.

7 Penalty for acting as unregistered landlord etc.

In section 93(7) of the 2004 Act (offences), for “level 5 on the standard scale” substitute “£50,000”.

8 Disqualification orders for unregistered landlords

After section 93 of the 2004 Act insert—

“93A Disqualification orders etc.

(1) This section applies where a court convicts a person of an offence under section 93(1) or (2).

(2) The court may, in addition to imposing a penalty under section 93(7), by order disqualify the convicted person (and, where the person is not an individual, any director, partner or other person concerned in the management of the house concerned) from being registered by any local authority for such period not exceeding 5 years as may be specified in the order.

(3) A person may appeal against an order under subsection (2) in the same manner as the convicted person may appeal against sentence.

(4) The court may suspend the effect of an order made under subsection (2) pending such an appeal.

(5) The court may, on summary application by a person disqualified by an order under subsection (2), revoke the order with effect from such date as the court may specify.

(6) But no such revocation may be made unless the court is satisfied that there has been a change of circumstances which justifies the revocation of the order.

(7) No application may be made for the purposes of subsection (5) during the first year of a disqualification.

(8) The court may order the applicant to pay the whole or part of the expenses arising from an application made for the purposes of subsection (5).

(9) Within 6 days of the court—

(a) disqualifying a person under subsection (2); or

(b) revoking an order under subsection (5),

the clerk of court must provide an extract of the disqualification or, as the case may be, the revocation to the local authority for the area in which the house concerned is situated.”.

9 Power to obtain information

After section 97 of the 2004 Act insert—

“Information

97A Power to obtain information

(1) A local authority may, for the purpose of enabling or assisting it to exercise any function under this Part, require any person appearing to it to fall within subsection (2) to provide the local authority with—

(a) confirmation of the nature of that person’s interest in the house;

- (b) the name and address of, and information about that person's relationship with, any other person whom that person knows to—
- (i) own, occupy or have any other interest in the house;
 - (ii) act in relation to a lease or occupancy arrangement to which that house is subject; or
 - (iii) act for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to that house;
- (c) such other information relating to the house, or such other person, as the local authority may reasonably request.
- (2) A person falls within this subsection if the person—
- (a) owns, occupies or has any other interest in the house concerned;
 - (b) acts in relation to a lease or occupancy arrangement to which that house is subject; or
 - (c) acts for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to that house.
- (3) A local authority may, for the purpose of enabling or assisting it to exercise any function under this Part, require any person appearing to it to fall within subsection (4) to provide the local authority with—
- (a) confirmation of the nature of that person's interest in any such house in relation to which the person acts;
 - (b) the address of any such house;
 - (c) the name and address of, and information about that person's relationship with, any other person whom that person knows to own any such house;
 - (d) such other information relating to any such house, or such other person, as the local authority may reasonably request.
- (4) A person falls within this subsection if the person—
- (a) acts in relation to a lease or occupancy arrangement to which any house within the local authority's area is subject; or
 - (b) acts for the person who owns the house with a view to a lease or occupancy arrangement being entered into in relation to such a house.
- (5) A requirement under subsection (1) or (3) is to be made by serving it on the person concerned in accordance with section 97B.
- (6) It is an offence for a person—
- (a) without reasonable excuse, to fail to comply with a requirement made under this section; or
 - (b) knowingly or recklessly to provide information which is false or misleading in a material respect to a local authority or any other person—
 - (i) in purported compliance with a requirement made under this section; or

(ii) otherwise if the person knows, or could reasonably be expected to know, that the information may be used by, or provided to, a local authority in connection with its functions under this Part.

(7) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

97B Power to obtain information: service of requirement

(1) A requirement under section 97A(1) or (3) must be in writing.

(2) A requirement under section 97A(1) or (3) is served on a person if it is—

(a) delivered to the person at the place mentioned in subsection (3);

(b) sent, by post in a prepaid registered letter or by the recorded delivery service, to the person at that place; or

(c) sent to the person in some other manner (including by electronic means) which the local authority reasonably considers likely to cause it to be delivered to the person on the same or next day.

(3) The place referred to in subsection (2) is—

(a) where the person is an individual, that person's place of business or usual or last known place of abode;

(b) where the person is an incorporated company or body, its registered or principal office.

(4) Subsection (5) applies where service of a requirement by one of the methods described in subsection (2) has been attempted and failed.

(5) Where this subsection applies, a requirement under section 97A(1) or (3) may be served on the person by—

(a) where the person is an individual, leaving a copy of the requirement at that person's place of business or usual or last known place of abode;

(b) where the person is an incorporated company or body, leaving a copy of the requirement at the person's registered or principal office.

(6) Subsection (7) applies where the local authority is unable to deliver or send a requirement under section 97A(1) or (3) to the owner or occupier of any house or other premises because the local authority is not (having made reasonable enquiries) aware of the name or address of that owner or occupier.

(7) Where this subsection applies, a requirement under section 97A(1) or (3) may be served by addressing a copy of it to "The Owner" or, as the case may be, "The Occupier" of the house and leaving it at the house or other premises.

(8) A requirement which is sent by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference."

10 Part 8 of the 2004 Act: guidance

After section 99 of the 2004 Act, insert—

“Guidance

99A Guidance

- (1) A local authority must have regard to any guidance issued by the Scottish Ministers about—
- 5 (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—
- (a) local authorities; and
- (b) such other persons as they think fit.”.

11 Information to be given to local authority

After section 22 of the 2006 Act insert—

“22A Information to be given to local authority

- (1) On receipt of an application under section 22(1), the private rented housing panel must provide the information mentioned in subsection (2) to the local authority for the area in which the house concerned is situated for the purpose of the local authority maintaining the register under section 82(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).
- 15 (2) The information is—
- (a) the address of the house concerned,
- 20 (b) the name of the landlord of the house (if known),
- (c) the landlord’s address (if known),
- (d) the landlord registration number of the landlord (if known), and
- (e) the name and address (if known) of any person who acts as agent for the landlord.”.

12 Minor and consequential amendments

The schedule to this Act (which makes minor modifications and modifications consequential on this Part) has effect.

PART 2

AMENDMENT OF PART 5 OF HOUSING (SCOTLAND) ACT 2006

13 Amendment of HMO licensing regime

- (1) In section 125 of the 2006 Act (meaning of “house in multiple occupation”)—
- (a) in subsection (1)—
- (i) for the words from “Any” to second “is” substitute ““HMO” means any living accommodation”, and
- 35 (ii) after “families” insert “—
- (a) which—

- (i) falls within subsection (2), and
- (ii) is occupied by those 3 or more persons as an only or main residence, or

(b) which is of such type, or which is occupied in such manner, as the Scottish Ministers may by order specify.”,

(b) after subsection (1) insert—

“(1A) Before making an order under subsection (1)(b), the Scottish Ministers must consult—

(a) local authorities, and

(b) such tenants (or tenants’ representatives) and such landlords (or landlords’ representatives) as they think fit.”,

(c) subsection (4)(a) is repealed.

(2) After section 129 of the 2006 Act insert—

“129A Preliminary refusal: breach of planning control

(1) The local authority may, within 21 days of an application for an HMO licence, refuse to consider the application if it considers that occupation of the living accommodation concerned as an HMO would constitute a breach of planning control for the purposes of the Town and Country Planning (Scotland) Act 1997 (c. 8) (“the 1997 Act”).

(2) The local authority must, within 7 days of deciding to refuse to consider an HMO application, serve notice of its decision on—

(a) the applicant,

(b) the enforcing authority, and

(c) the chief constable.

(3) The notice must—

(a) give the local authority’s reason for refusing to consider the HMO application, and

(b) inform the applicant of the effect of subsection (4).

(4) No fee may be charged in respect of a further application for an HMO licence in relation to the living accommodation concerned made within 28 days of the applicant subsequently obtaining—

(a) planning permission under Part 3 of the 1997 Act, or

(b) a certificate of lawfulness of use or development under section 150 or 151 of the 1997 Act,

in respect of the occupation of the living accommodation as an HMO.

(5) This section applies regardless of whether the local authority is the planning authority for the area in which the living accommodation concerned is situated.”.

(3) In section 132(1) of the 2006 Act (restriction on applications), after first “licence” insert “(otherwise than under section 129A),”.

(4) In section 135 of the 2006 Act (application for new HMO licence: effect on existing HMO licence)—

(a) in subsection (2)—

(i) the word “and” immediately following paragraph (a) is repealed,

(ii) after that paragraph insert—

“(aa) where the local authority refuses to consider the application for the new HMO licence—

(i) the date on which the existing HMO licence would expire had an application for a new HMO licence not been made, or

(ii) such later date as the local authority considers reasonable in the circumstances, and”,

(b) after subsection (2) insert—

“(3) The local authority must serve notice of a decision under subsection (2)(aa)(ii) to extend (or further extend) the duration of an existing HMO licence on—

(a) the licence holder,

(b) the enforcing authority, and

(c) the chief constable.”.

(5) In section 158(1)(a) of the 2006 Act (notice of decisions), after “so” insert “(otherwise than under section 129A)”.

(6) In section 191(4)(a) of the 2006 Act (orders and regulations), after “section” insert “125(1)(b),”.

14 Penalty for certain offences in relation to houses in multiple occupation

In section 156(1)(a) of the 2006 Act (penalties etc.), for “£20,000” substitute “£50,000”.

15 Reasons for decisions

(1) In section 158 of the 2006 Act (notice of decisions)—

(a) in subsection (12)(a), for “give” substitute “subject to subsection (17), advise of the right to request”,

(b) after that subsection insert—

“(13) A person on whom a notice of a decision to which this section applies has been served may request the local authority to give its reasons for the decision.

(14) A request under subsection (13) must be made within 14 days of the person receiving notice of the decision.

(15) Where a local authority receives such a request it must notify the person of its reasons for the decision within 14 days of receiving the request.

(16) A local authority must, at the same time as notifying the person under subsection (15), so notify any other person on whom a notice of the decision has been served.

(17) The requirement for the notice to advise of the right to request the local authority’s reasons does not apply where the reasons are included in the notice (or accompany it in writing).”.

(2) In section 159 of the 2006 Act (Part 5 appeals), after subsection (5) insert—

“(5A) For the purposes of an appeal, the sheriff may require the local authority to give reasons for the decision (if the authority has not already done so), and the authority must comply with such a requirement.”.

16 Guidance

In section 163(1) of the 2006 Act (guidance), after “Part” insert “and section 186 (so far as that section relates to this Part)”.

PART 3

OVERCROWDING STATUTORY NOTICES

17 Overcrowding in private rented housing: statutory notice

(1) A local authority may, subject to section 17A, require the landlord of a house to which subsection (2) applies to take steps to ensure the house is not overcrowded.

(2) This subsection applies to any house in the local authority’s area—

(a) which is overcrowded, and

(b) the overcrowding of which is, in the local authority’s opinion, contributing or connected to (or is likely to contribute or be connected to)—

(i) an adverse effect on the health or wellbeing of any person,

(ii) an adverse effect on the amenity of the house or its locality.

(3) A requirement under subsection (1) must be made by serving a notice (an “overcrowding statutory notice”) on the landlord in accordance with section 26.

(4) Where there are joint landlords, the duty under subsection (3) may be satisfied by service on any one of them.

(5) An overcrowding statutory notice—

(a) must specify—

(i) the steps which require to be carried out to ensure the house is no longer overcrowded, and

(ii) the period within which the steps must be completed (being a period not shorter than 28 days),

(b) must state the conditions set out in section 19, and

(c) may specify other steps which require to be carried out for the purposes of section 19(b) or otherwise.

(6) An overcrowding statutory notice may not specify any step which would require the landlord to breach any statutory or contractual obligation.

(7) The Scottish Ministers may by order prescribe—

(a) the form of an overcrowding statutory notice,

- (b) other information to be included in the notice,
- (c) persons who must be given a copy of the notice by the local authority.

(7A) Before making an order under subsection (7), the Scottish Ministers must consult—

- (a) local authorities,
- (b) such persons or bodies as appear to them to be representative of the interests of—
 - (i) landlords,
 - (ii) occupiers of houses, and
- (c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

10 **17A Matters to be considered prior to service of overcrowding statutory notice**

(1) This section applies where a local authority is considering serving an overcrowding statutory notice in relation to a house.

(2) The authority may serve the notice only if it is reasonable and proportionate in the circumstances to do so having regard to—

- (a) the nature of the adverse effect referred to in section 17(2)(b) by reference to which the notice would be served,
- (b) the degree to which the overcrowding of the house is contributing to or connected to that adverse effect,
- (c) the likely effects of service of the notice, and

(d) whether there are means other than by service of the notice by which the adverse effect could be mitigated or avoided.

(3) The authority must take into account—

- (a) the circumstances of the occupier of the house and of any other persons residing in the house (including, in particular, whether any of them is, as a result of the overcrowding of the house, homeless),
- (b) the views (if known) of the landlord, the occupier and any other persons residing in the house, and
- (c) the likely effects of service of the notice on the occupier and any other persons residing in the house (including, in particular, whether it may lead to the occupier or any such person becoming homeless or threatened with homelessness).

(4) For the purposes of subsection (3), whether a person is homeless or threatened with homelessness is to be determined in accordance with section 24 of the Housing (Scotland) Act 1987 (c.26).

35 **17B Information and advice for occupiers**

(1) This section applies where a local authority serves an overcrowding statutory notice in relation to a house.

(2) The authority must, at the same time as serving the overcrowding statutory notice, also serve on the occupier of the house a notice containing prescribed information and advice in connection with the overcrowding statutory notice.

- (3) If the occupier of the house or any other person residing in the house requests information or advice from the local authority in connection with the overcrowding statutory notice, the local authority must comply with the request, unless the authority considers the request to be unreasonable.
- 5 (4) The local authority may give the occupier of the house such other information and advice as the authority considers appropriate in connection with the overcrowding statutory notice.
- (5) In subsection (2), “prescribed” means prescribed by order made by the Scottish Ministers.
- 10 (6) Such an order may also prescribe the form of the notice to be served under subsection (2).
- (7) Before making an order under this section, the Scottish Ministers must consult—
- (a) local authorities,
 - (b) such persons or bodies as appear to them to be representative of the interests of—
- 15 (i) landlords,
- (ii) occupiers of houses, and
 - (c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

19 Mandatory conditions

- 20 The conditions are, where the steps have been taken as specified in the notice to ensure the house is no longer overcrowded, that the landlord must—
- (d) not cause the house to become overcrowded,
 - (e) take reasonable steps to prevent the house becoming overcrowded.

20 Duration of notice

- 25 (1) An overcrowding statutory notice—
- (a) has effect from, and
 - (b) expires 5 years (or such shorter period of not less than one year as may be specified in the notice) after,
- the latest of the dates set out in subsection (2).
- 30 (2) Those dates are—
- (a) the last date on which the notice may be appealed to the sheriff under section 22,
 - (b) where such an appeal is made, the date on which—
- 35 (i) an order is made under section 22(4), or
- (ii) the application is abandoned, and
 - (c) any later date as may be specified in the notice.
- (3) An overcrowding statutory notice ceases to have effect in relation to a person if that person ceases to be the landlord of the house.

21 Representations

- (1) A person on whom an overcrowding statutory notice is served may make representations to the local authority concerning the notice within 7 days of the notice being served.
- 5 (2) A local authority must consider any representations made under subsection (1) and respond to the person within 7 days of the representations having been made by—
- (a) confirming the notice,
 - (b) varying the notice, or
 - (c) revoking the notice.
- 10 (3) Where the local authority fails to respond in accordance with subsection (2), the overcrowding statutory notice is revoked.
- (4) Where this section applies to the variation of an overcrowding statutory notice by virtue of section 23(4)(a), subsection (3) of this section only applies to the variation of the overcrowding statutory notice.

22 Appeals

- 15 (1) The landlord may appeal against an overcrowding statutory notice by summary application to the sheriff.
- (2) An application under subsection (1) must be made—
- 20 (a) where representations under section 21(1) have been made, before the expiry of the period of 28 days beginning with the service of the notice,
 - (b) in any other case, before the expiry of the period of 21 days beginning with the service of the notice.
- (3) But the sheriff may, on cause shown, hear an appeal made after the deadline set by subsection (2).
- (4) The sheriff may determine the appeal by making an order—
- 25 (a) confirming the notice,
 - (b) varying it in such manner as may be specified in the order, or
 - (c) revoking the notice.
- (5) The sheriff's decision on any such appeal is final.
- 30 (6) Where this section applies to the variation of an overcrowding statutory notice by virtue of section 23(4)(b), the sheriff's powers under subsection (4) of this section are not prejudiced in relation to the overcrowding statutory notice.

23 Variation

- (1) The local authority may vary an overcrowding statutory notice (including extending the duration of its effect) at any time.
- 35 (2) But a notice may not be so varied so as to shorten the duration of its effect.
- (3) The local authority must serve notice of any variation of an overcrowding statutory notice on the landlord in accordance with section 26.
- (4) The following sections apply to a notice of variation of an overcrowding statutory notice as they apply to an overcrowding statutory notice—

- (a) section 21 (representations),
 - (b) section 22 (appeals).
- (5) A variation of an overcrowding statutory notice has effect from the latest of the dates set out in subsection (6).
- 5 (6) Those dates are—
- (a) the last date on which the notice of variation of the overcrowding statutory notice may be appealed to the sheriff under section 22,
 - (b) where such an appeal is made, the date on which—
 - 10 (i) an order is made under section 22(4), or
 - (ii) the application is abandoned, and
 - (c) any later date as may be specified in the notice of variation of the overcrowding statutory notice.
- (7) Any reference to an overcrowding statutory notice in this Part includes, unless the context otherwise requires, any variation which has effect by virtue of this section.

15 **24 Revocation**

- (1) The local authority may revoke an overcrowding statutory notice at any time.
- (2) The local authority must serve any revocation of an overcrowding statutory notice on the landlord by a notice in accordance with section 26.
- 20 (3) A revocation of an overcrowding statutory notice has effect from the date on which the notice of revocation is served on the landlord.

25 Offences

- (1) A landlord commits an offence if the landlord fails, without reasonable excuse, to comply with any requirement or condition contained in an overcrowding statutory notice within the period (if any) specified for completion.
- 25 (2) A person who commits an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

25A Power to obtain information

- 30 (1) A local authority may, for the purpose of enabling it to discharge its functions under this Part, serve a notice on a person falling within subsection (2) (referred to as “A”) requiring A to provide the authority with any of the information mentioned in subsection (3).
- (2) A person falls within this subsection if the person appears to the local authority to—
 - (a) own, occupy or have any other interest in a house in the local authority’s area, or
 - 35 (b) act in relation to the lease or occupancy arrangement to which any such house is subject.
- (3) The information is—
 - (a) confirmation of the nature of A’s interest in the house,

(b) the name and address of, and information about A's relationship with, any other person whom A knows to—

(i) own, occupy or have any other interest in the house, or

(ii) act in relation to the lease or occupancy arrangement to which the house is subject,

(c) such other information relating to the house, or such other person, as the local authority may reasonably require.

(4) A person commits an offence if the person—

(a) without reasonable excuse, fails to comply with a requirement of a notice served on the person under subsection (1), or

(b) knowingly or recklessly provides information which is false or misleading in a material respect to a local authority or other person—

(i) in purported compliance with a requirement of such a notice, or

(ii) otherwise if the person knows, or could reasonably be expected to know, that the information may be used by, or provided to, a local authority for the purpose of the discharge of its functions under this Part.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

26 Service of notices

(1) A notice is served on a person if it is—

(a) delivered to the person at the place mentioned in subsection (2),

(b) sent, by post in a prepaid registered letter or by the recorded delivery service, to the person at that place, or

(c) sent to the person in some other manner (including by electronic means) which the local authority reasonably considers likely to cause it to be delivered to the person on the same or next day.

(2) The place referred to in subsection (1) is—

(a) where the person is an individual, that person's place of business or usual or last known place of abode,

(b) where the person is an incorporated company or body, its registered or principal office.

(3) Subsection (4) applies where service of the notice by one of the methods described in subsection (1) has been attempted and failed.

(4) Where this subsection applies, service of the notice may be on the person by—

(a) where the person is an individual, leaving a copy of the notice at that person's place of business or usual or last known place of abode,

(b) where the person is an incorporated company or body, leaving a copy of the notice at the person's registered or principal office.

(5) Subsection (6) applies where the local authority is unable to deliver or send a notice to the person because the local authority is not (having made reasonable enquiries) aware of the name or address of that owner or occupier.

- (6) Where this subsection applies, service of the notice may be by addressing a copy of it to “The Owner” or, as the case may be, “The Occupier” of the house and leaving it at the house or other premises.
- (7) A notice which is sent by electronic means must be received in a form which is legible and capable of being used for subsequent reference.

26A 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, or
 - (b) matters arising in connection with the discharge of those functions.
- (2) Before issuing any such guidance, the Scottish Ministers must consult—
- (a) local authorities,
 - (b) such persons or bodies as appear to them to be representative of the interests of—
 - (i) landlords,
 - (ii) occupiers of houses, and
 - (c) such other persons or bodies (if any) as they consider appropriate (which may include landlords or occupiers of houses).

27 Interpretation of Part 3

- (1) In this Part—
- “house” means premises—
- (a) which are subject to a lease or occupancy arrangement by virtue of which they may be used as a separate dwelling, and
 - (b) the owner of which would, if not registered in the register maintained by a local authority under section 82(1) of the 2004 Act, be guilty of an offence under subsection (1) of section 93 of that Act (disregarding subsection (3) of that section),
- “landlord”, in relation to a house, means the owner of the house.
- (2) In this Part references to a house being overcrowded are to be construed according to the definition of overcrowding in section 135 of the Housing (Scotland) Act 1987 (c. 26); but do not include any house to which the matters mentioned in section 139(2)(a) or (b) of that Act apply.

PART 4

MISCELLANEOUS

28 Premiums

- (1) In section 82 of the Rent (Scotland) Act 1984 (c. 58) (prohibition of premiums and loans on grant of protected tenancies)—
- (a) in subsection (1), “, in addition to the rent,” is repealed,

(b) in subsection (2), “in addition to the rent” is repealed.

(2) After section 89 of that Act insert—

“89A Premiums: regulations

(1) The Scottish Ministers may by regulations make provision about sums which may be charged in connection with the grant, renewal or continuance of a protected tenancy.

(2) Such regulations may, in particular, specify—

(a) categories of sum which are not to be treated as a premium for the purposes of this Part;

(b) the maximum amount which tenants may be asked to pay in respect of such a sum.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) such persons or bodies as they consider representative of the interests of—

(i) tenants;

(ii) private sector landlords; and

(iii) persons who act as agents for such landlords,

as they consider appropriate; and

(b) such other persons or bodies as the Scottish Ministers consider appropriate (which may include tenants, private sector landlords and persons who act as agents for such landlords).

(4) The power conferred by subsection (1) on the Scottish Ministers to make regulations—

(a) must be exercised by statutory instrument;

(b) may be exercised so as to make different provision for different purposes.

(5) No regulations are to be made under subsection (1) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.

(3) In section 90(1) of that Act (interpretation of Part 8), for the entry for “premium” substitute—

““premium” means any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge;”.

(4) In section 115(1) of that Act (interpretation), for the entry for “premium” substitute—

““premium” has the meaning given in section 90;”.

29 Tenant information packs

After section 30 of the 1988 Act insert—

“30A Duty of landlord to provide certain information

- 5 (1) A person who is to be the landlord under an assured tenancy (of whatever duration) must provide the person who is to be the tenant of that tenancy with the documents specified by virtue of section 30B(1) (“the standard tenancy documents”).
- (2) The standard tenancy documents must be provided no later than the date on which the assured tenancy commences.
- (3) Where there are to be joint landlords under the tenancy, the duty under subsection (1) may be satisfied by any one of them.
- 10 (4) A person under the duty mentioned in subsection (1) who (without reasonable excuse) does not comply with that duty is guilty of an offence.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- 15 (6) Where an offence under subsection (4) committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or similar officer of the body, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished accordingly.

30B Duty of landlord to provide certain information: further provision

- 20 (1) The Scottish Ministers may by order—
- (a) specify the documents to be provided under section 30A(1) which may, in particular, include—
- 25 (i) documents containing information about the tenancy;
- (ii) documents containing information about the house;
- (iii) documents containing information about the person who is to be the landlord;
- (iv) documents containing information about the rights and responsibilities of tenants and landlords;
- 30 (v) copies of documents which the person who is to be the landlord is under a duty to provide by virtue of this Act (other than section 30A(1)) or any other enactment;
- (b) make such further provision about the documents as they think fit, including, in particular, provision about the form of, and the information to be included in (or excluded from), any of the documents;
- 35 (c) make provision so that the giving of a document (or copy of a document) specified under subsection (1)(a)(v), either in pursuance of the duty under section 30A(1) or by virtue of another provision of this Act or any other enactment, has the effect of satisfying all or any such obligations;
- 40 (d) make provision about whether the documents may be provided separately or whether they must all be provided at the same time.
- (2) Before making an order under subsection (1), the Scottish Ministers must consult—

- (a) such persons and bodies as they consider representative of the interests of—
 - (i) tenants;
 - (ii) private sector landlords; and
 - (iii) persons who act as agents for such landlords, as they consider appropriate; and
- (b) such other persons or bodies as the Scottish Ministers consider appropriate (which may include tenants, private sector landlords and persons who act as agents for such landlords).”.

10 **30 Notices required for termination of short assured tenancy**

In section 33 of the 1988 Act (recovery of possession on termination of a short assured tenancy), after subsection (4) insert—

- “(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”.

15 **31 Landlord application to private rented housing panel**

- (1) The 2006 Act is amended as follows.
- (2) In section 21 (naming of panel and re-naming of committees)—
 - (a) in subsection (3), after “panel,” where it first occurs, insert “the members of the panel,”
 - (b) in subsection (4)—
 - (i) the words from “the exercise” to the end become paragraph (a), and
 - (ii) after that paragraph insert—
 - “(b) the exercise by members of the panel of the functions conferred on them under sections 28A and 28C.”.
- (3) At the beginning of the title of section 22 (application to private rented housing panel) insert “Tenant”.
- (4) After section 28 insert—

“28A Landlord application to private rented housing panel

- (1) A landlord may apply to the private rented housing panel for assistance under section 28C in exercising the landlord’s right of entry to the house concerned under section 181(4).
- (2) The president of the panel must allocate an application under subsection (1) to an individual member of the panel, and may subsequently reallocate it at any time to another individual member of the panel (the member to whom it is, for the time being, allocated being referred to as “the panel member”).
- (3) The panel member must decide whether—
 - (a) to assist the landlord in exercising the landlord’s right of entry to the house concerned under section 181(4) in accordance with section 28C, or
 - (b) to reject the application (and notify the landlord accordingly).

(4) The panel member may require the landlord to produce such further information as the panel member considers necessary to reach a decision on the application.

5 (5) Where the panel member decides to assist the landlord under subsection (3)(a) the panel member must send the landlord and the tenant a notice—

(a) indicating that—

(i) the panel member has decided to assist the landlord, and

10 (ii) the panel member will be seeking to arrange a suitable time for the landlord to exercise the landlord's right of entry under section 181(4), and

(b) informing the tenant of the tenant's right under subsection (6).

15 (6) A tenant may, within the period of 14 days beginning with the date of receipt of a notice under subsection (5) (or such longer period as the panel member considers appropriate in the circumstances), make representations to the panel member as to why it is inappropriate or unnecessary for the landlord to exercise the landlord's right of entry under section 181(4) at that time.

(7) Where representations are made by the tenant under subsection (6), the panel member—

20 (a) may make such further enquiries of the landlord and tenant as the panel member considers appropriate, and

(b) must decide whether to—

(i) continue to assist the landlord, or

(ii) stop assisting the landlord.

(8) A decision—

25 (a) to reject an application under subsection (3),

(b) of the panel member under subsection (7),

(c) by the panel member to stop acting in accordance with section 28C(9),
is final.

(9) No application may be made under subsection (1) where the landlord is—

30 (a) a local authority landlord (within the meaning of the Housing (Scotland) Act 2001 (asp 10)),

(b) a registered social landlord (being a body registered in the register maintained under section 57 of that Act), or

(c) Scottish Water.

35 **28B Landlord application to private rented housing panel: further provision**

(1) The Scottish Ministers may by regulations make further provision about the making or deciding of applications under section 28A.

(2) Those regulations may, in particular, make provision—

(a) about the form and content of applications and notices,

40 (b) prescribing a fee to accompany applications,

(c) specifying circumstances when the panel member must decide to reject an application or stop assisting a landlord,

(d) about the procedure for—

(i) making decisions under section 28A(3) or (7),

(ii) giving notice under section 28A(5),

(iii) making representations under section 28A(6).

(3) In this section, “the panel member” means the member of the private rented housing panel to whom the case has been allocated under section 28A(2).

28C Panel member to arrange suitable time for access

(1) Subsection (2) applies where the panel member has decided to assist the landlord under section 28A(3)(a).

(2) The panel member must liaise with the landlord and the tenant with a view to agreeing a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

(3) Subsection (4) applies if the tenant (without reasonable excuse) has failed or refused, within a reasonable time, to—

(a) respond to the panel member, or

(b) agree a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

(4) The panel member may fix a date and time (or dates and times) for the landlord to exercise the landlord’s right of entry to the house under section 181(4).

(5) Where a date and time has been agreed under subsection (2), the panel member may, on the request of either the landlord or the tenant and where there are reasonable grounds for doing so, liaise with the parties with a view to agreeing a different date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

(6) The panel member must as soon as reasonably practicable notify the landlord and tenant of any date and time (or dates and times) agreed or fixed under this section for the landlord to exercise the landlord’s right of entry under section 181(4).

(7) When notifying the parties of the date and time (or dates and times) agreed or fixed under this section, the panel member must also—

(a) provide the tenant with information about the action that the panel member may take under section 182 if the tenant refuses the landlord’s exercise of the landlord’s right of entry to the house under section 181(4), and

(b) inform both parties that the panel member (or a person authorised by the panel member) may be requested to attend when the landlord exercises such right of entry.

(8) The panel member may, at the request of the landlord or the tenant, attend at the house at the time agreed or fixed for the landlord to exercise the landlord’s right of entry under section 181(4).

- (9) The panel member may, at any time, stop assisting the landlord under this section if the panel member considers it appropriate to do so.
- (10) The panel member may—
- 5 (a) authorise a person (other than the landlord or a representative of the landlord) to exercise any function conferred on the panel member under this section, or
- (b) arrange for any such function to be carried out by another panel member.
- (11) The Scottish Ministers may by regulations make further provision about the action the panel member is to take under this section.
- 10 (12) In this section, “the panel member” means the member of the private rented housing panel to whom the case has been allocated under section 28A(2).”.
- (5) In section 29 (annual report)—
- (a) in subsection (1), after “panel” where it second occurs insert “, by the members of the panel”,
- 15 (b) in subsection (2)—
- (i) the words from “the frequency” to the end become paragraph (a), and
- (ii) after that paragraph insert—
- “ (b) the number of—
- (i) applications made under section 28A,
- 20 (ii) cases in which it has been possible to agree a suitable date and time (or dates and times) under section 28C for the landlord to exercise the landlord’s right of entry under section 181(4),
- (iii) houses attended by a member of the private rented housing panel (or a person authorised by such a member) as a result of a request made under section 28C(8), and
- 25 (iv) warrants sought to authorise entry under section 182(1) in pursuance of section 181(2A).”.
- (6) In section 181 (rights of entry: general), after subsection (2) insert—
- 30 “(2A) A member of the private rented housing panel, and any other person authorised by any such member, is entitled to enter any house in respect of which a decision has been made under section 28A(3) to assist the landlord’s exercise of the landlord’s right of entry under subsection (4) of this section for the purpose of enabling the landlord to exercise such right of entry.”.
- (7) In section 182(1) (warrants authorising entry), for “or (2)” substitute “, (2) or (2A)”.
- 35 (8) In section 191 (orders and regulations), after subsection (4) insert—
- “ (4A) Regulations under subsection (1) of section 28B (other than such regulations containing only provision under subsection (2)(b) of that section) are not to be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.

31A Relaxation of residential restriction on leases of more than 20 years

(1) Section 8 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (property let under a future long lease, etc. not to be used as a private dwelling) is amended as follows.

(2) In subsection (3A)—

(a) the word “or” immediately following paragraph (b) is repealed, and

(b) after paragraph (c), add “; or

(d) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.”.

(3) After subsection (3A), insert—

“(3B) An order under subsection (3A)(d) may—

(a) prescribe a body or type of body subject to conditions or restrictions,

(b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),

(c) restrict the application of subsection (3A) to specified leases, or leases of specified descriptions,

(d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any lease,

(e) make provision about the consequences, in relation to any lease, of—

(i) a breach of any condition or restriction prescribed by the order, or

(ii) subsection (3A) otherwise ceasing to apply in relation to a body or type of body or the lease.

(3C) Provision made by virtue of subsection (3B)(e) may, in particular, include provision for the protection of the interests of tenants or occupiers of any dwelling-houses on the property which is subject to the lease.

(3D) An order under subsection (3A)(d)—

(a) may modify any enactment, and

(b) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.”.

31B Restriction of right to redeem heritable securities after 20 years

(1) Section 11 of the Land Tenure Reform (Scotland) Act 1974 (c.38) (right to redeem heritable security after 20 years where security subjects used as a private dwelling) is amended as follows.

(2) In subsection (3A)(b)—

(a) the word “or” immediately following sub-paragraph (ii) is repealed, and

(b) after sub-paragraph (iii), add “; or

(iv) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.”.

(3) After subsection (3A), insert—

“(3B) An order under subsection (3A)(b)(iv) may—

- (a) prescribe a body or type of body subject to conditions or restrictions,
- (b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),
- (c) restrict the application of subsection (3A) to specified heritable securities, or heritable securities of specified descriptions,
- (d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any heritable security.

(3C) A statutory instrument containing an order under subsection (3A)(b)(iv) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

PART 5

GENERAL

32 Interpretation

In this Act—

“the 1988 Act” means the Housing (Scotland) Act 1988 (c. 43);

“the 2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8);

“the 2006 Act” means the Housing (Scotland) Act 2006 (asp 1).

33 Ancillary provision

- (1) The Scottish Ministers may by order make such consequential, supplementary, incidental, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for the purposes of giving full effect to, any provision of this Act.
- (2) An order under this section may modify any enactment, instrument or document.

34 Orders

- (1) Any power conferred by this Act on the Scottish Ministers to make an order—
 - (a) must be exercised by statutory instrument,
 - (b) includes power to make different provision for different purposes.
- (2) An order under section 33 containing provisions which add to, omit or replace any part of the text of an Act, may be made only if a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.
- (3) Any other statutory instrument containing an order (other than under section 35(3)) is subject to annulment in pursuance of a resolution of the Parliament.

35 Short title and commencement

- (1) This Act may be cited as the Private Rented Housing (Scotland) Act 2010.
- (2) This Part comes into force at the beginning of the day following the day on which the Bill for this Act receives Royal Assent.

- (3) The remaining provisions of this Act come into force on such day as the Scottish Ministers may appoint by order.
- (4) An order under subsection (3) may include transitional, transitory or saving provision.

SCHEDULE
(introduced by section 12)

MINOR AND CONSEQUENTIAL MODIFICATIONS

Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

- 5 1 The 2004 Act is amended as follows.
- 2 In section 84 (registration)—
- (a) in subsection (2), after “Where” insert “(subject to subsections (7) and (8))”,
- (b) after subsection (6) add—
- 10 “(7) The local authority may refuse to enter a person in the register maintained by the authority under section 82(1) if the person fails to comply with the duty, if applicable, imposed by section 92B(2).
- (8) The local authority must refuse to enter a person in the register maintained by the authority under section 82(1) if the person is disqualified by an order made under section 93A(2).”.
- 15 3 In section 86 (notification of registration or refusal to register)—
- (a) in subsection (1)(b), after “section” insert “or subsection (7) or (8) of section 84”,
- (b) in subsection (2), after “84(2)(b),” insert “(7) or (8),”.
- 4 In section 89 (removal from register), after subsection (3) add—
- 20 “(4) Where a registered person, without reasonable excuse, fails to comply with the duty imposed by section 92B(1) the authority may remove the person from the register.
- (5) Where—
- (a) a person is registered by a local authority; and
- (b) the person is disqualified from being registered by virtue of an order
- 25 under section 93A(2),
- the authority shall remove the person from its register.”.
- 5 In section 90(1) (notification of removal from register: registered person), after “89(1)” insert “, (4) or (5)”.
- 6 In section 91(1) (notification of removal from register: other persons), after “89(1)” insert “, (4) or (5)”.
- 30 In section 92(1) (appeal against refusal to register or removal from register)—
- (a) in paragraph (a), after “84(2)(b)” insert “, (7) or (8)”,
- (b) in paragraph (b), after “89(1)” insert “or (4)”.
- 8 In section 93(5) (offences), after paragraph (aa) insert—
- 35 “(aaa)the relevant person is not disqualified from being registered by virtue of an order under section 93A(2);”.

Private Rented Housing (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about private rented housing.

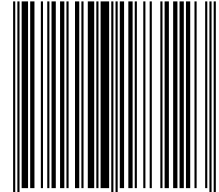
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