

Draft Order laid before the Scottish Parliament under section 141(4)(a) of the Antisocial Behaviour etc. (Scotland) Act 2004, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

HOUSING

The Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011

Made - - - - 2011

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 68(6) and 141(2)(b) of the Antisocial Behaviour etc. (Scotland) Act 2004⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 141(4)(a) of that Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 and comes into force on the day after the day on which it is made.

Amendment of the Antisocial Behaviour etc. (Scotland) Act 2004

2. Part 7 (housing: antisocial behaviour notices) of the Antisocial Behaviour etc. (Scotland) Act 2004 is modified in accordance with articles 3 to 8.

3. In section 68 (antisocial behaviour notices)—

(a) after subsection (1) insert—

“(1A) A local authority may also serve an antisocial behaviour notice on the landlord of a relevant house situated within the authority’s area and used for holiday purposes where—

- (a) the house has been used for those purposes on at least two occasions;
- (b) during at least two of those occasions a person mentioned in subsection (2) has engaged in antisocial behaviour at, or in the locality of, that house; and
- (c) the authority anticipates further use for those purposes that will result in antisocial behaviour by such a person.”;

(1) 2004 asp 8.

- (b) in subsection (2)(a) after “subsection (1)” insert “or, as the case may be, (1A)”;
- (c) in subsection (3)—
 - (i) before paragraph (a) insert—
 - “(za) stating whether it is served under subsection (1) or subsection (1A);”;
 - (ii) at the start of paragraph (a) insert “where the notice is served under subsection (1),”;
 - (iii) after paragraph (a) insert—
 - “(aa) where the notice is served under subsection (1A), describing the antisocial behaviour that has been engaged in at, or in the locality of, the relevant house to which the notice relates;”;
 - (iv) at the start of paragraph (b) insert “where the notice is served under subsection (1),”;
and
 - (v) after paragraph (b) insert—
 - “(ba) where the notice is served under subsection (1A), requiring the landlord of the relevant house to take, before the expiry of such period as may be specified in the notice, such action for the purpose of dealing with future antisocial behaviour as may be so specified;”;
- (d) in subsection (5)(a), after “subsection (1)” insert “or (1A)”.
- 4. In section 69(1) (review of antisocial behaviour notices), after “68(1)” insert “or (1A)”.
- 5. In section 71(1) (failure to comply with notice: order as to rental income), after “68(1)” insert “or (1A)”.
- 6. In section 74(1) (failure to comply with notice: management control order), after “68(1)” insert “or (1A)”.
- 7. In section 78 (failure to comply with notice: action by authority at landlord’s expense)—
 - (a) in subsection (1)(a), after “68(1)” insert “or (1A)”;
 - (b) in subsection (1)(c), after “notice”, insert “under section 68(1) or, as the case may be, future antisocial behaviour in respect of which action was specified in a notice under section 68(1A)”;
 - (c) in subsection (2), after “notice”, insert “under section 68(1) or, as the case may be, future antisocial behaviour in respect of which action was specified in a notice under section 68(1A)”.
- 8. In section 79(1) (failure to comply with notice: offence), after “68(1)” insert “or (1A)”.

Consequential amendment of secondary legislation

9. The Antisocial Behaviour Notice (Landlord Liability) (Scotland) Regulations 2005(2) are amended as follows—

- (a) in regulation 1(3) (interpretation), after “68(1)” insert “or (1A)”;
- (b) in regulation 2 (landlord liability for expenditure of local authority), after paragraph (2) insert—
 - “(3) Where the notice is served under section 68(1A) of the 2004 Act, sub-paragraphs (a) and (b) of paragraph (2) have effect as if the references to dealing with the antisocial behaviour specified in the notice were references to dealing with future antisocial behaviour.”.

10. In regulation 2 (advice and assistance) of the Antisocial Behaviour Notice (Advice and Assistance) (Scotland) Regulations 2005⁽³⁾—

- (a) in paragraph (1), after “68(1)” insert “or (1A)”;
(b) in paragraph (2)(b), after “68(1)” insert “or (1A)”.

St Andrew's House,
Edinburgh

Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies Part 7 of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) to enable a local authority to use that Part to address antisocial behaviour in relation to properties used for holiday purposes.

The 2004 Act gives a local authority the ability to serve an antisocial behaviour notice on the landlord of a property where an occupant or a visitor is engaging in antisocial behaviour. That notice describes the conduct and requires the landlord to take steps to deal with the behaviour. Part 7 of the 2004 Act also provides for further measures that may be taken if the landlord fails to comply with a notice, in addition to that failure being an offence.

This Order modifies Part 7 to allow a notice to be served where there has been antisocial behaviour by a person using a property for holiday purposes, or visitors while it is being so used.

Article 3 provides for when this type of notice can be served on a landlord. There must have been at least two occasions on which the property has been used for holiday purposes, and during at least two of those occasions antisocial behaviour has been engaged in by a user or visitor. Paragraph (3) provides that the notice must include details of the action a landlord must take to prevent future antisocial behaviour. The notice is served on the landlord and, if the local authority is aware of any person who acts of the landlord, that person. Paragraph (4) enables the notice to be served by newspaper publication if the local authority cannot identify the landlord.

Article 4 allows a landlord to apply for a review by a local authority when it has served a notice in relation to a property used for holiday purposes.

Article 5 provides that, if a landlord fails to comply with such a notice, the local authority may apply to a sheriff for an order that no rent or other consideration be payable by any person who occupies the property. The 2004 Act contains provisions for such an order, including what it may contain and provision for its appeal, revocation and suspension.

Sections 74 to 77 of the 2004 Act make provision for a management control order, where a landlord fails to comply with an antisocial behaviour notice. Such an order is made by a sheriff and transfers the management of the property to the local authority for a period of up to one year. Article 6 provides that such an order may also be sought where the notice relates to a property used for holiday purposes.

Article 7 provides that, where a landlord fails to comply with such a notice, a local authority may take such steps as it considers necessary to deal with the anticipated antisocial behaviour, which could be by taking steps to prevent other persons behaving antisocially. Regulations provide that the landlord is liable for expenses a local authority incurs where a notice is not complied with, and Article 9 makes consequential changes to those Regulations to ensure that a local authority can recover costs where a notice relates to a property used for holiday purposes.

Article 8 provides that failure to comply with a notice in relation to a property used for holiday purposes is an offence. As with notices in respect of other properties, the penalty is a fine not exceeding level 5 on the standard scale, and there is a defence where the landlord can show a reasonable excuse for the failure.

Article 10 makes consequential changes to a statutory instrument to ensure that a local authority is required to provide a landlord with advice and assistance where it proposes to serve a notice in respect of a property used for holiday purposes.

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Draft Legislation: This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Antisocial Behaviour Notices (Houses Used for Holiday Purposes) (Scotland) Order 2011 No. 201*