



# Housing (Scotland) Act 1987

## 1987 CHAPTER 26

### PART VII

#### OVERCROWDING

##### *Definition of overcrowding*

#### **135 Definition of overcrowding.**

—A house is overcrowded for the purposes of this Part when the number of persons sleeping in the house is such as to contravene—

- (a) the standard specified in section 136 (the room standard), or
- (b) the standard specified in section 137 (the space standard).

#### **136 The room standard.**

(1) The room standard is contravened when the number of persons sleeping in a house and the number of rooms available as sleeping accommodation is such that two persons of opposite sexes who are not living together as husband and wife must sleep in the same room.

(2) For this purpose—

- (a) children under the age of 10 shall be left out of account, and
- (b) a room is available as sleeping accommodation if it is of a type normally used in the locality either as a bedroom or as a living room.

#### **137 The space standard.**

(1) The space standard is contravened when the number of persons sleeping in a house is in excess of the permitted number, having regard to the number and floor area of the rooms of the house available as sleeping accommodation.

(2) For this purpose—

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- (a) no account shall be taken of a child under the age of one and a child aged one or over but under 10 shall be reckoned as one-half of a unit, and
  - (b) a room is available as sleeping accommodation if it is of a type normally used in the locality either as a living room or as a bedroom.
- (3) The permitted number of persons in relation to a house is whichever is the less of—
- (a) the number specified in Table I in relation to the number of rooms in the house available as sleeping accommodation, and
  - (b) the aggregate for all such rooms in the house of the numbers specified in column 2 of Table II in relation to each room of the floor area specified in column 1.

No account shall be taken for the purposes of either Table of a room having a floor area of less than 50 square feet.

TABLE I

<i>Number of rooms</i>	<i>Number of persons</i>
1	2
2	3
3	5
4	7½
5 or more	2 for each room

TABLE II

<b>Floor area of room</b>	<b>Number of persons</b>
110 sq. ft. or more	2
90 sq. ft. or more but less than 110 sq. ft.	1½
70 sq. ft. or more but less than 90 sq. ft.	1
50 sq. ft. or more but less than 70 sq. ft.	½

- (4) The Secretary of State may prescribe the manner in which the floor area of a room is to be ascertained for the purposes of this section; and the regulations may provide for the exclusion from computation, or the bringing into computation at a reduced figure, of floor space in a part of the room which is of less than a specified height.
- (5) Regulations under subsection (4) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A certificate of the local authority stating the number and floor areas of the rooms in a house, and that the floor areas have been ascertained in the prescribed manner, is evidence for the purposes of legal proceedings of the facts stated in it.

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### *Powers of Secretary of State*

#### **138 Secretary of State may increase permitted number of persons temporarily.**

- (1) The Secretary of State may, subject to the provisions of this section, increase by order the number of permitted persons in relation to houses to which this section applies or a specified class of those houses.
- (2) This section applies to houses consisting of a few rooms, or comprising rooms of exceptional floor area.
- (3) The Secretary of State may make an order under this section if he is satisfied on the representation of the local authority that such houses constitute so large a proportion of the housing accommodation in their district, or in any part of it, that it would be impracticable to assess the permitted number of persons in accordance with the provisions of section 137(3).
- (4) An order under this section may—
  - (a) direct that the provisions of section 137(3) are to have effect subject to such modifications for increasing the permitted number of persons as may be specified in the order;
  - (b) specify the period not exceeding 3 years during which such modifications are to apply;
  - (c) specify different modifications in relation to different classes of houses.
- (5) Any period specified in the order may be extended by the Secretary of State on the application of the local authority.
- (6) The Secretary of State shall consult the local authority before varying or revoking an order made under this section, and may vary it in respect of the modifications or of the houses to which the modifications apply or to both.
- (7) An order made under this section shall be made by statutory instrument.

### *Responsibility of occupier*

#### **139 Penalty for occupier causing or permitting overcrowding.**

- (1) The occupier of a house who causes or permits it to be overcrowded is guilty of an offence, subject to subsection (2).
- (2) The occupier is not guilty of an offence—
  - (a) if the overcrowding is within the exceptions specified in sections 140 or 141 (children attaining [<sup>F1</sup>age of one or 10] or temporary visitor), or
  - (b) by reason of anything done under the authority of, and in accordance with any conditions specified in, a licence granted by the local authority under section 142 or a resolution passed under section 143.
- (3) A person committing an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

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#### Textual Amendments

- F1 Words substituted (*retrospectively*) by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), s. 72(1), [Sch. 7 para. 5](#)

#### 140 Exception: children attaining age of 1 or 10.

- (1) Where a house which would not otherwise be overcrowded becomes overcrowded by reason of a child attaining the age of one or 10, the occupier does not commit an offence under section 139(1) (occupier causing or permitting overcrowding), so long as the condition in subsection (2) is met and the occupier does not fail to accept an offer of suitable alternative accommodation or to secure the removal of any person living in the house who is not a member of his family and whose removal is reasonably practicable.
- (2) The condition is that all the persons sleeping in the house are persons who were living there when the child attained that age and thereafter continuously live there, or children born after that date of any of those persons.

#### 141 Exception: temporary visitor.

—The occupier of a house shall not be guilty of an offence under section 139(1) in respect of overcrowding if the overcrowding is caused by a temporary resident whose stay does not exceed 16 days and to whom lodging is given by the occupier otherwise than for gain.

#### 142 Licence of local authority.

- (1) The occupier or intending occupier of a house may apply to the local authority for a licence authorising him to permit a number of persons in excess of the permitted number to sleep in the house.
- (2) The authority may grant such a licence if it appears to them that there are exceptional circumstances and that it is expedient to do so; and they shall specify in the licence the number of persons authorised in excess of the permitted number.
- (3) The licence shall be in the prescribed form and may be granted either unconditionally or subject to conditions specified in it.
- (4) The local authority may revoke the licence at their discretion by notice in writing served on the occupier and specifying a period (at least one month from the date of service) at the end of which the licence will cease to be in force.
- (5) Unless previously revoked, the licence continues in force for such period not exceeding twelve months as may be specified in it.
- (6) A copy of the licence and of any notice of revocation shall, within seven days of the issue of the licence or the service of the notice on the occupier, be served by the local authority on the landlord (if any) of the house.

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### **143 Exception: holiday visitors.**

- (1) A local authority may, for the purpose of providing for a seasonal increase of holiday visitors in their area, pass a resolution authorising—
  - (a) the occupiers of houses generally;
  - (b) the occupiers of houses of a specified class,in their area or any specified part of it to permit such number of persons in excess of the permitted number as may be specified to sleep in those houses during any period it is in force.
- (2) Such a resolution—
  - (a) requires the approval of the Secretary of State;
  - (b) is subject to such conditions as may be specified in it; and
  - (c) remains in force during the year in which it is passed for such period or periods not exceeding 16 weeks in the aggregate as it may specify.

#### *Powers and duties of landlord*

### **144 Offence by landlord not to inform prospective tenant of permitted number of occupants.**

- (1) The landlord of a house is guilty of an offence if he lets or agrees to let it to any person without—
  - (a) giving that person a written statement in the prescribed form of the permitted number of persons in relation to the house, and
  - (b) obtaining from that person a written acknowledgement in the prescribed form, and
  - (c) exhibiting the acknowledgement to the local authority on demand by them.
- (2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (3) A written statement given under subsection (1)(a) shall be treated as being sufficient and correct if it agrees with information given by the local authority under section 148.

### **145 Recovery of possession of overcrowded house that is let.**

—If the occupier of a house is guilty of an offence by reason of it being overcrowded—

- (a) nothing in the <sup>M1</sup>Rent (Scotland) Act 1984 [<sup>F2</sup>or in Part II of the Housing (Scotland) Act 1988] shall prevent the landlord from obtaining possession of the house;
- (b) the local authority after giving to the landlord written notice of their intention to do so may take any such steps for the termination of the occupier's tenancy or for his removal or ejection from the house as the landlord could take.

#### **Textual Amendments**

**F2** Words inserted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), s. 72(2), [Sch. 9 para. 14](#)

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#### Marginal Citations

M1 1984 c. 58.

### *Powers and duties of local authority*

#### **146 Duty of local authority to inspect district and to make reports and proposals as to overcrowding.**

- (1) A local authority shall, subject to the provisions of this section, carry out an inspection of their district or any part of it for the purpose of identifying houses that are overcrowded.
- (2) An inspection under subsection (1) shall be carried out at such times as—
  - (a) it appears to the local authority that there is occasion to do so, or
  - (b) the Secretary of State so directs.
- (3) On carrying out such an inspection the local authority shall prepare and submit to the Secretary of State a report indicating—
  - (a) the result of the inspection, and
  - (b) the additional housing accommodation required to put an end to overcrowding in the area to which the report relates, and
  - (c) subject to subsection (5), proposals for its provision, and
  - (d) in relation to such proposals, a statement of the steps the local authority propose to take to secure that priority is given to rehousing families living under the worst conditions of overcrowding or otherwise living under unsatisfactory housing conditions.
- (4) The report shall give such details as the Secretary of State may direct.
- (5) The report shall not require to make proposals for the additional housing accommodation required, if the local authority satisfy the Secretary of State that it will be otherwise provided.
- (6) Where the Secretary of State gives a direction under subsection (2), he may fix dates before which the performance of their duties under this section is to be completed.

#### **147 Power to require information about persons sleeping in house.**

- (1) The local authority may, for the purpose of enabling them to discharge their duties under this Part, serve notice on the occupier of a house requiring him to give them within 14 days a written statement of the number, ages and sexes of the persons sleeping in the house.
- (2) The occupier shall be guilty of an offence if—
  - (a) he makes default in complying with the requirement, or
  - (b) he gives a statement which to his knowledge is false in a material particular, and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

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#### **148 Duty to give information to landlords and occupiers.**

- (1) A local authority shall inform the landlord and the occupier of a house in writing of the permitted number of persons in relation to the house as soon as they have ascertained the floor area of the rooms.
- (2) They shall also so inform the landlord or the occupiers if they apply for the information.

#### **149 Power to publish information.**

A local authority may publish information for the assistance of landlords and occupiers of houses as to their rights and duties under this Part.

#### **150 Duty to enforce this Part.**

A local authority shall enforce the provisions of this Part.

#### **151 Interpretation and application.**

- (1) In this Part, except where the context otherwise requires—
  - “house” means any premises used or intended to be used as a separate dwelling . . . <sup>F3</sup>;
  - “landlord” means, in relation to any house, the person from whom the occupier derives his right to occupy it;
  - “suitable alternative accommodation” means, in relation to the occupier of a house, a house in which the occupier and his family can live without causing it to be overcrowded, being a house which the local authority certify to be suitable to the needs of the occupier and his family as respects security of tenure and proximity to place of work and to be suitable in relation to his means.
- (2) The provisions of sections 138(1) to (5), [<sup>F4</sup>139, 140 and 144] apply only to a locality in respect of which a day has been appointed under section 99 of the Housing (Scotland) Act 1966 or under any enactment referred to in that section.

#### **Textual Amendments**

- F3** Words repealed by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(1\)\(3\), Sch. 8 para. 3, Sch. 10](#)
- F4** Words substituted (*retrospectively*) by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\), s. 72\(1\), Sch. 7 para. 6](#)

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