

# TURCAN CONNELL

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# Information

## **Anti-Social Behaviour etc (Scotland) Act 2004**

### **Part 8**

#### **(Landlord Registration)**

The Anti-Social Behaviour etc (Scotland) Act 2004 (“the Act”) received Royal Assent on 26th July 2004. It provides among other things, for a new registration scheme for people (referred to throughout this note as “Owner(s)”) who lease property to or allow property to be occupied by unconnected third parties. The requirement for registration applies only to the lease or occupancy of property as a dwellinghouse. Local Authorities, registered social landlords and Communities Scotland do not have to register.

Part 8 of the Act (and Part 7 which gives power to local authorities to serve notice on a landlord where there is anti-social behaviour in a property they let out or allow to be occupied) came into force on 30th April 2006. There is a separate Turcan Connell briefing note on Part 7 of the Act.

The Act makes it an offence to own a house let to or occupied by an unconnected third party as a dwellinghouse if the Owner is not registered with their Local Authority. It should be noted that it is also an offence, if an Owner is not registered, to communicate with another person with a view to entering into such a lease or occupancy arrangement. An Owner must also register the details of their agent (if they have one); and of any tenant (and tenant’s agent) where that tenant is, in turn, letting a house to or allowing a

house to be occupied by a third party who is not a member of the family of either the Owner or the Owner's tenant.

### Comment

1. If an Owner wishes to enter into a short assured tenancy, it will not be possible to serve the required Statutory AT5 form on a tenant nor to speak to the potential tenant before the Owner is registered (or, as referred to below, has applied to be registered) with the Local Authority.
2. The regime applies not only to leases where there is a rent but to occupancy arrangements and, therefore, covers agreements for third parties to occupy properties where no rent passes.

There are certain categories of uses of a house as a dwelling which are disregarded for the purposes of the Act. These include a house used by a Religious Order, the principal occupation of which is prayer, contemplation, education or the relief of suffering; a house where a Control Order under Section 178 of the Housing (Scotland) 1987 is in force; a house used for holiday purposes; crofts and small land holdings; houses occupied by the tenant under a Limited Duration Tenancy, Short Limited Duration Tenancy and/or a tenancy under the Agricultural Holdings (Scotland) Act 1991; and a house which is the only or main residence of an Owner.

### Note

1. A Control Order under the Housing (Scotland) Act 1987 is an Order which may be served by a Local Authority in respect of a house within its district occupied by members of more than one family arising from defects due to failure to observe proper standards of management, failure to observe previous directions by the Local Authority regarding overcrowding or if it appears the state/condition of the house warrants such action.
2. It should be noted that there has been some confusion over the exclusion relating to houses occupied by the tenant under an LDT, SLDT or a full agricultural tenancy under the Agricultural Holdings (Scotland) Act 1991 ("1991 Act Tenancy") and whether those who own and let out farms under such leases need to register all or any of the houses within the lease.

Owners have to register houses included in a 1991 Act Tenancy, SLDT and LDT except the one (if any) occupied by the agricultural tenant. Houses which are vacant do not need to be registered. It is worth noting that where the lease of an agricultural holding is to a limited partnership, partnership or company, occupation by the general partner of a limited

partnership, any of the partners in an ordinary partnership or an officer of a company would not qualify as occupation by the tenant. Such a property should, therefore, be registered. The Scottish Executive's view, however, is that occupation by a limited partner or officer means that registration is **not** required.

The application process asks applicants, among other things, to declare that they have complied with housing legislation. Where an owner has not let a house included within a 1991 Act Tenancy, SLDT or LDT direct, the owner cannot give such a declaration safely where it is his tenant who has carried out the letting/allowed the occupancy. The Owner, in this instance, has no control over the terms of the lease/letting/occupancy arrangement and is unlikely in agricultural leases entered into before the Anti-Social Behaviour etc. (Scotland) Act to have included relevant clauses which would allow the Owner to make such a declaration. How a local authority will view an application which does not include the relevant declaration is not yet known. An explanatory letter should be sent with any such application.

Following an amendment to the 2004 Act introduced by the Housing (Scotland) Act 2006, a mid-landlord has to register as the agent of an Owner.

3. Owners **will** have to register in respect of houses occupied by employees.

Registration is only required where the lease is to, or the occupancy arrangement is with, an unconnected person. An unconnected person is someone who is not a member of the family of the Owner.

It is **not** an offence under the Act to let or allow a property to be occupied or to communicate with someone with a view to letting or allowing occupancy of it if the Owner has applied to the Local Authority for registration with payment of the relevant fee, the Owner has not been refused registration in the previous year and their application has not yet been determined. The Act also provides a defence to an Owner of reasonable excuse. If an Owner is convicted of an offence of letting or allowing occupancy without being registered they will be liable to a fine not exceeding £5,000.

In addition to being liable for prosecution, an unregistered Owner who has let a house or allowed it to be occupied by someone as a dwelling, can be served with a notice by the Local Authority in terms of which no rent or other consideration will be payable until revocation of the notice. A copy of any notice must be served on the tenant and any agent. An Owner has a period of twenty-one days from the date on which the notice takes effect to appeal to the Sheriff against service of such a notice. Notice of the fact that the Owner is appealing must be given to the tenant or occupant.

Once the Local Authority is satisfied that the Owner is registered and it is no longer appropriate for the notice to be served, having regard to the circumstances, the Local Authority **shall** revoke the notice but no “back rent” will become payable to the Owner. An Owner has twenty one days from the date of a Local Authority deciding not to revoke a notice to appeal against such a refusal.

All Local Authorities are required by the Act to prepare and maintain a register for the purposes of the Act.

Applications for registration will ask Owners to specify their name and address; the address of each house which they own which is subject to a lease or occupancy arrangement in terms of which an unconnected person may use the house as a dwelling; an address to which correspondence should be sent; and details of any person who acts for the owner in relation to the lease or occupancy arrangement. In addition, Regulations have been passed setting out further information which should be sought by Local Authorities including details of certain convictions; the identity of any joint owner; confirmation that the Owner has complied with the legal requirements relative to their lettings; and details of any court or tribunal judgements against the Owner under the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003 and/or the Employment Equality (Religion or Belief) Regulations 2003.

It is an offence to knowingly give false information and those found guilty will be liable to a fine not exceeding £1,000.

Third parties can apply to the Local Authority for information from the Register in relation to a particular house or a particular person and the Act sets out the information to be supplied. The Local Authority have discretion, however, to provide further information, provide information subject to conditions or, where the Local Authority consider that providing the information is likely to jeopardise someone’s safety or welfare or the security of any premises, to withhold the information.

The Act sets out the criteria which will be taken into account by the Local Authority when deciding whether or not to register an Owner. If the Local Authority is satisfied that the Owner is a fit and proper person to act as a landlord under a lease or occupancy arrangement and, where an Owner uses an agent the agent is a fit and proper person, they are to register the Owner. The criteria to which regard is to be had (when deciding whether the Owner is a fit and proper person) include any contraventions of the law relating to housing or landlord and tenant and actings (including failure to act) by the Owner or their agent in respect of anti-social behaviour affecting the house subject to the lease or occupancy arrangement.

An entry in the register will be for three years. An Owner must notify the Local Authority of changes to information provided. It is an offence not to do so.

If, after the initial registration, an Owner appoints an agent to act in relation to the lease then the Owner must notify the Local Authority. If the Local Authority determines that the agent appointed is not a fit and proper person, the registered landlord is removed from the register.

### Note

The sanction is **not** that a landlord cannot use that agent; the sanction is that the Owner will be removed from the register. He will immediately have to reapply for registration in order that he is not committing an offence in respect of his ongoing leases or occupancy arrangements.

The Local Authority also have power to remove an Owner from the register if they determine the Owner is no longer a fit and proper person or their agent is no longer a fit and proper person.

Such removal will have immediate consequences for any ongoing lets or occupancy arrangements. If the Owner cannot re-register, he will have to end any such arrangements. He may not be able to do so immediately and there is no specific defence for ongoing arrangements where a registered landlord is removed from the register or, indeed, where a lease has proceeded on the basis that the Owner has applied to register and his application is refused. An Owner in such a position would have to rely on the defence of reasonable excuse.

It should be noted that an Owner has a right of appeal to the Sheriff against a refusal to register and/or against a removal from the register.

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This note is intended as a brief summary of Part 8 of the Anti-Social Behaviour etc (Scotland) Act 2004. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.

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