



# Housing (Scotland) Act 2001

## 2001 asp 10

### PART 1

#### HOMELESSNESS AND ALLOCATION OF HOUSING

##### **1 Homelessness strategies**

- (1) Every local authority must, when required to do so by the Scottish Ministers—
  - (a) carry out an assessment of homelessness in its area, and
  - (b) prepare and submit to the Scottish Ministers a strategy for preventing and alleviating homelessness in its area (a “homelessness strategy”).
- (2) A requirement under subsection (1) may make provision as to—
  - (a) the particular matters to be assessed under subsection (1)(a),
  - (b) the time by which the strategy is to be submitted to the Scottish Ministers,
  - (c) the form of the strategy and the matters which it is to include,
  - (d) the period to which the strategy is to relate.
- (3) The Scottish Ministers may issue guidance, either to local authorities generally or to a particular authority, as to the form and content of an assessment and of a homelessness strategy and as to consultation on a proposed strategy.
- (4) Without prejudice to subsections (2) and (3), a homelessness strategy must state how the local authority is to comply with its duty under section 106 so far as relating to the matters included in the strategy.
- (5) A local authority must provide a copy of its homelessness strategy to any person who requests it.
- (6) A local authority—
  - (a) may, from time to time, and
  - (b) must, if required to do so by the Scottish Ministers,review its homelessness strategy and prepare and submit to the Scottish Ministers a revised homelessness strategy.

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## 2 Advice on homelessness etc.

- (1) Every local authority must secure that advice and information about—
- (a) homelessness and the prevention of homelessness, and
  - (b) any services which may assist a homeless person or assist in the prevention of homelessness,
- is available free of charge to any person in the authority’s area.
- (2) The Scottish Ministers may issue guidance, either to local authorities generally or to a particular authority, as to the form and content of such advice and information.

## 3 Homeless persons and persons threatened with homelessness

- (1) In section 24 (definition of persons threatened with homelessness) of the 1987 Act—
- (a) in subsection (1), for “Scotland, or England or Wales” substitute “the United Kingdom or elsewhere”,
  - (b) in subsection (3), after paragraph (d) insert “; or
    - (e) it is not permanent accommodation, in circumstances where, immediately before the commencement of his occupation of it, a local authority had a duty under section 31(2) in relation to him.”,
  - (c) in subsection (4), for “28 days” substitute “2 months”,
  - (d) after subsection (4) insert—
    - “(5) For the purposes of subsection (3)(e), “permanent accommodation” includes accommodation—
      - (a) of which the person is the heritable proprietor,
      - (b) secured by a Scottish secure tenancy,
      - (c) secured by an assured tenancy that is not a short assured tenancy,
      - (d) where paragraph 1 or 2 of schedule 6 to the Housing (Scotland) Act 2001 ([asp 10](#)) is satisfied in relation to the person, secured by a short Scottish secure tenancy.”
- (2) In section 29(1) (interim duty to accommodate) of that Act, the words “and have a priority need” are repealed.
- (3) In section 31 (duties to persons found to be homeless) of that Act—
- (a) in subsection (2), after “secure that” insert “permanent”,
  - (b) in subsection (3)—
    - (i) for the words from “Where” to “intentionally” substitute “In any other case”,
    - (ii) in paragraph (b), for the words from “such” to “circumstances” substitute “assistance of such type as may be prescribed”,
  - (c) subsection (4) is repealed,
  - (d) at the end insert—
    - “(5) For the purposes of subsection (2), “permanent accommodation” includes accommodation—
      - (a) secured by a Scottish secure tenancy,

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- (b) secured by an assured tenancy that is not a short assured tenancy,
    - (c) where paragraph 1 or 2 of schedule 6 to the Housing (Scotland) Act 2001 (asp10) is satisfied in relation to the applicant, secured by a short Scottish secure tenancy.”
- (4) In section 32 (duties to persons found to be threatened with homelessness) of that Act—
  - (a) in subsection (3)—
    - (i) for the words from “Where” to “intentionally” substitute “In any other case”,
    - (ii) for the words from “such” to “circumstances” substitute “assistance of such type as may be prescribed”,
  - (b) in subsection (5)—
    - (i) after “accommodation” insert “(a)”,
    - (ii) at the end insert—
      - “(b) that does not meet any special needs of the applicant and any other person referred to in section 24(2), or
      - (c) that it is not reasonable for the applicant to occupy.”,
  - (c) after subsection (5) insert—
    - “(6) Regulations made by virtue of section 31(3)(b) or subsection (3) above may make different provision for different purposes and different areas.
    - (7) Before making any such regulations, the Scottish Ministers shall consult—
      - (a) such associations representing local authorities, and
      - (b) such other persons,as they think fit on the proposed regulations.
    - (8) In exercising their functions under section 31 or this section in respect of a person falling within section 25(1)(b), the local authority shall have regard to the best interests of the dependent children referred to in that provision.”
- (5) After that section insert—

**“32A Power of the Scottish Ministers to modify application of sections 31 and 32**

- (1) The provisions of—
  - (a) section 31(2) so far as requiring that accommodation is to be permanent accommodation (within the meaning of section 31(5)), and
  - (b) section 32(5)(b),do not apply in such circumstances as may be prescribed.
- (2) Where—
  - (a) accommodation has been provided under section 31(2), and
  - (b) by virtue of subsection (1) above, that accommodation is not permanent accommodation (within the meaning of section 31(5)) or

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does not meet the special needs of the applicant and any other person referred to in section 24(2),  
 section 26 does not apply.”

- (6) In section 34 (duties to persons whose applications are referred)—
- (a) in subsection (2), after “that” in the second and fourth places where it occurs insert “permanent”,
  - (b) in subsection (3)(a), after “that” insert “permanent”,
  - (c) after subsection (4) insert—
    - “(5) For the purposes of subsection (1), “accommodation” has the meaning given in section 32(5).
    - (6) For the purposes of subsections (2) and (3)(a), “permanent accommodation” has the meaning given in section 31(5) as read with section 32(5).”

#### **4 Review of decisions**

- (1) In section 29 (interim duty to accommodate) of the 1987 Act, in subsection (1)—
- (a) after “occupation” insert “(a)”,
  - (b) at the end insert—
    - “(b) where the applicant has, under section 35A, requested a review of a decision of the authority, until they have notified him in accordance with section 35B of the decision reached on review.”
- (2) In section 30 (notification of decision and reasons) of that Act, after subsection (4) insert—
- “(4A) They shall also notify him—
- (a) that he may request a review of the decision and of the time within which such a request must be made, and
  - (b) of the advice and assistance that is available to him in connection with any such review.”
- (3) In section 34 (duties to persons whose applications are referred) of that Act—
- (a) after subsection (3) insert—
    - “(3A) The notifying authority shall also notify him—
      - (a) that he may request a review of the determination and of the time within which such a request must be made, and
      - (b) of the advice and assistance that is available to him in connection with any such review.”,
    - (b) in subsection (4), for “subsection (3)” substitute “this section”.
- (4) After section 35 of that Act insert—

#### **“35A Right to request review of decision**

- (1) Where an applicant requests a review of a decision to which subsection (2) applies, the local authority concerned shall review the decision.

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- (2) This subsection applies to the following decisions of a local authority—
  - (a) any decision as to what duty (if any) is owed to the applicant under section 31 or 32,
  - (b) any decision to notify another authority under section 33(1),
  - (c) any determination under section 33(4) or 34(2) as to whether the conditions for referral of an application are satisfied,
  - (d) where accommodation is secured for the applicant under section 31, 32 or 34, any decision as to whether the provision of that accommodation discharges the authority's duty to the applicant under that section.
- (3) A request for a review shall be made before the end of the period of 21 days beginning with the day on which the applicant is notified of the decision or such longer period as the authority may allow.
- (4) There is no right to request a review of a decision reached on review.

### **35B Procedure on review**

- (1) A review under section 35A shall be carried out by a person senior to the person who made the decision being reviewed and who had no involvement in the making of that decision.
- (2) The authority, or as the case may be either of the authorities, concerned shall notify the applicant of the decision reached on review.
- (3) If the decision is—
  - (a) to confirm the original decision on any issue against the interests of the applicant, or
  - (b) to confirm a previous decision—
    - (i) to notify another authority under section 33(1), or
    - (ii) that the conditions are met for referral of his case,the authority shall also notify him of the reasons for the decision.
- (4) Where subsection (3) applies, notice of the decision shall not be treated as given unless and until that subsection is complied with.
- (5) Any notice required to be given to an applicant under this section shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority's office for a reasonable period for collection by him or on his behalf."

## **5 Duty of registered social landlord to provide accommodation**

- (1) Where a local authority has a duty under section 31(2) (duty to persons found to be homeless) of the 1987 Act in relation to a homeless person, it may request a registered social landlord which holds houses for housing purposes in its area to provide accommodation for the person.
- (2) In deciding whether to make such a request, the local authority must have regard to the availability of appropriate accommodation in its area.

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- (3) A registered social landlord must, within a reasonable period, comply with such a request unless it has a good reason for not doing so.
- (4) A registered social landlord complies with such a request only if it provides for the person concerned accommodation—
  - (a) where paragraph 1 or 2 of schedule 6 is satisfied, secured by a short Scottish secure tenancy,
  - (b) in that or any other case, secured by a Scottish secure tenancy.
- (5) Subsection (4) does not apply where such a request is expressly for the provision of accommodation not secured as mentioned in that subsection.
- (6) A registered social landlord which holds housing for housing purposes in a local authority's area must comply with any reasonable request for information in relation to that housing made to it by the authority in connection with the exercise of the authority's functions under this section.
- (7) The Scottish Ministers may issue guidance as to what constitutes—
  - (a) for the purposes of subsection (3)—
    - (i) a reasonable period,
    - (ii) a good reason,
  - (b) for the purposes of subsection (6), a reasonable request.
- (8) Before issuing any such guidance, the Scottish Ministers must consult—
  - (a) such associations representing local authorities,
  - (b) such associations representing registered social landlords, and
  - (c) such other persons,
 as they think fit.

## **6 Duty of registered social landlord: further provision**

- (1) Where—
  - (a) a registered social landlord does not, within a reasonable period, comply with a request made by a local authority under section 5,
  - (b) the local authority considers, having regard to any guidance issued under subsection (7) of that section, that the landlord had no good reason for not complying with the request, and
  - (c) the local authority and the landlord are unable, within such period as the Scottish Ministers may specify by order, to reach agreement as to whether there is such a good reason,
 the local authority and the landlord must appoint an arbiter to determine the issue.
- (2) In determining for the purposes of subsection (1)(a) what is a reasonable period, regard must be had to any guidance issued under section 5(7).
- (3) If there is no agreement as to who is to be appointed as arbiter, the Scottish Ministers must, on the request of the local authority, appoint an arbiter.
- (4) The cost of any arbitration under this section is to be shared equally between the local authority and the landlord unless the arbiter determines otherwise.
- (5) The Scottish Ministers may issue guidance as to—

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- (a) the period within which an arbiter is to be appointed under subsection (1),
  - (b) the procedure for appointing an arbiter under that subsection,
  - (c) the remuneration and other expenses which may be paid to an arbiter appointed under subsection (1) or (3), and any other expenses which may be paid in respect of arbitration,
  - (d) the procedure to be followed at arbitration,
  - (e) the maximum length of time of the arbitration procedure.
- (6) Any determination of an arbiter by virtue of this section is final.

## **7 Persons living in hostel and other short-term accommodation**

- (1) This section applies to the occupancy of residential accommodation, or of any description of residential accommodation, on such basis as may be specified in regulations made by the Scottish Ministers.
- (2) Such regulations must not specify occupancy of accommodation—
- (a) as heritable proprietor,
  - (b) secured by—
    - (i) a Scottish secure tenancy or what would be a Scottish secure tenancy but for paragraph 1, 2 or 8 of schedule 1,
    - (ii) a short Scottish secure tenancy,
    - (iii) an assured tenancy or what would be an assured tenancy but for paragraph 8 of Schedule 4 to the 1988 Act,
    - (iv) a short assured tenancy.
- (3) The Scottish Ministers may specify by regulations terms which are to have effect as terms of an occupancy to which this section applies as between the occupier and the person providing the accommodation; and any agreement between those persons has no effect so far as it is inconsistent with any such term.
- (4) Regulations under subsection (3) must include provision for a minimum period of notice to be given by the person providing the accommodation to the occupier before the right of occupancy can be terminated; but such provision does not prevent the earlier termination of occupancy rights where there is a serious danger to other occupiers or staff of the accommodation.
- (5) Regulations under subsection (3) may also make provision for an application to the court by a person whose occupancy is terminated on the ground that there is a serious danger to other occupiers or staff of the accommodation.
- (6) Subsection (3) does not prevent the occupier and the person providing the accommodation from agreeing terms of the occupancy additional to those specified in the regulations.
- (7) A person providing such accommodation who fails, without reasonable excuse, to comply with a term specified under subsection (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) Before making any regulations under subsection (3), the Scottish Ministers must consult—
- (a) such associations representing local authorities,
  - (b) such associations representing registered social landlords, and

(c) such other persons,  
as they think fit on the proposed regulations.

## **8 Common housing registers**

- (1) A local authority must, when required to do so by the Scottish Ministers, prepare and submit to the Scottish Ministers proposals for establishing and maintaining a list of applicants for housing to be kept jointly by or on behalf of any two or more housing providers in connection with the allocation of housing held by them for housing purposes.
- (2) In subsection (1), “housing providers” means the local authority, any other local authority and any registered social landlord.
- (3) The Scottish Ministers may by regulations make provision as to establishing and maintaining such a list.
- (4) Such regulations may, in particular, make provision as to—
  - (a) the time by which proposals under subsection (1) are to be submitted to the Scottish Ministers,
  - (b) the form of such proposals and the matters which they are to include,
  - (c) consultation on such proposals,
  - (d) the procedure for approval of such proposals by the Scottish Ministers,
  - (e) the procedure for implementing such proposals .
- (5) Where the Scottish Ministers approve proposals by virtue of this section, the local authority must ensure that a list of applicants for housing is established and maintained in accordance with the proposals as so approved.
- (6) A registered social landlord which holds housing for housing purposes must comply with any reasonable request made to it by a local authority in connection with the exercise of the authority’s functions under this section.

## **9 Housing lists**

For section 19 (admission to housing list) of the 1987 Act substitute—

### **“19 Admission to housing list**

- (1) An applicant for housing held by a local authority or a registered social landlord is entitled to be admitted to a housing list unless the applicant is under 16 years of age.
- (2) In this section, “housing list” means a list of applicants for housing which is kept by any housing provider or jointly by or on behalf of any two or more housing providers in connection with the allocation of housing held by it or them for housing purposes.
- (3) In subsection (2), “housing provider” means any local authority or any registered social landlord.”



## 10 Allocation of housing

- (1) Section 20 (persons to have priority on housing list and allocation of housing) of the 1987 Act is amended as follows.
- (2) In subsection (1)—
  - (a) after “authority” insert “and a registered social landlord”,
  - (b) for paragraph (b) substitute—

“(b) to homeless persons and persons threatened with homelessness (within the meaning of Part II).”
- (3) In subsection (2)—
  - (a) for “local authority” in the first place where it occurs substitute “such”,
  - (b) after “authority” in the second place where it occurs insert “and a registered social landlord”,
  - (c) in paragraph (a), for sub-paragraph (iii) substitute—
    - “(iii) any liability (for payment of rent or otherwise) of the applicant which is attributable to the applicant’s tenancy of a house but which is no longer outstanding; or
    - (iv) any such liability which is outstanding but in respect of which subsection (2A) is satisfied; or
    - (v) any outstanding liability of the applicant or of any person who it is proposed will reside with the applicant which is not attributable to the tenancy of a house; or
    - (vi) except to the extent permitted by subsection (2B), the age of the applicant provided that the applicant has attained the age of 16 years; or
    - (vii) the income of the applicant and his family; or
    - (viii) whether, or to what value, the applicant or any of his family owns or has owned (or any of them own or have owned) heritable or moveable property;”
  - (d) after paragraph (a) insert—
    - “(aa) shall take no account of whether an applicant is resident in their area if the applicant—
      - (i) is employed, or has been offered employment, in the area; or
      - (ii) wishes to move into the area and they are satisfied that his purpose in doing so is to seek employment; or
      - (iii) wishes to move into the area to be near a relative or carer; or
      - (iv) has special social or medical reasons for requiring to be housed within the area; or
      - (v) is subject to conduct amounting to harassment (“conduct” and “harassment” being construed in accordance with section 8 of the Protection from Harassment Act 1997 (c. 40)) and wishes to move into the area; or

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(vi) runs the risk of domestic violence (within the meaning of section 33(3)) and wishes to move into the area; and”.

(4) After subsection (2) insert—

“(2A) This subsection is satisfied in respect of an outstanding liability where—

- (a) the amount of the outstanding liability is not more than one twelfth of the annual amount payable (or which was payable) by the applicant to the landlord in respect of the tenancy in question; or
- (b) the applicant—
  - (i) has agreed with the landlord an arrangement for paying the outstanding liability;
  - (ii) has made payments in accordance with that arrangement for at least three months; and
  - (iii) is continuing to make such payments.

(2B) A local authority and a registered social landlord may take into account the age of applicants in the allocation of—

- (a) houses which have been designed or substantially adapted for occupation by persons of a particular age group;
- (b) houses to persons who are or are to be in receipt of housing support services (within the meaning of section 91 of the Housing (Scotland) Act 2001 ([asp 10](#))) for persons of a particular age group.”

(5) After subsection (3) insert—

“(4) In the application of this section to registered social landlords, any reference to their area means the local authority area or areas, or the part of that area or those areas, in which the registered social landlord holds houses for housing purposes.”

## PART 2

### TENANTS OF SOCIAL LANDLORDS

#### CHAPTER 1

##### SCOTTISH SECURE TENANCIES

###### *Creation and termination of tenancy*

## 11 Scottish secure tenancy

(1) A tenancy of a house is a Scottish secure tenancy if—

- (a) the house is let as a separate dwelling,
- (b) the landlord is—
  - (i) a local authority landlord,
  - (ii) a registered social landlord, or
  - (iii) a water authority or sewerage authority,

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- specified, or of a description specified, in an order made by the Scottish Ministers,
- (c) the tenant is an individual and the house is the tenant's only or principal home,
  - (d) where the landlord is a registered social landlord which is a co-operative housing association, the tenant is a member of the association, and
  - (e) the tenancy—
    - (i) was created on or after such date as the order may specify in relation to the landlord, or
    - (ii) was created before that date and is of a description specified in the order in relation to the landlord.
- (2) An order under subsection (1) may, without prejudice to section 109(2) or 110, make provision for ensuring that rights of the landlord, the tenant and any other person under or in relation to a tenancy which becomes a Scottish secure tenancy by virtue of the order are not adversely affected by the tenancy becoming a Scottish secure tenancy.
- (3) In this Act, “local authority landlord” means a landlord which is a local authority, a joint board or joint committee of two or more local authorities, or the common good of a local authority, or any trust under the control of a local authority.
- (4) A tenancy is not a Scottish secure tenancy if it is a tenancy of a kind mentioned in schedule 1.
- (5) The tenant under a Scottish secure tenancy and one or more other individuals falling within subsection (6) may jointly apply in writing to the landlord for the other individuals to be included with the tenant as joint tenants under the tenancy; and the landlord must consent to the alteration of the tenancy unless it has reasonable grounds for not doing so.
- (6) An individual falls within this subsection if the house in question is, or is intended to be, that person's only or principal home.
- (7) It is a term of every Scottish secure tenancy that the tenant complies with paragraphs (c) and (d) of subsection (1).
- (8) Without prejudice to sections 14 and 16 and schedule 2, a tenancy which is a Scottish secure tenancy continues to be a Scottish secure tenancy even if subsection (1)(b), (c) or (d) is no longer satisfied.
- (9) Where—
  - (a) the house which a tenant under a Scottish secure tenancy normally occupies is not available for occupation, and
  - (b) the tenant is accommodated temporarily in another house the landlord of which is a local authority landlord or a registered social landlord,the other house is to be taken, for the purposes of this Chapter except sections 12 to 16 and paragraph 4 of schedule 1, to be the house which the tenant normally occupies.

## **12 Restriction on termination of tenancy**

- (1) Despite anything in the tenancy agreement, a Scottish secure tenancy may not be brought to an end except—
  - (a) by an order for recovery of possession under section 16(2),
  - (b) by operation of section 18(2),

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- (c) by operation of section 22,
  - (d) by operation of section 35,
  - (e) by written agreement between the landlord and the tenant, or
  - (f) by 4 weeks' notice given by the tenant to the landlord.
- (2) Subsection (3) applies where—
- (a) the house which a tenant under a Scottish secure tenancy normally occupies is not available for occupation, and
  - (b) the tenant is—
    - (i) by agreement, or
    - (ii) following an order under section 16(2) (where an order has also been made under subsection (6) of that section),  
 accommodated temporarily in another house the landlord of which is a landlord mentioned in section 11(1)(b).
- (3) Where this subsection applies, the landlord is not entitled to bring the tenant's occupation of the other house to an end before the house which the tenant normally occupies is available for occupation unless the Scottish secure tenancy has been brought to an end.

### **13 Termination of joint tenant's interest in tenancy**

A joint tenant under a Scottish secure tenancy may bring to an end that tenant's interest in the tenancy by 4 weeks' notice given to the landlord and each of the other joint tenants under the tenancy.

### **14 Proceedings for possession**

- (1) The landlord under a Scottish secure tenancy may raise proceedings by way of summary cause for recovery of possession of the house.
- (2) Such proceedings may not be raised unless—
- (a) the landlord has served on the tenant and any qualifying occupier a notice complying with subsection (4),
  - (b) the proceedings are raised on or after the date specified in the notice, and
  - (c) the notice is in force at the time when the proceedings are raised.
- (3) Before serving a notice under subsection (2) the landlord must make such inquiries as may be necessary to establish so far as is reasonably practicable whether there are any qualifying occupiers of the house and, if so, their identities.
- (4) A notice under subsection (2) must be in such form as the Scottish Ministers may prescribe by regulations, and must specify—
- (a) the ground, being a ground set out in Part 1 of schedule 2, on which proceedings for recovery of possession are to be raised, and
  - (b) a date, not earlier than—
    - (i) 4 weeks from the date of service of the notice, or
    - (ii) the date on which the tenancy could have been brought to an end by a notice to quit had it not been a Scottish secure tenancy,
 whichever is later, on or after which the landlord may raise proceedings for recovery of possession.

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- (5) A notice under subsection (2) ceases to be in force 6 months after the date specified in it in accordance with subsection (4)(b) or when it is withdrawn by the landlord, whichever is earlier.
- (6) In this section and section 15, “qualifying occupier” means a person who occupies the house as that person’s only or principal home and who is—
  - (a) a member of the tenant’s family aged at least 16 years,
  - (b) a person to whom the tenant has, with the landlord’s consent under section 32(1), assigned, sublet or otherwise given up possession of the house or any part of it, or
  - (c) a person whom the tenant has, with such consent, taken in as a lodger.

## **15 Rights of qualifying occupiers in possession proceedings**

Where a qualifying occupier applies to the court to be sisted as a party to proceedings under section 14, the court must grant the application.

## **16 Powers of court in possession proceedings**

- (1) The court may, as it thinks fit, adjourn proceedings under section 14 on a ground set out in any of paragraphs 1 to 7 and 15 of schedule 2 for a period or periods, with or without imposing conditions as to payment of outstanding rent or otherwise.
- (2) Subject to subsection (1), in proceedings under section 14 the court must make an order for recovery of possession if it appears to the court—
  - (a) that—
    - (i) the landlord has a ground for recovery of possession set out in any of paragraphs 1 to 7 of that schedule and specified in the notice required by section 14, and
    - (ii) it is reasonable to make the order,
  - (b) that—
    - (i) the landlord has a ground for recovery of possession set out in any of paragraphs 8 to 14 of that schedule and so specified, and
    - (ii) other suitable accommodation will be available for the tenant when the order takes effect, or
  - (c) that—
    - (i) the landlord has a ground for recovery of possession set out in paragraph 15 of that schedule and so specified,
    - (ii) it is reasonable to make the order, and
    - (iii) other suitable accommodation will be available for the tenant when the order takes effect.
- (3) For the purposes of subsection (2)(a)(ii) the court is to have regard, in particular, to—
  - (a) the nature, frequency and duration of—
    - (i) where the ground for recovery of possession is one set out in any of paragraphs 1 and 3 to 7 of schedule 2, the conduct taken into account by the court in concluding that the ground is established,
    - (ii) where the ground for recovery of possession is that set out in paragraph 2 of that schedule, the conduct in respect of which the person in question was convicted,

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- (b) the extent to which that conduct is or was conduct of, or a consequence of acts or omissions of, persons other than the tenant,
  - (c) the effect which that conduct has had, is having and is likely to have on any person other than the tenant, and
  - (d) any action taken by the landlord, before raising the proceedings, with a view to securing the cessation of that conduct.
- (4) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (2)(b) or (c).
- (5) An order under subsection (2) must appoint a date for recovery of possession and has the effect of—
- (a) terminating the tenancy, and
  - (b) giving the landlord the right to recover possession of the house, at that date.
- (6) Where, in proceedings under section 14 on the ground set out in paragraph 10 of schedule 2, it appears to the court that the landlord intends that—
- (a) substantial work will be carried out on the building (or a part of the building) which comprises or includes the house, and
  - (b) the tenant should return to the house after the work is completed,
- the court must make an order that the tenant is entitled to return to the house after the work is completed; and subsection (5)(a) does not apply in such a case.

## **17 Abandoned tenancies**

- (1) This section applies where a landlord under a Scottish secure tenancy has reasonable grounds for believing that—
- (a) the house is unoccupied, and
  - (b) the tenant does not intend to occupy it as the tenant's home.
- (2) The landlord may enter the house at any time for the purpose of securing the house and any fittings, fixtures or furniture against vandalism.
- (3) For the purposes of subsection (2), the landlord and its servants or agents may open, by force if necessary, doors and lockfast places.
- (4) The landlord may take possession of the house in accordance with section 18.

## **18 Repossession**

- (1) A landlord wishing to take possession of a house under section 17(4) must serve on the tenant a notice—
- (a) stating that the landlord has reason to believe that the house is unoccupied and that the tenant does not intend to occupy it as the tenant's home,
  - (b) requiring the tenant to inform the landlord in writing within 4 weeks of service of the notice if the tenant intends to occupy the house as the tenant's home, and
  - (c) informing the tenant that, if it appears to the landlord at the end of that period that the tenant does not intend so to occupy the house, the tenancy will be terminated with immediate effect.
- (2) Where—

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- (a) the landlord has—
    - (i) served on the tenant a notice complying with subsection (1), and
    - (ii) made such inquiries as may be necessary to satisfy the landlord that the house is unoccupied and that the tenant does not intend to occupy it as the tenant's home, and
  - (b) at the end of the period mentioned in subsection (1)(b) the landlord is so satisfied,  
the landlord may serve a further notice on the tenant bringing the tenancy to an end with immediate effect.
- (3) Where a tenancy has been terminated in accordance with this section the landlord is entitled to take possession of the house without any further proceedings.
- (4) The Scottish Ministers may by order make provision for the landlord, in taking possession of the house, to secure the safe custody and delivery to the tenant of any property which is found in a house to which this section applies and, in particular—
- (a) for requiring charges to be paid in respect of such property before it is delivered to the tenant, and
  - (b) for authorising the disposal of such property, if the tenant has not arranged for its delivery to the tenant before the expiry of such period as the order may specify, and the application of any proceeds towards any costs incurred by the landlord and any rent due but unpaid by the tenant to the landlord.

## **19 Tenant's recourse to court**

- (1) A tenant under a Scottish secure tenancy who is aggrieved by termination of the tenancy by the landlord under section 18(2) may raise proceedings by summary application within 6 months after the date of the termination.
- (2) Subsection (3) applies where, in proceedings under this section, it appears to the court that the landlord—
- (a) has failed to comply with any provision of section 18,
  - (b) did not have reasonable grounds for finding—
    - (i) that the house was unoccupied, or
    - (ii) that the tenant did not intend to occupy it as the tenant's home, or
  - (c) was in error in finding that the tenant did not intend to occupy the house as the tenant's home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of the tenant's intention so to occupy it.
- (3) Where this subsection applies the court must—
- (a) if the house has not been let to a new tenant, grant a declarator that the notice under section 18(2) is of no effect, or
  - (b) in any other case, direct the landlord to make other suitable accommodation available to the tenant.
- (4) On granting a declarator under subsection (3)(a) the court may make such further order in relation to the Scottish secure tenancy as it thinks fit.
- (5) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (3)(b).

## **20 Abandonment by joint tenant**

- (1) This section applies where a landlord under a Scottish secure tenancy has reasonable grounds for believing that a joint tenant under the tenancy (the “abandoning tenant”)—
  - (a) is not occupying the house, and
  - (b) does not intend to occupy it as the tenant’s home.
- (2) A landlord wishing to bring to an end the interest of an abandoning tenant in the tenancy must serve on the abandoning tenant a notice—
  - (a) stating that the landlord has reason to believe that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant’s home,
  - (b) requiring the abandoning tenant to inform the landlord in writing within 4 weeks of service of the notice if the abandoning tenant intends to occupy the house as the tenant’s home, and
  - (c) informing the abandoning tenant that, if it appears to the landlord at the end of that period that the abandoning tenant does not intend so to occupy the house, the abandoning tenant’s interest in the tenancy will be brought to an end by the service of a notice under subsection (3).
- (3) Where—
  - (a) the landlord has—
    - (i) served on the abandoning tenant a notice complying with subsection (2), and
    - (ii) made such inquiries as may be necessary to satisfy the landlord that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant’s home, and
  - (b) at the end of the period mentioned in subsection (2)(b) the landlord is so satisfied,

the landlord may serve a further notice on the abandoning tenant bringing the abandoning tenant’s interest in the tenancy to an end with effect from a date specified in the notice, being a date not earlier than 8 weeks after the date of service of the notice.
- (4) A landlord serving a notice on an abandoning tenant under subsection (2) or (3) must serve a copy of the notice on each of the other joint tenants under the tenancy.

## **21 Joint tenancies: abandoning tenant’s recourse to court**

- (1) A joint tenant under a Scottish secure tenancy who is aggrieved by the bringing to an end of the tenant’s interest in the tenancy under subsection (3) of section 20 may raise proceedings by summary application within 8 weeks after the date of service of the notice under that subsection.
- (2) Subsection (3) of this section applies where, in proceedings under this section, it appears to the court that the landlord—
  - (a) has failed to comply with any provision of section 20,
  - (b) did not have reasonable grounds for finding that the tenant—
    - (i) was not occupying the house, or
    - (ii) did not intend to occupy it as the tenant’s home, or
  - (c) was in error in finding that the tenant did not intend to occupy the house as the tenant’s home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of the tenant’s intention so to occupy it.



- (3) Where this subsection applies, the court must—
  - (a) grant a declarator that the notice under section 20(3) is of no effect, or
  - (b) if it would be unreasonable to grant such a declarator, direct the landlord to make other suitable accommodation available to the tenant.
- (4) On granting a declarator under subsection (3)(a) the court may make such further order in relation to the tenant's interest in the tenancy as it thinks fit.
- (5) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (3)(b).

### *Succession*

## **22 Succession to Scottish secure tenancy**

- (1) On the death of a tenant under a Scottish secure tenancy, the tenancy passes by operation of law to a qualified person.
- (2) On the death of a qualified person who succeeded to a tenancy under subsection (1), the tenancy passes by operation of law to another qualified person.
- (3) If, for the purpose of subsection (1) or (2), there is no qualified person, or every qualified person declines the tenancy, the tenancy is terminated.
- (4) On the death of a qualified person who succeeded to a tenancy under subsection (2), the tenancy is terminated.
- (5) Schedule 3, which makes provision as to who are qualified persons for the purposes of this section and as to the operation of subsections (1) and (2), has effect.
- (6) Where, in a case to which paragraph 5 of schedule 3 applies—
  - (a) a tenancy is terminated by operation of subsection (3), and
  - (b) there is a person who would have been a qualified person but for that paragraph,the landlord must make other suitable accommodation available to that person.
- (7) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (6).
- (8) Subsection (4) does not operate so as to terminate the Scottish secure tenancy of any tenant under a joint tenancy where such a joint tenant continues to use the house as that person's only or principal home.
- (9) Where a tenancy is terminated by operation of subsection (4) and there is a qualified person (other than a joint tenant to whom subsection (8) applies), that person is entitled to continue as tenant for a period not exceeding 6 months, but the tenancy ceases to be a Scottish secure tenancy.
- (10) Where a tenant gives up a Scottish secure tenancy in order to occupy another house which is subject to a Scottish secure tenancy, following termination of the first tenancy by an order under section 16(2)(b), those tenancies are, for the purposes of this section, to be treated as being a single tenancy.

*Tenancy agreement and information*

**23 Tenant’s right to written tenancy agreement and information**

- (1) The landlord under a Scottish secure tenancy must—
  - (a) draw up a tenancy agreement stating (expressly or by reference) the terms of the tenancy,
  - (b) ensure that it is, before the commencement of the tenancy, subscribed by the landlord and the tenant in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7), and
  - (c) supply a copy to the tenant.
- (2) The tenant is not liable for any fees in respect of anything done under subsection (1).
- (3) The Scottish Ministers may issue guidance as to the form and content of a tenancy agreement; and such guidance may include, in particular, a model tenancy agreement.
- (4) Before the creation of a Scottish secure tenancy the landlord must provide the tenant with information about—
  - (a) the tenant’s right under Part III of the 1987 Act to purchase the house which is the subject of the tenancy, and
  - (b) the obligations which the tenant is likely to incur if that right is exercised, including any obligation to maintain any building of which the house forms part and any common areas.
- (5) Where the tenant’s right under that Part to purchase the house is affected by any amendment to that Part or the exercise of any power conferred by that Part, the landlord must inform the tenant of that fact and of the extent to which the tenant’s right to purchase is affected.
- (6) The landlord under a Scottish secure tenancy must provide the tenant with information about its complaints procedure and must, if the tenant so requests, provide the tenant with information about—
  - (a) the terms of the tenancy,
  - (b) the landlord’s policy and procedure in relation to setting of rent and charges,
  - (c) the landlord’s policy and rules in relation to—
    - (i) admission of applicants to any housing list,
    - (ii) priority of allocation of houses,
    - (iii) transfers of tenants between houses owned by the landlord,
    - (iv) exchanges of houses owned by the landlord with houses owned by other bodies,
    - (v) repairs and maintenance,
  - (d) the application of Part III of the 1987 Act to the tenant, the tenancy and the house,
  - (e) the obligations which the tenant is likely to incur if the tenant’s right under that Part to purchase the house is exercised, including any obligation to maintain any building of which the house forms part and any common areas,
  - (f) where the landlord is a local authority landlord or a registered social landlord, the landlord’s tenant participation strategy,

- (g) the landlord's arrangements for taking decisions in the exercise of its functions in relation to the management of housing accommodation and the provision of related services by it.

### *Variation*

#### **24 Restriction on variation of tenancy**

- (1) Despite anything in the tenancy agreement, the terms of a Scottish secure tenancy may not be varied except—
  - (a) by written agreement between the landlord and the tenant, or
  - (b) under section 25 or 26.
- (2) A variation referred to in subsection (1) does not terminate the tenancy.
- (3) The landlord must draw up any agreement under subsection (1)(a) and ensure that it is subscribed by the parties in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7).

#### **25 Increase in rent or charges**

- (1) The landlord under a Scottish secure tenancy may increase the rent or any other charge payable under the tenancy by giving the tenant notice of the increase not less than 4 weeks before the beginning of any rental period (or any earlier day on which the payment of rent in respect of that period falls to be made).
- (2) Where a notice is given under subsection (1), the rent or charge is increased in relation to that and every subsequent rental period.
- (3) In subsections (1) and (2), “rental period” means a period in respect of which an instalment of rent falls to be paid.
- (4) Where the landlord under a Scottish secure tenancy proposes to increase the rents or any other charges payable by all, or any class of, its tenants it must, before giving notice under subsection (1)—
  - (a) consult those of its tenants who would be affected by the proposal, and
  - (b) have regard to the views expressed by those consulted.

#### **26 Variation of tenancy by court order**

- (1) Where the landlord under a Scottish secure tenancy wishes to vary the terms or conditions of the tenancy, but the tenant refuses or fails to agree the variation, the landlord may raise proceedings by summary application.
- (2) Where the tenant under a Scottish secure tenancy wishes to vary any term of the tenancy which restricts the tenant's use or enjoyment of the house, on the ground that—
  - (a) by reason of changes in the character of the house or of the neighbourhood or other circumstances, the term is or has become unreasonable or inappropriate,
  - (b) the term is unduly burdensome compared with any benefit resulting from its performance, or
  - (c) the existence of the term impedes some reasonable use of the house,

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but the landlord refuses or fails to agree the variation, the tenant may raise proceedings by summary application.

- (3) In proceedings under subsection (1) or (2) the court may make such order varying any term of the tenancy (other than a term relating to the amount of rent or of any other charge payable by the tenant) as it considers reasonable in all the circumstances, having particular regard to—
  - (a) the safety of any person, and
  - (b) any likelihood of damage to the house or to any premises of which it forms part.
- (4) An order under subsection (3) in proceedings under subsection (2) may require the tenant to pay to the landlord such sum (if any) as the court considers reasonable to compensate the landlord for any patrimonial loss arising from the variation.
- (5) At any time before making an order in proceedings under subsection (2), the court may order the tenant to serve a copy of the application on any person who, in the capacity of owner or tenant of any land, appears to the court—
  - (a) to benefit from the term of which variation is sought, or
  - (b) to be adversely affected by the proposed variation.

#### *Repairs and improvements*

### **27 Repairs**

- (1) Schedule 4, which makes provision about the landlord’s obligations to repair a house let under a Scottish secure tenancy, has effect.
- (2) The Scottish Ministers may make regulations for entitling a tenant under a Scottish secure tenancy whose landlord is a landlord specified in the regulations to have qualifying repairs carried out to the house which is the subject of the tenancy.
- (3) The regulations must specify, in particular—
  - (a) the maximum amount payable in respect of any single qualifying repair,
  - (b) the period within which a qualifying repair is to be completed, and
  - (c) the repairs which are qualifying repairs for the purposes of this section.

### **28 Landlord’s consent to work**

- (1) It is a term of every Scottish secure tenancy that the tenant is not to carry out work, other than interior decoration, in relation to the house without the consent in writing of the landlord, which must not be unreasonably withheld.
- (2) In this section and Part 1 of schedule 5, “work” means—
  - (a) alteration, improvement or enlargement of the house or of any fittings or fixtures,
  - (b) addition of new fittings or fixtures,
  - (c) erection of a garage, shed or other structure,
 but does not include repairs or maintenance of any of these.
- (3) The provisions of Part 1 of schedule 5 have effect as terms of every Scottish secure tenancy.

- (4) The Scottish Ministers may issue guidance to landlords as to the standards to which different descriptions of work should be carried out and as to the matters to which landlords should have regard in considering imposing conditions under paragraph 2(b) of schedule 5 as to the standard of work.

## **29 Reimbursement of cost of work**

- (1) On the termination of a Scottish secure tenancy, the landlord may (without prejudice to any other power to that effect) make any payment to the tenant which it considers appropriate in respect of improvement work carried out by the tenant (or by any predecessor of the tenant under the same tenancy) with the landlord's consent under section 28.
- (2) The amount of any payment under subsection (1) must not exceed the cost of the work in respect of which it is made, after deduction of the amount of any grant paid or payable under Part XIII (grants for improvement, repairs etc.) of the 1987 Act.
- (3) Where a Scottish secure tenancy is terminated (under section 22(3) or (4)) by the death of the tenant, a payment under subsection (1) may be made to the tenant's personal representatives.

## **30 Right to compensation for improvements**

- (1) For the purposes of this section—
- “qualifying improvement work” is improvement work which is prescribed as such and which is begun not earlier than the commencement of this section,
- “qualifying person” is a person who is, immediately before the tenancy is terminated, a tenant under a Scottish secure tenancy, and—
- (a) is the tenant who carried out the qualifying improvement work,
- (b) is a tenant of a joint tenancy which existed at the time the work was carried out, or
- (c) succeeded to the tenancy under section 22 on the death of the tenant who carried out the work and the tenancy did not cease to be a Scottish secure tenancy on the succession.
- (2) For the purposes of this section, a tenancy is terminated when—
- (a) any of the circumstances of subsection (1) of section 12 apply and, in a case where the termination is under paragraph (d), (e) or (f) of that subsection, the house is vacated,
- (b) there is a change of landlord, or
- (c) it is assigned to a new tenant.
- (3) Where the tenant under a Scottish secure tenancy has carried out qualifying improvement work with the consent of the landlord under section 28, a qualifying person is on the termination of the tenancy entitled to be paid compensation by the landlord in respect of the work.
- (4) Compensation is not payable if—
- (a) the tenancy comes to an end in prescribed circumstances,
- (b) compensation has been paid under section 29 in respect of the improvement,
- or

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- (c) the amount of any compensation which would otherwise be payable is less than such amount as may be prescribed.
- (5) Regulations under this section may provide that—
- (a) any compensation payable is to be—
    - (i) determined by the landlord in such manner and taking into account such matters as may be prescribed, or
    - (ii) calculated in such manner and taking into account such matters as may be prescribed, and is not to exceed such amount, if any, as may be prescribed,
  - (b) the landlord may set off against any compensation payable under this section any sums owed to it by any qualifying person.
- (6) Where, in the case of two or more qualifying persons, one of them (“the missing person”) cannot be found—
- (a) a claim for compensation under this section may be made by, and compensation may be paid to, the other qualifying person or persons, but
  - (b) the missing person is entitled to recover the missing person’s share of any compensation so paid from the other qualifying person or persons.
- (7) Regulations under this section may—
- (a) provide for the manner in which and the period within which claims for compensation under this section are to be made, and for the procedure to be followed in determining such claims,
  - (b) prescribe the form of any document required to be used for the purposes of or in connection with such claims, and
  - (c) provide for the determination of questions arising under the regulations.
- (8) In this section, “prescribed” means prescribed by regulations made by the Scottish Ministers.

### **31 Effect of work on rent**

In assessing the rent to be payable under a Scottish secure tenancy by—

- (a) a tenant who has carried out work on the house,
- (b) a person who has succeeded that tenant in the tenancy, or
- (c) the spouse of a person mentioned in paragraph (b) or a person living with that person as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex,

no account is to be taken at any time of any improvement in the value or amenities of the house resulting from the work.

#### *Assignment, subletting and exchanges*

### **32 Assignment, subletting etc.**

- (1) It is a term of every Scottish secure tenancy that the tenant may assign, sublet or otherwise give up to another person possession of the house or any part of it or take in a lodger—
- (a) only with the consent in writing of the landlord, and

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- (b) in the case of an assignment, only where the house has been the assignee's only or principal home throughout the period of 6 months ending with the date of the application for the landlord's consent to the assignment under paragraph 9 of schedule 5.
- (2) A landlord whose consent is required under subsection (1) may refuse such consent only if it has reasonable grounds for doing so.
- (3) There are, in particular, reasonable grounds for refusing such consent if—
- (a) a notice under section 14(2) has been served on the tenant specifying a ground set out in any of paragraphs 1 to 7 of schedule 2,
  - (b) an order for recovery of possession of the house has been made against the tenant under section 16(2),
  - (c) it appears to the landlord that a payment other than—
    - (i) a rent which is in its opinion a reasonable rent, or
    - (ii) a deposit which in its opinion is reasonable, returnable at the termination of the assignment, subletting or other transaction and given as security for the subtenant's obligations for accounts for supplies of gas, electricity, telephone or other domestic supplies and for damage to the house or contents,has been or is to be received by the tenant in consideration of the assignment, subletting or other transaction,
  - (d) the transaction for which consent is sought would lead to overcrowding of the house in such circumstances as to render the occupier guilty of an offence under section 139 of the 1987 Act, or
  - (e) the landlord proposes to carry out work on the house or on the building of which it forms part so that the proposed work will affect the accommodation likely to be used by the subtenant or other person who would reside in the house as a result of the transaction.
- (4) Where the landlord is a registered social landlord which is a co-operative housing association, any consent under subsection (1) is subject to the condition that the assignee, subtenant or other person is a member of the association when the assignment or sublease takes effect or, as the case may be, when possession is given to the other person.
- (5) The Scottish Ministers may by order modify subsection (3).
- (6) It is a term of every Scottish secure tenancy that, where the landlord has given consent to an assignment, subletting or other transaction under subsection (1), the tenant—
- (a) must notify the landlord of any proposed increase in the rent which was payable by the subtenant at the commencement of the assignment, subletting or other transaction, and
  - (b) must not increase the rent if the landlord objects to the increase.
- (7) An assignment, subletting or other transaction to which this section applies is not—
- (a) a protected tenancy or a statutory tenancy within the meaning of the Rent (Scotland) Act 1984 (c. 58), or
  - (b) an assured tenancy,
- and Part VII (rent assessment) of that Act does not apply to such an assignment, subletting or other transaction.

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- (8) In this section and schedule 5, “subtenant” means a person entitled to possession of a house or any part of a house under an assignment, subletting or other transaction to which this section applies, and includes a lodger.
- (9) The provisions of Part 2 of schedule 5, so far as relating to this section, have effect as terms of every Scottish secure tenancy.

### **33 Exchange of house**

- (1) It is a term of every Scottish secure tenancy that the tenant may exchange the house which is the subject of the tenancy for another house which is the subject of a Scottish secure tenancy (whether or not of the same landlord) but only with the consent in writing of the landlord and (if different) the landlord of the other house.
- (2) A landlord whose consent is requested under subsection (1) may refuse such consent only if it has reasonable grounds for doing so.
- (3) There are, in particular, reasonable grounds for refusing such consent if—
- (a) a notice under section 14(2) has been served on the tenant specifying a ground set out in any of paragraphs 1 to 7 of schedule 2,
  - (b) an order for recovery of possession of the house which is the subject of the current tenancy has been made against the tenant under section 16(2),
  - (c) that house was provided by the landlord in connection with the tenant’s employment with it,
  - (d) that house has been designed or adapted for occupation by a person whose special needs require accommodation of the kind provided by the house and, if the exchange took place, there would no longer be a person with such special needs occupying the house,
  - (e) the accommodation in the other house—
    - (i) is substantially larger than that required by the tenant and the tenant’s family, or
    - (ii) is not suitable to the needs of the tenant and the tenant’s family, or
  - (f) the exchange would lead to overcrowding of the house in such circumstances as to render the occupier guilty of an offence under section 139 of the 1987 Act.
- (4) Where the landlord is a registered social landlord which is a co-operative housing association, any consent under subsection (1) is subject to the condition that the tenant of the other house is a member of the association when the exchange takes effect.
- (5) The Scottish Ministers may by order modify subsection (3).
- (6) On an exchange in accordance with this section, the existing tenancy is terminated and the tenant is taken to have been granted a Scottish secure tenancy of the other house by the landlord of that house; and this Part applies to that tenancy accordingly.
- (7) The provisions of Part 2 of schedule 5, so far as relating to this section, have effect as terms of every Scottish secure tenancy.



### *Short Scottish secure tenancies*

#### **34 Short Scottish secure tenancies**

- (1) A tenancy of a house is a short Scottish secure tenancy if—
  - (a) it would have been a Scottish secure tenancy but for this section,
  - (b) it is for a term of not less than 6 months, and
  - (c) before its creation, the prospective landlord serves on the prospective tenant a notice under subsection (4).
- (2) A prospective landlord may serve a notice under subsection (4) only where any of the paragraphs of schedule 6 is satisfied.
- (3) The Scottish Ministers may by order modify that schedule.
- (4) A notice under this subsection—
  - (a) must be in such form as the Scottish Ministers may prescribe by regulations,
  - (b) must state that the tenancy to which it relates is to be a short Scottish secure tenancy and specify the paragraph of that schedule which is satisfied in relation to it, and
  - (c) must specify the term of the tenancy.
- (5) At the end of the tenancy it may continue—
  - (a) by tacit relocation, or
  - (b) by express agreement,and the continued tenancy is a short Scottish secure tenancy despite subsection (1) not being satisfied.
- (6) The provisions of this Chapter, except sections 11(2) and (4), 12 and 22 and schedules 1 and 3, apply to a short Scottish secure tenancy as they do to a Scottish secure tenancy.
- (7) Where a tenancy is a short Scottish secure tenancy by virtue of section 35 or paragraph 1 or 2 of schedule 6 the landlord must provide, or ensure the provision of, such housing support services as it considers appropriate with a view to enabling the conversion of the tenancy to a Scottish secure tenancy by virtue of section 37.
- (8) The Scottish Ministers may issue guidance as to the housing support services which are appropriate for the purposes of subsection (7).

#### **35 Conversion to short Scottish secure tenancy**

- (1) A Scottish secure tenancy of a house becomes a short Scottish secure tenancy by virtue of this section immediately on the landlord serving on the tenant a notice under subsection (3).
- (2) The landlord may serve a notice under subsection (3) only where the tenant (or any one of joint tenants) or a person residing or lodging with, or subtenant of, the tenant is subject to an anti-social behaviour order under section 19 of the Crime and Disorder Act 1998 (c. 37).
- (3) A notice under this subsection must—
  - (a) state that the Scottish secure tenancy to which it relates becomes a short Scottish secure tenancy by virtue of service of the notice, and

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- (b) specify the tenant or other person who is subject to the anti-social behaviour order.
- (4) Subsections (5) and (6) of section 34 apply to a tenancy which becomes a short Scottish secure tenancy by virtue of this section.
- (5) Where a Scottish secure tenancy becomes a short Scottish secure tenancy by virtue of this section, a tenant who is aggrieved by the conversion may raise proceedings by summary application.
- (6) In such proceedings the court may, if it considers that there are good grounds for doing so, grant a declarator that the notice under subsection (3) is of no effect.

### **36 Recovery of possession**

- (1) The landlord under a short Scottish secure tenancy may raise proceedings by way of summary cause for recovery of possession of the house which is the subject of the tenancy.
- (2) Such proceedings may not be raised unless—
  - (a) the landlord has served on the tenant a notice complying with subsection (3),
  - (b) the proceedings are raised on or after the date specified in the notice, and
  - (c) the notice is in force at the time when the proceedings are raised.
- (3) A notice under subsection (2) must be in such form as the Scottish Ministers may prescribe by regulations, and must—
  - (a) state that the landlord requires possession of the house,
  - (b) specify a date, not earlier than—
    - (i) 2 months, or such longer period as the tenancy agreement may provide, from the date of service of the notice, or
    - (ii) the date on which the tenancy could have been brought to an end by a notice to quit had it not been a short Scottish secure tenancy,
 whichever is later, on or after which the landlord may raise proceedings for recovery of possession.
- (4) A notice under subsection (2) ceases to be in force 6 months after the date specified in it in accordance with subsection (3)(b) or when it is withdrawn by the landlord, whichever is earlier.
- (5) The court must make an order for recovery of possession if it appears to the court that—
  - (a) the tenancy has reached the ish referred to in section 34(5),
  - (b) tacit relocation is not operating,
  - (c) no further contractual tenancy (whether or not a short Scottish secure tenancy) is in existence, and
  - (d) subsection (2) has been complied with.
- (6) An order under subsection (5) must appoint a date for recovery of possession and has the effect of—
  - (a) terminating the tenancy, and
  - (b) giving the landlord the right to recover possession of the house, at that date.

(7) This section is without prejudice to sections 14 and 16.

### **37 Conversion to Scottish secure tenancy**

(1) Where—

(a) a tenancy is a short Scottish secure tenancy by virtue of section 35 or paragraph 1 or 2 of schedule 6, and

(b) the landlord has not, in the period of 12 months following the creation of the tenancy, served on the tenant a notice under section 14(2) or 36(2),

the tenancy becomes, by virtue of this section, a Scottish secure tenancy with effect from the expiry of that period.

(2) Where subsection (1)(a) applies and the landlord has, in the period of 12 months following the creation of the tenancy, served a notice referred to in subsection (1)(b), then—

(a) if the notice—

(i) has ceased to be in force in accordance with section 14(5) or, as the case may be, 36(4), or

(ii) has been withdrawn by the landlord without proceedings for recovery of possession having been raised,

the tenancy becomes, by virtue of this section, a Scottish secure tenancy with effect from the date on which the notice ceased to be in force or was withdrawn or the expiry of that period of 12 months, whichever is the later,

(b) if proceedings for recovery of possession have been raised and have been finally determined in favour of the tenant, the tenancy becomes, by virtue of this section, a Scottish secure tenancy with effect from the date on which the proceedings were finally determined or the expiry of that period of 12 months, whichever is the later.

(3) For the purposes of subsection (2)(b) proceedings are finally determined when—

(a) the period for appealing against the interlocutor disposing of the proceedings has expired without an appeal being lodged, or

(b) where an appeal has been lodged, the appeal is withdrawn or finally determined.

(4) Where a tenancy becomes a Scottish secure tenancy by virtue of this section, the landlord must notify the tenant of that fact and of the date on which the tenancy became a Scottish secure tenancy.

#### *Miscellaneous and general*

### **38 Appeals**

(1) A person who is aggrieved by a decision of a landlord mentioned in section 11(1)(b) to make a house available to the person for occupancy on the basis of—

(a) an occupancy agreement instead of a Scottish secure tenancy or a short Scottish secure tenancy,

(b) a tenancy which is not a Scottish secure tenancy or a short Scottish secure tenancy, or

(c) a short Scottish secure tenancy instead of a Scottish secure tenancy,

may raise proceedings by summary application.

- (2) In such proceedings the court may, if it considers that there are good grounds for doing so, order the landlord to let the house to the person under a Scottish secure tenancy or, as the case may be, a short Scottish secure tenancy.

### **39 Application of sections 23 to 33 to other tenancies**

Where a tenancy is excluded from being a Scottish secure tenancy only by the operation of paragraph 1 or 9 of schedule 1, sections 23 to 33 apply to the tenancy as if it were a Scottish secure tenancy.

### **40 Notices**

- (1) A notice or other document authorised or required by this Chapter to be given to a person (however expressed) may be given—
- (a) by delivering it to that person,
  - (b) by leaving it at that person's proper address, or
  - (c) by sending it by recorded delivery letter to that person at that address.
- (2) For the purposes of subsection (1) and of paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I.1999/1379), a person's proper address is that person's last known address.

### **41 Interpretation of Chapter 1**

In this Chapter, unless otherwise expressly provided—

“co-operative housing association” has the meaning given in section 300(1)(b) of the 1987 Act,

“court” means the sheriff court for the district in which is situated the house to which the tenancy in question relates, and “proceedings” means proceedings in that court,

“landlord” means a person who lets a house to a tenant for human habitation, and includes any person from time to time deriving title under the original landlord,

“notice” means notice in writing,

“tenancy” means an agreement under which a house is made available for human habitation, and “lease” and related expressions are to be construed accordingly,

“tenant” means a person who leases a house from a landlord and whose right in the house derives directly from the landlord, and in the case of a joint tenancy means all the tenants.

## **CHAPTER 2**

### **RIGHT TO BUY**

### **42 The qualifying conditions**

- (1) In subsection (2) of section 61 (qualifying conditions for right to buy) of the 1987 Act—

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- (a) in paragraph (a), after “is” insert “, or was when the tenancy was granted,”,
  - (b) in paragraph (c), for “2 years” substitute “5 years”.
- (2) In subsection (10) of that section—
- (a) for “the following section” substitute “section 62”,
  - (b) in paragraph (a), after “house” in the first place where it occurs insert “are to continuous occupation and”,
  - (c) in paragraph (b), after sub-paragraph (iii) insert—
    - “(iv) the landlord may, if it thinks fit, disregard as not affecting continuity any interruption in occupation which appears to it to result from circumstances outwith the control of the person in question.”

#### **43 Exemptions from right to buy**

- (1) Section 61(4) (exemptions from right to buy) of the 1987 Act is amended as follows.
- (2) Paragraphs (a), (b), (d) and (f) are repealed.
- (3) In paragraph (c), for “such a landlord” substitute “a landlord which is a registered social landlord”.
- (4) After paragraph (c) insert—
- “(ca) where a landlord which is a registered social landlord is a co-operative housing association;”.
- (5) For paragraph (e) substitute—
- “(e) where a registered social landlord is registered as such by virtue of section 57(2) of the Housing (Scotland) Act 2001 (asp 10) and was, on the date on which that Act received Royal Assent, a recognised body within the meaning of section 1(7) (Scottish charities) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40);”.
- (6) After paragraph (e) insert—
- “(ea) to a house that is one of a group of houses which has been designed for persons with special needs where one or more of the following conditions is satisfied—
    - (i) the houses are provided with, or situated near, special facilities for use by their tenants (whether or not exclusively),
    - (ii) the tenants of the houses are provided with housing support services (within the meaning of section 91 of the Housing (Scotland) Act 2001 (asp 10)).”

#### **44 Limitation on right to buy: registered social landlords**

After section 61 of the 1987 Act insert—

##### **“61A Limitation on right to purchase from registered social landlords**

- (1) Subject to subsection (2), this section applies to a Scottish secure tenancy where the landlord is a registered social landlord and—

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- (a) the tenancy was created on or after the date specified in relation to the landlord in an order under section 11(1) of the Housing (Scotland) Act 2001 (asp 10), or
  - (b) the tenancy became a Scottish secure tenancy by virtue of such an order.
- (2) This section does not apply—
- (a) to a tenancy of a house acquired by the landlord after the date referred to in subsection (1)(a),
  - (b) to a tenancy of a house constructed by the landlord after that date if an offer of grant in connection with the construction was made by the Scottish Ministers or a local authority after that date,
  - (c) in such other circumstances as the Scottish Ministers may specify by order made by statutory instrument.
- (3) Where this section applies, section 61(1) does not apply in relation to a house let under the tenancy until the expiry of—
- (a) the period of 10 years beginning with the date referred to in subsection (1)(a), and
  - (b) any further period determined under subsection (4).
- (4) The Scottish Ministers may if they think fit, on an application made by the landlord before the expiry of a period mentioned in subsection (3)(a) or (b), determine a further period, not exceeding 10 years, for the purposes of paragraph (b) of that subsection.
- (5) The Scottish Ministers may issue guidance as to—
- (a) the form of such an application,
  - (b) the information to be provided by the landlord in support of such an application.
- (6) Before making an application under subsection (4), the landlord shall consult—
- (a) any heritable creditor of the landlord having an interest in a house of the landlord's in relation to which this section applies, and
  - (b) such other persons as it thinks fit.
- (7) If a registered social landlord so elects by notice in writing to the Scottish Ministers, subsection (3) ceases, on the date specified in the notice, to have effect in relation to houses let (whether before or after that date) by the landlord.
- (8) A notice given under subsection (7) cannot be withdrawn after the date specified in it.
- (9) Where a landlord gives a notice under subsection (7) it shall take such steps as are reasonable to inform—
- (a) those of its tenants affected by the operation of subsection (3), and
  - (b) any heritable creditor referred to in subsection (6)(a),
- that the notice has been given and of its effect.
- (10) A statutory instrument containing an order under subsection (2)(c) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”

## 45      **Limitation on right to buy: pressured areas**

After section 61A of the 1987 Act insert—

### **“61B Limitation on right to purchase: pressured areas**

- (1) The Scottish Ministers may, from time to time, on a proposal from a local authority, designate any part of the local authority’s area as a pressured area if they consider that—
  - (a) the needs of that part for housing accommodation in houses provided by the authority or by registered social landlords exceed substantially, or are likely to exceed substantially, the amount of such housing accommodation which is, or is likely to be, available in that part, and
  - (b) the exercise by tenants of houses in that part of the right under section 61(1) to purchase such houses is likely to increase the extent by which such needs exceed the amount of such housing accommodation.
- (2) A designation under subsection (1)—
  - (a) may be in terms of the proposal or in such other terms as the Scottish Ministers think fit,
  - (b) has effect for such period, not exceeding 5 years, as the Scottish Ministers may specify.
- (3) For so long as an area is designated as a pressured area, section 61(1) does not apply in relation to a house in the area—
  - (a) let under a tenancy created on or after the date specified in relation to the landlord in an order under section 11(1) of the Housing (Scotland) Act 2001 (asp 10), or
  - (b) let under a tenancy created before that date where—
    - (i) the tenant did not, immediately before that date, have a right under section 61(1) to purchase the house, or
    - (ii) the tenant succeeded to the tenancy on or after that date.
- (4) In determining for the purposes of subsection (3)(b)(i) whether a tenant had a right to purchase a house, section 61(2)(c) is to be left out of account.
- (5) A designation under subsection (1) shall—
  - (a) identify the pressured area,
  - (b) specify the date on which the designation takes effect, and
  - (c) specify the period for which it has effect.
- (6) The local authority shall take such steps as are reasonable to publicise—
  - (a) a designation under subsection (1) and its effect,
  - (b) any amendment or revocation of such a designation under subsection (8) and its effect.
- (7) Where a local authority landlord or a registered social landlord offers a person a tenancy of a house in an area in relation to which, on the proposed commencement date of the tenancy, a designation under subsection (1) will be in force, the landlord shall inform the person of the designation and its effect.
- (8) A designation under subsection (1) may be amended or revoked by the Scottish Ministers at any time if the local authority propose that they should do so

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and provide reasons for that proposal sufficient to justify the amendment or revocation.

- (9) A local authority may make a further proposal under subsection (1) in relation to a part of their area despite a designation under that subsection being, or having been, in force in relation to that part.
- (10) Nothing in this section affects a notice to purchase served prior to the designation of an area as a pressured area.

### **61C Pressured area proposals: procedure**

- (1) A proposal by a local authority under section 61B(1) shall specify—
  - (a) the part of their area proposed for designation as a pressured area, and
  - (b) the period, not exceeding 5 years, for which it is proposed the designation should have effect.
- (2) The Scottish Ministers may issue guidance as to—
  - (a) the form of such a proposal,
  - (b) the information to be provided by a local authority in support of such a proposal.
- (3) Before making a proposal under section 61B(1) in relation to any part of their area a local authority shall consult—
  - (a) every registered social landlord holding houses for housing purposes in the part in question, and
  - (b) such bodies representing the interests of tenants and other residents in that part, and such other persons, as the authority think fit.”

## **46 Limitation on right to buy: arrears of rent, council tax etc.**

- (1) After section 61C of the 1987 Act insert—

### **“61D Limitation on right to purchase: arrears of rent, council tax etc.**

- (1) Subsections (2) and (3) apply where a tenant serves on a landlord an application to purchase at a time when the tenant, or any joint purchaser (within the meaning of section 61(6))—
  - (a) has not paid the landlord rent or any other charge lawfully due to the landlord under that or any other tenancy, or
  - (b) has not paid any sum lawfully due in respect of—
    - (i) council tax in respect of the house or any other house in the local government area in which the house is situated, or
    - (ii) water and sewerage charges in relation to the house or any other such house.
- (2) If the landlord is a local authority landlord, it is entitled (but not required) to serve on the tenant a notice of refusal under section 68.
- (3) If the landlord is a registered social landlord—
  - (a) where the sum is a sum referred to in subsection (1)(a), the landlord is entitled (but not required) to serve such a notice on the tenant,



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- (b) where the sum is a sum referred to in subsection (1)(b), the landlord shall—
    - (i) consult the local authority for the area in which the house is situated, and
    - (ii) serve such a notice on the tenant unless the authority agree that such a notice should not be served.”
- (2) In section 63 (application to purchase and offer to sell) of that Act, after subsection (1) insert—
- “(1A) Where the landlord is a registered social landlord the tenant shall, when serving on the landlord the application to purchase, give the landlord a certificate issued by the local authority for the area in which the house is situated stating—
- (a) whether the tenant and any joint purchaser have, as at the date of the certificate (which must be no more than one month before the date of the application to purchase), paid the sums referred to in section 61D(1)(b), and
  - (b) if they have not, the amount of any such sum lawfully due by the tenant or, as the case may be, the joint purchaser as at the date of the certificate.
- (1B) A local authority shall, on the application of a tenant or joint purchaser referred to in subsection (1A), issue to that person free of charge a certificate as to the matters specified in paragraphs (a) and (b) of that subsection so far as relating to that person.
- (1C) A certificate under subsection (1B) shall be issued not later than 21 days after the receipt of the application by the authority.”

#### **47      Limitation on right to buy: conduct**

After section 61D of the 1987 Act insert—

##### **“61E Limitation on right to purchase: conduct**

- (1) Subsection (3) applies where—
- (a) the landlord has served on the tenant a notice under section 14(2) of the Housing (Scotland) Act 2001 (asp 10) specifying a ground set out in any of paragraphs 1 to 7 of schedule 2 to that Act as the ground on which proceedings for recovery of possession of the house are to be raised, and
  - (b) neither of the following has occurred—
    - (i) the notice has ceased to be in force in accordance with section 14(5) of that Act or has been withdrawn by the landlord without proceedings for recovery of possession having been raised, or
    - (ii) such proceedings have been raised and have been finally determined.
- (2) For the purposes of subsection (1)(b)(ii) proceedings are finally determined when—

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- (a) the period for appealing against the interlocutor disposing of the proceedings has expired without an appeal being lodged, or
  - (b) where an appeal has been lodged, the appeal is withdrawn or finally determined.
- (3) Where this subsection applies, section 61(1) does not apply in relation to the house referred to in subsection (1) of this section.
- (4) Nothing in this section affects an application to purchase served prior to service of the notice referred to in subsection (1).”

#### 48 **Houses liable to demolition**

After section 70 of the 1987 Act insert—

*“Houses liable to demolition*

**70A Authorisation of refusal to sell houses liable to demolition**

- (1) Where—
- (a) an application to purchase a house liable to demolition is served on a landlord, and
  - (b) it appears to the landlord that the tenant would, apart from this section, have a right under section 61 to purchase the house,
- the landlord may, within one month of service of the application to purchase, instead of serving an offer to sell on the tenant, apply to the Scottish Ministers for authority to serve a notice of refusal.
- (2) For the purposes of this section a house is liable to demolition if the landlord has made a decision to demolish the house.
- (3) An application to the Scottish Ministers under subsection (1) shall be accompanied by such information in support of the application as the Scottish Ministers may prescribe by order made by statutory instrument.
- (4) The Scottish Ministers may grant such an application if they consider it reasonable to do so in all the circumstances; and in deciding whether to grant the application they shall have regard in particular to—
- (a) the period which is expected to elapse before the landlord demolishes the house in question; and
  - (b) the extent to which, before deciding to demolish the house, the landlord consulted the tenant about the proposal to demolish it and the effect of the proposal on the tenant’s right under section 61 to purchase it.
- (5) Where the Scottish Ministers grant such an application the landlord shall serve on the tenant a notice of refusal under this section as soon as practicable, and in any event within one month of the granting of the application.
- (6) Where the Scottish Ministers refuse such an application the landlord shall serve on the tenant an offer to sell under section 63(2) before—
- (a) the expiry of the period of one month beginning with the refusal; or
  - (b) if later, the expiry of the period mentioned in that section.

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

#### **49 Discounts**

(1) Section 62 (the price) of the 1987 Act is amended as follows.

(2) In subsection (3)—

- (a) for paragraph (a) substitute—  
“*(a)* 20 per cent of the market value of the house,”
- (b) in paragraph (b), for the words from “*or, where*” to “*beyond 2*” substitute “*of the market value for every year beyond 5*”,
- (c) for the words from “*60 per cent*” to the end substitute “*35 per cent or £15,000, whichever is less*”.

(3) In subsection (3A)—

- (a) for “*the appropriate person*” substitute “*any of the persons mentioned in subsection (4)(a)(i) to (iv)*”,
- (b) the words “*by any of these persons*” are repealed.

(4) After subsection (3A) insert—

“(3B) Where a previous discount was received by two or more persons jointly, subsection (3A) has effect as if each of them had received an equal proportion of the discount.”

(5) In subsection (4)—

- (a) in paragraph (a), for “*such occupation*” substitute “*occupation of the type mentioned in subsection (3)(b)*”,
- (b) the words from “*and, for the purposes*” to the end are repealed.

(6) In subsection (5)—

- (a) in paragraph (b), for “*two*” substitute “*5*”,
- (b) for “*higher*” substitute “*other*”.

(7) After subsection (5) insert—

“(5A) The Scottish Ministers may by order vary the maximum amount of discount for the time being specified in subsection (3).”

(8) In subsection (6)—

- (a) after “(5)” insert “*or (5A)*”,
- (b) in paragraph (a), after “*case*” insert “*or different areas*”.

#### **50 Assistance to tenants to obtain other accommodation**

(1) Section 66 (schemes for payments to assist local authority tenants to obtain other accommodation) of the 1988 Act is amended as follows.

(2) In subsection (1)—

- (a) after “*authority*” in the third place where it occurs insert “*or of a registered social landlord under tenancies of houses situated in the area of the authority*”,

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- (b) for “either” substitute “or of a registered social landlord, by one or more of the following”,
  - (c) after paragraph (a) insert “or
    - (aa) by acquiring an interest in land and building a house on the land,”,
  - (d) paragraph (c) and the preceding “or” are repealed.
- (3) After subsection (2) insert—
- “(2A) A provision of a scheme made in pursuance of subsection (2)(a) above may in particular specify, or provide for the determination of, persons as qualifying tenants by reference to the houses to which the tenancies relate being situated in an area designated as a pressured area under section 61B of the Housing (Scotland) Act 1987 (c. 26).”
- (4) After subsection (5) insert—
- “(5A) The Scottish Ministers may issue guidance as to the form and content of schemes made by local authorities under this section; and in considering whether to approve any such scheme, the Scottish Ministers shall have regard to the extent to which it complies with any such guidance.”

## 51 Right to buy: miscellaneous repeals

- (1) Sections 62A and 73A to 73D (rent to loan scheme) of the 1987 Act are repealed.
- (2) Section 69(1A) (limitation on power of the Scottish Ministers to authorise refusal to sell certain houses provided for persons of pensionable age) of that Act is repealed.
- (3) Section 216 (obligation of landlords to offer loans to certain tenants exercising right to purchase) of that Act is repealed.

## 52 Reports on right to buy

- (1) The Scottish Ministers—
  - (a) must, within 4 years of the coming into force of this section, and
  - (b) may, from time to time thereafter,
 prepare and publish a report on the matters set out in subsection (2).
- (2) Those matters are—
  - (a) the extent to which tenants have exercised their rights under Part III of the 1987 Act to purchase the houses which are the subject of the tenancies, and
  - (b) the effect of the exercise of those rights on—
    - (i) the nature and condition of the housing stock,
    - (ii) the needs of persons for housing accommodation, and
    - (iii) the demand for, and availability of, housing accommodation.

## CHAPTER 3

### TENANT PARTICIPATION

#### 53 Tenant participation

- (1) Every local authority landlord and registered social landlord must, by such time as the Scottish Ministers may direct, prepare a strategy (a “tenant participation strategy”) for promoting the participation of tenants under a Scottish secure tenancy or a short Scottish secure tenancy in the formulation by the landlord of proposals in relation to the management of housing accommodation and the provision of related services by it, so far as such proposals are likely to affect such tenants.
- (2) Such a strategy must include, in particular—
  - (a) provision as to—
    - (i) the arrangements for obtaining and taking account of the views of registered tenant organisations and tenants as to the matters on which the landlord should make proposals of the type referred to in subsection (1) and the nature and content of such proposals,
    - (ii) notifying registered tenant organisations and tenants of the matters on which the landlord expects to be making such proposals, and
    - (iii) the information to be provided to registered tenant organisations and tenants about such proposals and their likely effect, and
  - (b) an assessment of the resources (including financial and other assistance to bodies comprised of or representing tenants) required, and a statement of the resources proposed, to give effect to the strategy.
- (3) Every local authority landlord and registered social landlord must maintain a register of tenant organisations and keep it open for public inspection at all reasonable times.
- (4) The Scottish Ministers may by order make provision as to—
  - (a) the criteria to be satisfied by a body seeking registration in the register or removal from the register,
  - (b) the procedure to be followed in relation to applications for registration and removal from the register.
- (5) A body which is aggrieved by a decision of a landlord—
  - (a) not to register it in the register, or
  - (b) to remove or not to remove it from the register,may appeal against the decision to the Scottish Ministers, who may confirm or reverse the decision.
- (6) In this Act, “registered tenant organisation”, in relation to a landlord, means a body for the time being registered in the register of tenant organisations maintained by the landlord.

#### 54 Consultation with tenants and registered tenant organisations

- (1) A local authority landlord and a registered social landlord under a Scottish secure tenancy or a short Scottish secure tenancy must notify the tenant and every registered tenant organisation of—
  - (a) any proposal to which subsection (2) applies, and

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- (b) the likely effect of the proposal on the tenant,  
and must have regard to any representations made to it, within such reasonable period as is specified in the notice, by the tenant or any such organisation in relation to the proposal.
- (2) This subsection applies to a proposal by the landlord concerning—
  - (a) its policy in relation to housing management, repairs or maintenance, where the proposal, if implemented, is likely significantly to affect the tenant,
  - (b) the standard of service in relation to housing management, repairs and maintenance which it intends to provide,
  - (c) its tenant participation strategy under section 53,
  - (d) a disposal which would result in a change of landlord or, if different, of owner of the house which is the subject of the tenancy.
- (3) This section is without prejudice to section 53.

## **55 Tenant management agreements**

- (1) A society, company or body of trustees for the time being approved by the Scottish Ministers for the purposes of this section (in this section and section 56 referred to as a “tenant management co-operative”) may make an agreement with a landlord mentioned in section 11(1)(b) for the exercise by the co-operative of the landlord’s housing functions.
- (2) The Scottish Ministers must approve a society, company or body of trustees for the purposes of this section if they are satisfied that it is generally suitable to carry out such functions.
- (3) Where a tenant management co-operative applies to a landlord referred to in subsection (1) for agreement to the co-operative exercising, on such terms as the application may specify, all or part of the landlord’s housing functions, the landlord must make an agreement with the co-operative if it is satisfied that—
  - (a) the co-operative is approved under subsection (2),
  - (b) the co-operative will be able to exercise the functions specified in the proposal competently and efficiently, and
  - (c) so far as those functions relate to houses, the co-operative is representative of the tenants of those houses.
- (4) Where a landlord refuses to make an agreement with a co-operative on the ground that it is not satisfied as to a matter mentioned in subsection (3)(b) or (c), the co-operative may appeal to the Scottish Ministers, who may confirm or reverse the landlord’s decision.
- (5) Where the Scottish Ministers reverse the landlord’s decision, the landlord and the co-operative must make the agreement.
- (6) Where the landlord and the co-operative are unable to agree the terms of the agreement, the co-operative may appeal to the Scottish Ministers who may determine the terms of the agreement.
- (7) An agreement under this section may be made only with the approval of the Scottish Ministers, and such approval may be given subject to conditions.

- (8) An agreement under this section does not affect the responsibility of the local authority landlord or registered social landlord for the exercise of its functions.

## **56 Tenant management agreements: further provision**

- (1) An agreement under section 55 may be made in relation to—
- (a) all or any part of the landlord’s housing functions,
  - (b) all or any part of the houses held by the landlord for the purposes of those functions.
- (2) In that section and this section, references to the landlord’s housing functions are—
- (a) in relation to a local authority landlord, references to the functions of the landlord—
    - (i) relating to land or any interest in land held by it for the purposes of Part I of the 1987 Act,
    - (ii) under sections 4 and 5 (power to provide furniture, board and laundry facilities) of that Act, in connection with any such land or interest,
  - (b) in relation to a registered social landlord, references to its housing activities within the meaning of section 83(3),
  - (c) in relation to a water authority or a sewerage authority, references to its functions in relation to the provision and management of houses.
- (3) An agreement under section 55 between a tenant management co-operative and a local authority landlord may, without prejudice to any other enactment, include terms providing for the letting of land to the co-operative by the landlord for a period not exceeding 20 years.
- (4) A local authority must continue to include in its housing revenue account houses on land included in an agreement under that section between a tenant management co-operative and a local authority landlord; and neither the making of the agreement nor any letting of land in pursuance of it is to be treated as a ground for the reduction, suspension or discontinuance of any Exchequer contribution or subsidy under section 202 of the 1987 Act.
- (5) In subsection (4), “Exchequer contribution” has the meaning given in section 338(1) of the 1987 Act.

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## PART 3

### REGULATION OF SOCIAL LANDLORDS

#### CHAPTER 1

##### REGISTERED SOCIAL LANDLORDS

###### *Registration*

#### **57 The register of social landlords**

- (1) The Scottish Ministers are to maintain a register of social landlords and are to keep it open for public inspection at all reasonable times.
- (2) A body to which subsection (3) applies is, by virtue of this subsection, registered as a social landlord.
- (3) This subsection applies to—
  - (a) every housing association which, immediately before the commencement of subsection (2), was registered in the register of housing associations maintained under section 3 of the Housing Associations Act 1985 (c. 69), and
  - (b) any other body which, by order made by the Scottish Ministers, is to be treated as being a housing association so registered.
- (4) The Scottish Ministers must, not later than one month before the date on which subsection (2) is to come into force, notify every body appearing to them to be one to which that subsection will apply of that fact and of the effect of that subsection.

#### **58 Eligibility for registration**

- (1) A body is eligible for registration as a social landlord if it is—
  - (a) a society registered under the Industrial and Provident Societies Act 1965 (c. 12) which has its registered office for the purposes of that Act in Scotland and satisfies the conditions in subsection (2), or
  - (b) a company registered under the Companies Act 1985 (c. 6) which has its registered office for the purposes of that Act in Scotland and satisfies those conditions.
- (2) The conditions are that the body does not trade for profit and is established for the purpose of, or has among its objects and powers, the provision, construction, improvement or management of—
  - (a) houses to be kept available for letting,
  - (b) houses for occupation by members of the body, where the rules of the body restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by the body, or
  - (c) hostels,and that any additional purposes or objects are among those specified in subsection (3).
- (3) The permissible additional purposes or objects are—



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- (a) providing land, amenities or services, or providing, constructing, repairing or improving buildings, for its residents, either exclusively or together with other persons,
  - (b) acquiring, or repairing and improving, or creating by the conversion of houses or other property, houses to be disposed of on sale, on lease or on shared ownership terms,
  - (c) constructing houses to be disposed of on shared ownership terms,
  - (d) managing houses which are held on leases or other lettings (not being houses falling within subsection (2)(a) or (b)) or blocks of flats,
  - (e) providing services of any description for owners or occupiers of houses in—
    - (i) arranging or carrying out works of maintenance, repair or improvement, or encouraging or facilitating the carrying out of such works,
    - (ii) arranging property insurance,
  - (f) encouraging and giving advice on the formation of registered social landlords or providing services for, and giving advice on the running of, such landlords and other voluntary organisations concerned with housing, or matters connected with housing.
- (4) A body is not ineligible for registration by reason only that its powers include power—
- (a) to acquire commercial premises or businesses as an incidental part of a project or series of projects undertaken for purposes or objects falling within subsection (2) or (3),
  - (b) to repair, improve or convert any commercial premises acquired as mentioned in paragraph (a) or to carry on for a limited period any business so acquired,
  - (c) to repair or improve houses, or buildings in which houses are situated, after the tenants have exercised, or claimed to exercise, acquisition rights.
- (5) The Scottish Ministers may by order amend the permissible purposes, objects and powers specified in subsections (3) and (4), but any such amendment which restricts or limits those purposes, objects or powers has no effect in relation to a body registered as a social landlord when the order was made.
- (6) In this section—
- “acquisition rights” means rights to purchase under section 61 of the 1987 Act,
  - “block of flats” means a building containing two or more flats which are held on leases or other lettings and which are occupied or intended to be occupied wholly or mainly for residential purposes,
  - “disposed of on shared ownership terms” means disposed of under a shared ownership agreement (defined in section 83(3)),
  - “letting” includes the grant of a right or permission to occupy,
  - “residents”, in relation to a body, means persons occupying the houses or hostels provided or managed by the body,
  - “voluntary organisation” means an organisation whose activities are not carried on for profit.

## 59 Registration

- (1) The Scottish Ministers may register as a social landlord any body which is eligible for such registration.

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- (2) An application for registration must be made in such manner, and accompanied by such fee (if any), as the Scottish Ministers may determine.
- (3) As soon as may be after registering a body which is an industrial and provident society as a social landlord the Scottish Ministers must give notice of the registration to the Financial Services Authority, which must record the registration.
- (4) A body which at any time is, or was, registered as a social landlord is, for all purposes other than rectification of the register, to be conclusively presumed to be, or to have been, at that time a body eligible for registration as a social landlord.

## **60      Removal from the register**

- (1) A body which has been registered as a social landlord is not to be removed from the register except in accordance with this section.
- (2) If it appears to the Scottish Ministers that a body which is on the register of social landlords—
  - (a) is no longer a body eligible for such registration,
  - (b) has ceased to exist or does not operate, or
  - (c) meets the criteria for removal from the register established under section 61,the Scottish Ministers may, after giving the body at least 14 days' notice, remove it from the register.
- (3) In the case of a body which appears to the Scottish Ministers to have ceased to exist, or not to operate, notice under subsection (2) is deemed to be given to the body if it is served at the address last known to the Scottish Ministers to be the principal place of business of the body.
- (4) A body which is registered as a social landlord may request the Scottish Ministers to remove it from the register and the Scottish Ministers may do so if they are satisfied that the body meets the criteria for removal established under section 61.
- (5) As soon as may be after removing a body which is an industrial and provident society from the register of social landlords the Scottish Ministers must give notice of the removal to the Financial Services Authority, which must record the removal.

## **61      Criteria for registration or removal from register**

- (1) The Scottish Ministers must establish (and may from time to time vary) criteria to be satisfied by a body seeking registration as a social landlord; and in deciding whether to register a body the Scottish Ministers must have regard to whether those criteria are met.
- (2) The Scottish Ministers must establish (and may from time to time vary) criteria to be satisfied where a body seeks to be removed from the register of social landlords; and in deciding whether to remove a body from the register the Scottish Ministers must have regard to whether those criteria are met.
- (3) Before establishing or varying any such criteria the Scottish Ministers must consult—
  - (a) such bodies representing registered social landlords,
  - (b) such bodies representing tenants of registered social landlords, and
  - (c) such other persons,

as they think fit.

- (4) The Scottish Ministers must publish the criteria for registration and the criteria for removal in such manner as they think fit.

## **62 Appeal against decision on registration or removal**

- (1) A body which is aggrieved by a decision of the Scottish Ministers—
- (a) not to register it as a social landlord, or
  - (b) to remove or not to remove it from the register of social landlords,
- may appeal against the decision to the Court of Session.
- (2) If an appeal is brought against a decision relating to the removal of a body from the register, the Scottish Ministers must not remove the body from the register until the appeal has been finally determined or is withdrawn.
- (3) As soon as may be after an appeal is brought against a decision relating to the removal of a body which is an industrial and provident society from the register, the Scottish Ministers must give notice of the appeal to the Financial Services Authority.

### *Regulation*

## **63 Regulation of registered social landlords**

Schedule 7, which makes provision about the regulation of registered social landlords, has effect.

## **64 Insolvency etc. of registered social landlords**

Schedule 8, which makes provision about the insolvency etc. of registered social landlords, has effect.

### *Disposal of land and related matters*

## **65 Power of registered social landlord to dispose of land**

- (1) A registered social landlord has power by virtue of this section, but not otherwise, to dispose, in such manner as it thinks fit, of land held by it.
- (2) Subsection (1)—
- (a) is without prejudice to Part III (the right to buy) of the 1987 Act,
  - (b) has effect subject to sections 66 to 68 and 76 of, and schedules 7 and 9 to, this Act.

## **66 Consent required for disposal of land by registered social landlord**

- (1) The written consent of the Scottish Ministers is required for any disposal of land by a registered social landlord under section 65.
- (2) The consent of the Scottish Ministers may be given—

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- (a) generally to all registered social landlords or to a particular landlord or description of landlords,
  - (b) in relation to particular land or a particular description of land,
  - (c) in relation to a particular disposal or a particular description of disposal,
- and may be given subject to conditions.
- (3) In considering whether to give consent under this section the Scottish Ministers must have regard to the views expressed by those consulted under section 68.
- (4) A disposal by a landlord which requires consent under this section is valid in favour of a person claiming under the landlord despite that consent not having been given; and a person dealing with the landlord, or with a person claiming under the landlord, is not concerned to see or inquire whether any such consent has been given.
- (5) Where at the time of its removal from the register of social landlords a body owns land, this section continues to apply to that land after the removal as if the body concerned continued to be a registered social landlord.
- (6) In this section, “disposal” means sale, lease, heritable security, charge or any other disposal.

#### **67 Disposals not requiring consent**

- (1) Section 66 does not apply to a disposal by a registered social landlord by way of—
- (a) a lease under a Scottish secure tenancy, or what would be a Scottish secure tenancy but for schedule 1,
  - (b) a lease under a short Scottish secure tenancy,
  - (c) a lease under an assured tenancy or an assured agricultural occupancy,
  - (d) a lease under what would be an assured tenancy but for any of paragraphs 3 to 8 and 12 of Schedule 4 to the 1988 Act, or
  - (e) a disposal under Part III (the right to buy) of the 1987 Act.
- (2) The Scottish Ministers may by order specify additional disposals to which section 66 does not apply.
- (3) In this section, “assured agricultural occupancy” has the same meaning as in Part I of the Housing Act 1988 (c. 50).

#### **68 Disposals of land: consultation with tenants**

- (1) This section applies where a registered social landlord proposes to make a disposal of land under section 65 other than—
- (a) a disposal which does not require the consent of the Scottish Ministers under section 66,
  - (b) a disposal to which schedule 9 applies, or
  - (c) a disposal of an interest by way of security for a loan.
- (2) Where this section applies, the landlord must consult—
- (a) the tenants of those of its houses included in the disposal, and
  - (b) such other persons as the Scottish Ministers may require,
- and must inform the Scottish Ministers of the views expressed by those consulted.

### *Housing management*

#### **69 Inspections**

- (1) The Scottish Ministers may appoint a person to carry out an inspection of the management of the affairs of a registered social landlord in relation to the provision of housing accommodation and related services.
- (2) A person appointed to carry out an inspection under subsection (1) (an “inspector”) has a right of access at all reasonable times to—
  - (a) any premises of the registered social landlord, and
  - (b) any document relating to the landlord which appears to the inspector to be necessary for the purposes of the inspection.
- (3) An inspector may—
  - (a) require a person holding or accountable for any such document to provide the inspector with such information and explanation as the inspector thinks necessary,
  - (b) require that person to attend before the inspector in person to give the information or explanation or to produce the document.
- (4) The registered social landlord must provide an inspector with every facility and all information which the inspector may reasonably require for the purposes of the inspection.
- (5) An inspector must, if so required, produce written authorisation for the carrying out of the inspection.
- (6) A person who fails, without reasonable excuse, to comply with a requirement of an inspector under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **70 Inspection reports**

- (1) Where an inspection has been carried out under section 69, the Scottish Ministers must issue and publish a report and send a copy of it to the registered social landlord and any registered tenant organisation.
- (2) The report must identify any respects in which, as a result of the inspection, the management of the affairs of the registered social landlord in relation to the provision of housing accommodation and related services was found to be unsatisfactory.

#### **71 Appointment of manager**

- (1) Where the Scottish Ministers consider it necessary or expedient in order to ensure that the management of its affairs by a registered social landlord is of an appropriate standard (either generally or in relation to a particular matter), they may—
  - (a) appoint a manager, or
  - (b) require the landlord to appoint a manager,to conduct the affairs of the landlord, or such of the affairs as the Scottish Ministers may specify.

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- (2) A manager appointed under subsection (1)(a) or in pursuance of a requirement under subsection (1)(b)—
  - (a) is to be appointed for such period and on such terms and conditions as the Scottish Ministers may determine,
  - (b) has, by virtue of the appointment, power generally to do all such things as are necessary for carrying out the manager’s functions, and
  - (c) has such specific powers (which may include power to do anything which the landlord has power to do) as the Scottish Ministers may specify.
- (3) The remuneration and expenses of the manager are to be paid by the landlord.
- (4) The Scottish Ministers may give directions in relation to the carrying out of the manager’s functions; and the manager must comply with any such direction.
- (5) In carrying out functions the manager acts as the landlord’s agent; and the manager is not personally liable on a contract entered into as manager.
- (6) A person dealing with the manager in good faith and for value is not concerned to inquire whether the manager is acting within the powers conferred by virtue of this section.

## CHAPTER 2

### LOCAL AUTHORITY HOUSING MANAGEMENT

#### 72     **Inspections**

- (1) The Scottish Ministers may appoint a person to carry out an inspection of the exercise of the functions of a local authority in relation to the provision of housing accommodation and related services.
- (2) A person appointed to carry out an inspection under subsection (1) (an “inspector”) has a right of access at all reasonable times to—
  - (a) any premises of the local authority, and
  - (b) any document relating to the authority which appears to the inspector to be necessary for the purposes of the inspection.
- (3) An inspector may—
  - (a) require a person holding or accountable for any such document to provide the inspector with such information and explanation as the inspector thinks necessary,
  - (b) require that person to attend before the inspector in person to give the information or explanation or to produce the document.
- (4) The local authority must provide an inspector with every facility and all information which the inspector may reasonably require for the purposes of the inspection.
- (5) An inspector must, if so required, produce written authorisation for the carrying out of the inspection.
- (6) A person who fails, without reasonable excuse, to comply with a requirement of an inspector under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **73 Inspection reports**

- (1) Where an inspection has been carried out under section 72, the Scottish Ministers must issue and publish a report and send a copy of it to the local authority and any registered tenant organisation.
- (2) The report must identify any respects in which, as a result of the inspection, the exercise of the functions of the local authority in relation to the provision of housing accommodation and related services was found to be unsatisfactory.

### **74 Remedial plans**

- (1) The Scottish Ministers may require a local authority to prepare, and to submit to the Scottish Ministers by such time as they may direct, a plan (a “remedial plan”) setting out the authority’s proposals for dealing with the matters identified in the report in pursuance of section 73(2), or such of those matters as are specified in the requirement.
- (2) Before making a requirement under subsection (1) the Scottish Ministers must send a draft of the requirement to the authority and must specify a period within which the authority may make comments to the Scottish Ministers on the proposed requirement.
- (3) In deciding whether to make a requirement under subsection (1) and what its terms should be the Scottish Ministers must have regard to any comments received from the authority under subsection (2).
- (4) On receipt of a remedial plan from an authority the Scottish Ministers may—
  - (a) approve it (with or without modifications), or
  - (b) reject it.
- (5) Where the Scottish Ministers approve a remedial plan, they may impose conditions as to its adoption and implementation by the authority.
- (6) The Scottish Ministers must not—
  - (a) approve a remedial plan with modifications,
  - (b) reject a remedial plan, or
  - (c) impose conditions under subsection (5),unless they have given the authority notice of their intention to do so and have had regard to any comments received from the authority within such period as the Scottish Ministers may specify.
- (7) Where a plan is approved under subsection (4)(a), the authority must adopt and implement it in accordance with any conditions imposed under subsection (5).
- (8) Where a plan is rejected under subsection (4)(b), the authority must prepare a revised plan and submit it to the Scottish Ministers by such time as they may direct.

### **75 Remedial plans: appointment of manager**

- (1) The Scottish Ministers may carry out an inspection of the implementation of a remedial plan by a local authority.
- (2) Subsections (2) to (6) of section 72 apply in relation to such an inspection as they apply in relation to an inspection under subsection (1) of that section.

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- (3) Where, as a result of an inspection under subsection (1) of this section, the Scottish Ministers consider that the remedial plan is not being implemented satisfactorily, they may appoint a manager to exercise such functions of the authority in relation to the provision of housing accommodation and related services as the Scottish Ministers may specify.
- (4) Before appointing a manager under subsection (3) the Scottish Ministers must consult—
  - (a) the authority,
  - (b) such bodies representing local authorities as they think fit, and
  - (c) the Accounts Commission for Scotland,
 and must have regard to any comments received from them within such period as the Scottish Ministers may specify.
- (5) A manager appointed under subsection (3)—
  - (a) is to be appointed for such period and on such terms and conditions as the Scottish Ministers may determine,
  - (b) has, by virtue of the appointment, power generally to do all such things as are necessary for carrying out the manager’s functions, and
  - (c) has such specific powers (which may include power to do anything which the authority has power to do) as the Scottish Ministers may specify.
- (6) The remuneration and expenses of the manager are to be paid by the authority.
- (7) The Scottish Ministers may give directions in relation to the carrying out of the manager’s functions; and the manager must comply with any such direction.
- (8) In carrying out functions the manager acts as the agent of the authority; and the manager is not personally liable on a contract entered into as manager.
- (9) A person dealing with the manager in good faith and for value is not concerned to inquire whether the manager is acting within the powers conferred by virtue of this section.

### CHAPTER 3

#### COMMON PROVISIONS

##### *Disposals of tenanted houses: consultation and consent*

#### **76 Disposals of tenanted houses: consultation and consent**

- (1) Schedule 9 (which makes provision for consultation with tenants, including a ballot, where a disposal by a local authority landlord or a registered social landlord would result in a change of landlord for a tenant under a Scottish secure tenancy) has effect.
- (2) Where a disposal to which that schedule applies is to a person other than a registered social landlord, the Scottish Ministers must not give consent to the disposal under section 12(7) of the 1987 Act or, as the case may be, section 66 of this Act unless they are satisfied that a disposal to a registered social landlord is not appropriate.



## Information

### 77 Power to obtain information

- (1) The Scottish Ministers may, for any purpose mentioned in subsection (2), serve on a person a notice requiring the person—
  - (a) to provide the Scottish Ministers, or a person authorised by them, at a time and place and in the form and manner specified in the notice, with such information relating to the affairs of a local authority or, as the case may be, a registered social landlord in connection with the provision of housing accommodation and related services as may be specified or described in the notice, or
  - (b) to produce to the Scottish Ministers, or a person authorised by them, at a time and place specified in the notice, any documents relating to such affairs which are specified or described in the notice and are in that person's custody or under that person's control.
- (2) The purposes referred to in subsection (1) are any purpose connected with the provision of housing accommodation and related services by the authority or, as the case may be, the landlord.
- (3) A notice in pursuance of subsection (1) in relation to a local authority may be served on—
  - (a) the authority,
  - (b) an officer or employee of the authority,
  - (c) any other person whom the Scottish Ministers have reason to believe is or may be in possession of relevant information.
- (4) No notice is to be served on a person falling within paragraph (b) or (c) of subsection (3) unless—
  - (a) a notice has been served on the local authority and has not been complied with, or
  - (b) the Scottish Ministers believe that the information or documents in question are not in the possession of the authority.
- (5) A notice in pursuance of subsection (1) in relation to a registered social landlord may be served on—
  - (a) the landlord,
  - (b) any person who is, or has been, an officer, member, employee or agent of the landlord,
  - (c) a subsidiary or associate of the landlord,
  - (d) any person who is, or has been, an officer, member, employee or agent of a subsidiary or associate of the landlord,
  - (e) any other person whom the Scottish Ministers have reason to believe is or may be in possession of relevant information.
- (6) No notice is to be served on a person falling within paragraphs (b) to (e) of subsection (5) unless—
  - (a) a notice has been served on the registered social landlord and has not been complied with, or
  - (b) the Scottish Ministers believe that the information or documents in question are not in the possession of the landlord.

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## **78 Power to obtain information: further provision**

- (1) In section 77, “agent” includes banker, solicitor and auditor.
- (2) Nothing in that section authorises the Scottish Ministers to require—
  - (a) the disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session, or
  - (b) the disclosure by a banker of anything in breach of any duty of confidentiality owed by the banker to a person other than a local authority or, as the case may be, a registered social landlord or a subsidiary or associate of a registered social landlord.
- (3) References in that section to a document are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.
- (4) Where by virtue of that section documents are produced to any person, that person may take copies of or make extracts from them.
- (5) A person who fails, without reasonable excuse, to do anything required of that person by a notice under that section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person who intentionally alters, suppresses or destroys a document which that person has been required by a notice under that section to produce is guilty of an offence and is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

### *Guidance*

## **79 Issue of guidance by the Scottish Ministers**

- (1) The Scottish Ministers may issue guidance with respect to the provision of housing accommodation and related services by local authorities and registered social landlords.
- (2) Guidance under this section may, in particular, be issued with respect to—
  - (a) the housing needs for which provision should be made and the means of meeting those needs,
  - (b) the prevention and alleviation of homelessness,
  - (c) the provision and management of sites for persons of nomadic habit of life, whatever their race or origin,
  - (d) the acquisition and disposal of housing accommodation,
  - (e) the allocation of housing accommodation,
  - (f) the terms of tenancies and the principles upon which levels of rent should be determined,
  - (g) standards of maintenance and repair and the means of achieving those standards,

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- (h) the prevention of anti-social behaviour and conduct, and conduct amounting to harassment, by tenants and other persons whose actions and conduct are the subject of paragraph 7 of schedule 2 (“anti-social”, “conduct” and “harassment” having the meanings given in sub-paragraph (2) of that paragraph),
  - (i) the provision of services for owners and occupiers of houses,
  - (j) consultation and communication with tenants and bodies representing tenants,
  - (k) the participation of tenants and bodies representing tenants in the formulation of proposals concerning housing accommodation and related services,
  - (l) procedures for dealing with disputes between tenants and local authorities or registered social landlords,
  - (m) standards of governance and financial accountability.
- (3) The power to issue guidance under this section does not include power to issue guidance in respect of the functions conferred on local authorities by Part XIII (improvement and repairs grants) of the 1987 Act.
- (4) Before issuing any guidance under this section the Scottish Ministers must consult such persons as they think fit.
- (5) The Scottish Ministers must issue the guidance in such manner as they consider appropriate for bringing it to the notice of the local authorities or, as the case may be, the registered social landlords concerned.
- (6) Guidance under this section may make different provision in relation to different cases and, in particular, in relation to different areas, different descriptions of housing accommodation and different descriptions of local authority or registered social landlord.
- (7) In considering whether action needs to be taken to secure the proper management of the provision of housing accommodation and related services by a local authority or a registered social landlord or whether there has been mismanagement, the Scottish Ministers may have regard (among other matters) to the extent to which any guidance under Part 1 of this Act, section 37 (guidance on homelessness) of the 1987 Act or this section is being or has been followed.

#### *Code of good practice*

### **80 Code of good practice**

- (1) The Scottish Ministers must publish a statement setting out how they propose to exercise their functions under this Part.
- (2) The Scottish Ministers must keep the statement under review and—
- (a) may from time to time,
  - (b) must, not more than 5 years from the date of publication of the statement and at least once every five years thereafter,
- publish a further such statement.

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### *Charges for regulatory functions*

#### **81 Charges for regulatory functions of the Scottish Ministers**

- (1) The Scottish Ministers may, after consultation with a local authority or, as the case may be, a registered social landlord, direct the authority or landlord to pay to them an amount specified in, or calculated in accordance with, the direction in respect of the expenses specified in subsection (2); and the authority or landlord must comply with any such direction.
- (2) The expenses referred to in subsection (1) are the expenses of the Scottish Ministers in exercising in relation to the authority or landlord their functions under—
  - (a) this Part,
  - (b) sections 17A and 17B (publication of housing management information) of the 1987 Act, and
  - (c) any other enactment relating to the provision of housing accommodation or related services by local authorities or registered social landlords.

## **CHAPTER 4**

### INTERPRETATION OF PART 3

#### **82 Meaning of “subsidiary” and “associate”**

- (1) In this Part “subsidiary”, in relation to a registered social landlord, means a company with respect to which one of the following conditions is fulfilled—
  - (a) the landlord is a member of the company and controls the composition of the board of directors,
  - (b) the landlord holds more than half in nominal value of the company’s equity share capital,
  - (c) the company is a subsidiary, within the meaning of the Companies Act 1985 (c. 6) or the Friendly and Industrial and Provident Societies Act 1968 (c. 55), of another company which, by virtue of paragraph (a) or (b), is itself a subsidiary of the landlord.
- (2) For the purposes of subsection (1)(a), the composition of a company’s board of directors is deemed to be controlled by a registered social landlord if, but only if, the landlord, by the exercise of some power exercisable by the landlord without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships.
- (3) In relation to a company which is an industrial and provident society—
  - (a) any reference in this section to the board of directors is a reference to the committee of management of the society,
  - (b) the reference in subsection (2) to the holders of all or a majority of the directorships is a reference—
    - (i) to all or a majority of the members of the committee, or
    - (ii) if the landlord is a member of the committee, such number as together with the landlord would constitute a majority.

- (4) In the case of a registered social landlord which is a body of trustees, references in this section to the landlord are to the trustees acting as such.
- (5) In this Part “associate”, in relation to a registered social landlord, means—
  - (a) any body of which the landlord is a subsidiary, and
  - (b) any other subsidiary of such a body.
- (6) In subsection (5) “subsidiary” has the same meaning as in the Companies Act 1985 (c. 6) or the Friendly and Industrial and Provident Societies Act 1968 (c. 55) or, in the case of a body which is itself a registered social landlord, has the meaning given by subsection (1).

### **83 Interpretation of Part 3**

- (1) References in this Part to an officer of a registered social landlord are—
  - (a) in the case of an industrial and provident society, to any officer of the society as defined in section 74 of the Industrial and Provident Societies Act 1965 (c. 12), including a co-opted member of the committee of the society, and
  - (b) in the case of a company registered under the Companies Act 1985 (c. 6), to any director or other officer of the company within the meaning of that Act.
- (2) In this Part, in relation to an industrial and provident society—
  - (a) “committee” means the committee of management or other directing body of the society,
  - (b) “co-opted member”, in relation to the committee, includes any person co-opted to serve on the committee, whether the person is a member of the society or not,
  - (c) any reference to a member of the committee includes a co-opted member.
- (3) In this Part—
  - “co-operative housing association” has the meaning given in section 300(1)(b) of the 1987 Act,
  - “housing activities” means, in relation to a registered social landlord, all its activities in pursuance of the purposes, objects and powers mentioned in section 58,
  - “housing association” and, in relation to a housing association, “fully mutual” have the meanings given in section 1 of the Housing Associations Act 1985 (c. 69),
  - “provision of housing accommodation and related services” includes—
    - (a) the prevention and alleviation of homelessness,
    - (b) the management of housing accommodation,
    - (c) the provision of services for owners and occupiers of houses,
    - (d) the provision and management of sites for persons of nomadic habit of life, whatever their race or origin,
  - “shared ownership agreement” means an agreement whereby—
    - (a) a pro indiviso right in a house is sold, and the remaining pro indiviso rights therein are leased, to a person subject to the person being entitled, from time to time, to purchase those remaining rights until that person has purchased the entire house, or

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(b) pro indiviso rights in houses are conveyed to trustees to hold on behalf of persons each of whom, by purchasing a share in those houses, becomes entitled to exclusive occupancy of one of the houses but with any such person who wishes to sell or otherwise dispose of that person's share being required to do so through the agency of the trustees,  
 or such other agreement as may be approved by the Scottish Ministers whereby a person acquires a pro indiviso right in a house or houses and thereby becomes entitled to exclusive occupancy of the house or, as the case may be, one of the houses.

## PART 4

### SCOTTISH HOMES

#### **84      Transfer of functions to the Scottish Ministers**

The functions of Scottish Homes are transferred to the Scottish Ministers.

#### **85      Property and liabilities**

- (1) The Scottish Ministers may by order provide for the transfer to them, or to such other person as the order may specify, of any property and liabilities to which Scottish Homes is entitled or subject.
- (2) A certificate issued by the Scottish Ministers that any property or liability has, or has not, been transferred by subsection (1) is conclusive evidence of the transfer or (as the case may be) that there has not been a transfer.
- (3) Subsection (1) has effect in relation to property and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities.

#### **86      Transfer of staff**

- (1) The Scottish Ministers may by order make provision for the staff of Scottish Homes to transfer to, and become members of the staff of, the Scottish Administration.
- (2) The terms and conditions of appointment of a person who becomes a member of the staff of the Scottish Administration by virtue of subsection (1) are to be determined by the Scottish Ministers but, taken as a whole, must be not less favourable to that person than the terms on which the person was employed by Scottish Homes immediately before the transfer.
- (3) When a person becomes a member of the staff of the Scottish Administration by virtue of subsection (1), then, for the purposes of the Employment Rights Act 1996 (c. 18), that person's period of employment by Scottish Homes counts as a period of service as a member of the staff of the Scottish Administration and the change of employment does not break the continuity of the period of employment.
- (4) Where a person ceases to be employed by Scottish Homes by virtue of subsection (1) that person is not, on ceasing to be so employed, to be treated—

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- (a) for the purposes of any scheme or regulations by virtue of the Superannuation Act 1972 (c. 11) as having been retired on redundancy,
- (b) for the purposes of Part XI of the Employment Rights Act 1996 (c. 18) as having been dismissed by reason of redundancy.

**87      Dissolution etc.**

- (1) Scottish Homes is dissolved on such date as the Scottish Ministers may by order specify.
- (2) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they think necessary or expedient in consequence of or in connection with—
  - (a) the transfer of functions, property, liabilities and staff of Scottish Homes, or
  - (b) the dissolution of Scottish Homes.

**PART 5**

**STRATEGIC HOUSING FUNCTIONS**

*The Scottish Ministers*

**88      Statement on fuel poverty**

- (1) The Scottish Ministers must, within 12 months of the coming into force of this section, prepare and publish a statement setting out the measures which they and local authorities have taken, are taking and intend to take for the purpose of ensuring, so far as reasonably practicable, that persons do not live in fuel poverty.
- (2) The measures to be set out in the statement must include measures for ensuring the efficient use of energy (for example, by installation of appropriate equipment or insulation).
- (3) The statement must specify—
  - (a) a target date (which must be within 15 years of the date of publication of the statement) for achieving the purpose mentioned in subsection (1), and
  - (b) interim objectives towards the achievement of that purpose.
- (4) The Scottish Ministers—
  - (a) must keep the statement under review,
  - (b) may from time to time modify the statement, and
  - (c) must publish any modified statement.
- (5) Before preparing or modifying the statement the Scottish Ministers must consult—
  - (a) such persons as appear to them to represent the interests of those living in fuel poverty, and
  - (b) such other persons,as they think fit.
- (6) The Scottish Ministers must, within 4 years of the date of publication of the statement and at least once every 4 years thereafter, prepare and publish a report on the measures

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referred to in the statement which have been taken since the date of its publication or, as the case may be, the date of the last such report.

### *Local authorities*

## **89 Local housing strategies**

- (1) A local authority must, when required to do so by the Scottish Ministers—
  - (a) carry out an assessment in accordance with subsection (2), and
  - (b) prepare, in accordance with subsection (4), and submit to the Scottish Ministers, a strategy (a “local housing strategy”).
- (2) The assessment referred to in subsection (1) must, in relation to the period specified in the requirement, assess housing provision and the provision of related services in the authority’s area, including in particular—
  - (a) the nature and condition of the housing stock,
  - (b) the needs of persons in the area for housing accommodation,
  - (c) the demand for, and availability of, housing accommodation,
  - (d) the needs of persons in the area for, and the availability of, housing accommodation designed or adapted for persons with special needs, and
  - (e) any other matter specified in the requirement.
- (3) In carrying out the assessment, the authority must have regard to the long-term supply of appropriately trained construction and maintenance labour within its area.
- (4) The local housing strategy must set out the authority’s policy for—
  - (a) exercising its functions, and
  - (b) co-ordinating the exercise of those functions and the functions and activities of registered social landlords and other persons concerned (in whatever way) with housing provision and the provision of related services,
 with a view to accomplishing the purpose set out in subsection (5).
- (5) That purpose is the provision, in the period specified in the requirement, of housing and related services in a manner which—
  - (a) is economic, efficient and effective, and
  - (b) ensures, so far as reasonably practicable, that persons do not live in fuel poverty.
- (6) A requirement under subsection (1)—
  - (a) must specify the period in relation to which the assessment is to be carried out and the strategy prepared and submitted,
  - (b) may make provision as to—
    - (i) the procedure to be followed in carrying out the assessment and preparing the strategy,
    - (ii) the time by which the strategy is to be submitted to the Scottish Ministers,
    - (iii) the form of the strategy and the matters which it is to include,
    - (iv) the consultation to be carried out by the local authority on its proposed strategy,
    - (v) the documents and information relating to the strategy and its preparation which are to be submitted to the Scottish Ministers.



- (7) Without prejudice to subsection (6)(b), the strategy must state how the local authority is to comply with its duty under section 106 so far as relating to the matters included in the strategy.
- (8) A local authority must provide a copy of its local housing strategy to any person who requests it.
- (9) Two or more local authorities subject to a requirement under subsection (1) may, with the consent of the Scottish Ministers, exercise their functions under this section jointly in relation to their combined areas.
- (10) The Scottish Ministers must exercise their power under subsection (1) so as to ensure that every local government area is included in a local housing strategy.
- (11) A local authority—
  - (a) must provide the Scottish Ministers with such information as they may require, in such form and at such times as they may require, about the authority’s implementation of its local housing strategy,
  - (b) must keep its strategy under review,
  - (c) may from time to time, after consultation with such persons as it thinks fit, modify its strategy, and
  - (d) must submit any such modified strategy to the Scottish Ministers.

## **90 Grants for housing purposes**

- (1) The Scottish Ministers may make grants to a local authority for the purposes of—
  - (a) the authority’s functions in connection with—
    - (i) providing, improving, adapting, repairing, maintaining and managing housing,
    - (ii) undertaking, and assisting the undertaking of, the development, redevelopment and improvement of the physical, social, economic and recreational environment related to housing,
    - (iii) preventing or alleviating homelessness, and related matters,
  - (b) relevant housing-related debt of the authority.
- (2) The functions mentioned in subsection (1)(a)(i) and (ii) do not include expenditure in relation to any house, building or land to which the housing revenue account kept by the authority under section 203 of the 1987 Act relates.
- (3) In subsection (1)(b), “relevant housing-related debt” means such liabilities of the authority as the Scottish Ministers, after consultation with the authority, may specify, being liabilities—
  - (a) in respect of loan charges within the meaning of paragraph 3(a) of Schedule 15 to the 1987 Act which—
    - (i) are required by that paragraph to be debited to the authority’s housing revenue account, or
    - (ii) would, but for an order under section 94(2) of this Act, have been required to be so debited, or
  - (b) otherwise arising in connection with the loan to which such loan charges relate.

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- (4) A grant under subsection (1) is to be—
  - (a) of such amount, and
  - (b) subject to such terms and conditions,
 as the Scottish Ministers think fit.
- (5) A local authority may arrange for any of its functions in relation to sums, or descriptions of sum, received by it under subsection (1) to be exercised on its behalf by the Scottish Ministers on such terms (including financial ones) as the authority and the Scottish Ministers may agree; and the Scottish Ministers may exercise those functions accordingly.
- (6) An arrangement under subsection (5) does not affect the responsibility of the authority for the exercise of its functions.

## **91 Grants for housing support services**

- (1) The Scottish Ministers may pay grants to local authorities towards expenditure incurred by them in providing, or contributing to the provision of, prescribed housing support services.
- (2) Grants under this section may be paid—
  - (a) to all local authorities,
  - (b) to particular local authorities, or
  - (c) to particular descriptions of local authority.
- (3) A grant under subsection (1) is to be—
  - (a) of such amount, and
  - (b) subject to such terms and conditions,
 as the Scottish Ministers think fit.
- (4) The Scottish Ministers may by order make provision as to the terms and conditions on which local authorities may make payments out of sums, or descriptions of sum, received by them under subsection (1) (including conditions for repayment in specified circumstances).
- (5) An order under subsection (4) has effect in relation to any sum subject to any terms and conditions imposed under subsection (3).
- (6) The Scottish Ministers may issue guidance to local authorities generally or to any description of local authority in relation to the matter mentioned in subsection (4).
- (7) Before making an order under subsection (4), issuing guidance under subsection (6) or making regulations under subsection (8) or (9) the Scottish Ministers must consult—
  - (a) such bodies representing local authorities, and
  - (b) such other persons,
 as they think fit.
- (8) In this Act—
 

“housing support services” includes any service which provides support, assistance, advice or counselling to an individual with particular needs with a view to enabling that individual to occupy, or to continue to occupy, as the person’s sole or main residence, residential accommodation other than excepted accommodation,

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“prescribed housing support services” means housing support services prescribed, or of a type prescribed, by regulations made by the Scottish Ministers.

- (9) For the purposes of subsection (8) “excepted accommodation” means accommodation, or accommodation of a type, specified as such in regulations made by the Scottish Ministers.

## **92 Assistance for housing purposes**

- (1) A local authority may promote—
- (a) the formation of bodies to act as registered social landlords,
  - (b) the development of registered social landlords.
- (2) A local authority may provide assistance to a registered social landlord or to any other person concerned with—
- (a) providing, improving, adapting, repairing, maintaining and managing housing,
  - (b) undertaking, and assisting the undertaking of, the development, redevelopment and improvement of the physical, social, economic and recreational environment related to housing,
  - (c) preventing or alleviating homelessness,
- or related matters.
- (3) A local authority may provide assistance to an individual in connection with the acquisition, construction, improvement, repair or maintenance of housing accommodation by that individual.
- (4) Assistance under subsection (2) may, in particular, be in the form of—
- (a) grants or loans to the landlord or person,
  - (b) subscribing for share or loan capital of the landlord or person,
  - (c) guaranteeing or joining in guaranteeing the payment of the principal of, and interest on, money borrowed by the landlord or person (including money borrowed by the issue of loan capital) or of interest on share capital issued by the landlord or person,
  - (d) granting indemnities,
  - (e) acquiring, holding, managing and disposing of land,
  - (f) providing or arranging for the provision of advice, training or other services and facilities,
  - (g) making available the services of staff of the local authority,
  - (h) carrying out or commissioning research and related activities,
  - (i) providing or arranging for the provision of information relating to housing.
- (5) Assistance under subsection (2)—
- (a) of a kind mentioned in subsection (4)(c) or (d), or
  - (b) which the authority proposes to carry to the debit of its housing revenue account kept under section 203 of the 1987 Act,
- may be provided only with the consent of the Scottish Ministers.
- (6) Assistance under subsection (3) may, in particular, be of a kind mentioned in subsection (4)(a), (c), (e) to (g) or (i).

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### **93 Assistance for housing purposes: further provision**

- (1) Assistance under subsection (2) or (3) of section 92 may, subject to subsection (2) of this section, be provided on such terms and conditions (including conditions for repayment of financial assistance in specified circumstances) as the local authority may specify.
- (2) The Scottish Ministers may by regulations make provision as to—
  - (a) the purposes for which, and the classes of persons to whom, local authorities may provide assistance under those subsections of a kind referred to in subsection (4)(a) to (d) of that section,
  - (b) the procedure to be followed by local authorities in considering whether to provide such assistance,
  - (c) the terms and conditions on which such assistance is to be provided (including conditions for repayment in specified circumstances).
- (3) The Scottish Ministers may issue guidance to local authorities generally or to any description of local authority in relation to the provision of assistance under section 92(2) or (3).
- (4) Before making regulations under subsection (2) or issuing guidance under subsection (3) of this section the Scottish Ministers must consult—
  - (a) such bodies representing local authorities,
  - (b) such bodies representing registered social landlords, and
  - (c) such other persons,as they think fit.
- (5) The Scottish Ministers may by order modify any enactment passed or made before the coming into force of section 92 under which a local authority may provide assistance to a landlord or other person of a kind which the authority may provide under that section.

### **94 Alteration of housing finance arrangements**

- (1) The Scottish Ministers may by order provide that, on a date specified in the order, sections 191 to 193 (housing support grants) of the 1987 Act cease to apply in relation to a local authority so specified.
- (2) The Scottish Ministers may by order provide that, on a date specified in the order, section 203(1) (duty to keep housing revenue account) of that Act ceases to apply in relation to a local authority so specified.
- (3) An order under subsection (2) may provide for any land held in the housing revenue account of the local authority on the specified date to be held, and accounted for, by the authority in such manner as the order may specify.
- (4) Except with the consent of the Scottish Ministers, which may be given subject to conditions, a local authority must not dispose of such land for a consideration less than the best that can reasonably be obtained.
- (5) Subsection (6) applies to any sum which is received by a local authority in connection with the disposal of any land held in the housing revenue account of the authority or in respect of which provision has been made by virtue of subsection (3).

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- (6) The Scottish Ministers may, after consultation with a local authority, direct the authority that any such sum, or any such sum of any description, specified in the direction is, to such extent as the direction may specify, to be applied by the authority for the purposes of—
- (a) the functions of the authority relating to housing under this Act or any other enactment, or
  - (b) the relevant housing-related debt of the authority (within the meaning of section 90(3));
- and the authority must comply with the direction.

*Meaning of “fuel poverty”*

**95 Meaning of “fuel poverty”**

- (1) For the purposes of this Part, a person lives in fuel poverty if that person is a member of a household with a low income living in a home which cannot be kept warm at a reasonable cost.
- (2) The Scottish Ministers may by regulations make provision, for the purposes of subsection (1), as to—
- (a) what is—
    - (i) a household,
    - (ii) a low income,
    - (iii) a reasonable cost,
  - (b) the circumstances in which a home is to be regarded for those purposes as being warm.
- (3) Before making any such regulations, the Scottish Ministers must consult—
- (a) such persons as appear to them to represent the interests of persons living in fuel poverty, and
  - (b) such other persons,  
as they think fit.

**PART 6**

GRANTS FOR IMPROVEMENT, REPAIRS ETC.

*Improvement grants*

**96 Extension of power to make improvement grants**

- (1) In section 236 (power of local authorities to make improvement grants) of the 1987 Act, in subsection (2)—
- (a) the word “and” at the end of sub-paragraph (i) of paragraph (a) is repealed,
  - (b) after that sub-paragraph insert—
    - “(ia) replacement of unsafe electrical wiring,
    - (ib) installation of mains-powered smoke detectors,
    - (ic) provision of adequate heating systems,

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- (id) provision of adequate thermal insulation,”
- (c) after sub-paragraph (ii) of paragraph (a) insert—
  - “(iii) in relation to a building in common ownership, the matters specified in subsection (2A);”.
- (2) After subsection (2) of that section insert—
  - “(2A) The matters referred to in subsection (2)(a)(iii) are the installation of—
    - (a) a fire-retardant door at the entrance to each house,
    - (b) a main door entry-phone system.”
- (3) In subsection (3) of that section, in the definition of “disabled person”, for the words from “means” to the end substitute “has the same meaning as in the Disability Discrimination Act 1995 (c. 50)”.
- (4) After that section insert—

**“236A Power to make improvement grants: further provision**

- (1) A tenant is not eligible for an improvement grant unless the works in respect of which the grant is sought have, for the period of 2 years preceding the tenant’s application, been his responsibility under his lease.
- (2) Subsection (1) does not apply if the works are—
  - (a) for the purpose mentioned in section 236(2)(a)(ii), or
  - (b) required for the health and safety of the occupants of the house.
- (3) The Scottish Ministers may by order modify subsections (2)(a) and (2A) of section 236, either generally or in relation to particular cases or areas.
- (4) No such order shall be made unless a draft of the order has been laid before, and approved by resolution of, the Scottish Parliament.”

**97 Application for grant**

- (1) Section 237 (form of application for improvement grant) of the 1987 Act is amended as follows—
  - (a) at the beginning insert “(1)”,
  - (b) at the end of paragraph (b), the word “and” is repealed,
  - (c) after paragraph (c) insert “, and
    - (d) such other matters, including information on the matters mentioned in section 240A(2)(a), as may be prescribed.
- (2) Different forms and different information may be prescribed under subsection (1) for different purposes.
- (3) A local authority may require an applicant to provide, within such reasonable period as they may specify, such information as they consider necessary to satisfy themselves that the information in the application form is accurate.
- (4) The local authority shall disregard any application from an applicant who fails to comply with such a requirement.”

(2) After that section insert—

**“237A Offences in relation to applications for improvement grant**

- (1) A person who—
- (a) knowingly or recklessly makes a statement—
    - (i) in an application for an improvement grant,
    - (ii) in response to a requirement made under section 237(3), which is false in a material particular,
  - (b) fails, without reasonable excuse, to notify the local authority of any change of circumstances material to that person’s case, or
  - (c) fails, without reasonable excuse, to comply with a requirement made under section 237(3),
- shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

**98 Age of buildings eligible for grant**

In section 240(2)(b) (conditions for approval of applications for improvement grants) of the 1987 Act, for “after 15 June 1964” substitute “less than 10 years prior to the date of the making of the application”.

**99 Applicant’s contribution to expense of works**

After section 240 of the 1987 Act insert—

**“240A Assessment of applicant’s contribution**

- (1) The Scottish Ministers may by regulations make provision for the assessment, in relation to such classes of application for an improvement grant as the regulations may specify, of an amount to be treated, for the purposes of section 242(1)(b), as the applicant’s contribution towards the approved expense.
- (2) Regulations under subsection (1) may provide for assessment to be by reference to—
- (a) the income and other financial circumstances of the applicant, the applicant’s spouse, any person who lives or intends to live with the applicant and any person on whom the applicant is dependent or who is dependent on the applicant,
  - (b) such other criteria as the Scottish Ministers think fit,
- and may make different provision for different cases or descriptions of case.
- (3) Regulations under subsection (1) shall be made by statutory instrument and shall not be made unless a draft has been laid before, and approved by resolution of, the Scottish Parliament.
- (4) In this Part—

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“the applicant’s contribution” means an amount assessed under subsection (1),

“approved expense” means, in relation to works referred to in an application, the amount of the expense of executing those works (as estimated in the application) approved by the local authority as being attributable to each house proposed to be provided or improved.

### **240B Applicant’s contribution: review**

- (1) Where an applicant for an improvement grant requests a review of an assessment of the applicant’s contribution, the local authority to which the application was made shall review the assessment.
- (2) A request for a review shall be made before the end of the period of 21 days beginning with the day on which the notice under section 241(1) was given or such longer period as the authority may allow.
- (3) A review under subsection (1) shall be carried out by a person senior to the person who made the assessment being reviewed and who had no involvement in the making of that assessment.
- (4) The authority shall notify the applicant of the decision reached on review.
- (5) Notice required to be given to the applicant under subsection (4) shall be given in writing and shall, if not received by him, be treated as having been given only if it is made available at the authority’s office for a reasonable period for collection by him or on his behalf.
- (6) There is no right to request a review of a decision reached on review.”

## **100 Approval of application**

- (1) Section 241 (approval of application of improvement grant) of the 1987 Act is amended as follows.
- (2) In subsection (1), for the words from “the amount” in the first place where they occur to the end substitute—
  - “(a) the approved expense,
  - (b) the applicant’s contribution (where it has been assessed under section 240A),
  - (c) the amount of the grant (and, where the grant is a minimum percentage grant, a statement of that fact).”
- (3) In subsection (3), for paragraph (b) substitute—
  - “(b) approve an application but fix as the approved expense in respect of any house an amount less than the amount of the expense estimated in the application in respect of that house (unless the approved expense is the maximum amount which may be fixed under section 242).”

## **101 Amount of grant**

- (1) Section 242 (amount of improvement grant) of the 1987 Act is amended as follows.
- (2) For subsection (1), substitute—



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- “(1) Subject to the following provisions of this section—
- (a) the approved expense shall not exceed £20,000, or such other amount as may be prescribed, in respect of each house to which the application relates,
  - (b) the amount of improvement grant payable shall be—
    - (i) the approved expense under deduction (where applicable) of the applicant’s contribution, or
    - (ii) where subsection (1A) applies, the amount determined by virtue of that subsection,whichever is the greater.
- (1A) In such cases as the Scottish Ministers may specify in regulations, the amount for the purposes of subsection (1)(b)(ii) shall be such percentage of the approved expense as may be so specified; and such regulations may make different provision for different cases or classes of case.
- (1B) Where the amount of improvement grant payable is that determined by virtue of subsection (1A), the grant is referred to in this Part as a “minimum percentage grant”.
- (1C) Regulations under subsection (1A) shall be made by statutory instrument and shall not be made unless a draft has been laid before, and approved by a resolution of, the Scottish Parliament.”
- (3) In subsection (2), for “(1)” substitute “(1)(a)”.
- (4) In subsection (4)—
- (a) for “amount than that payable” substitute “approved expense than that which may be fixed”,
  - (b) for “that amount” substitute “the approved expense”.
- (5) For subsection (5) substitute—
- “(5) Subsection (5A) applies in relation to an application for an improvement grant, other than—
- (a) an application to which section 244 applies, or
  - (b) an application in respect of works for the benefit of a disabled occupant within the meaning of section 236(3).
- (5A) Where this subsection applies, the maximum approved expense for the purposes of subsection (1)(a) shall be reduced by the total amount of any qualifying grants and assistance in respect of the same house which have been paid or approved for payment within the period of 10 years preceding the date on which the application is determined.
- (5B) In subsection (5A), “qualifying grants and assistance” means—
- (a) improvement grants, other than—
    - (i) grants under section 244,
    - (ii) grants in respect of works for the benefit of a disabled occupant within the meaning of section 236(3), and
    - (iii) minimum percentage grants,
  - (b) repairs grants, other than minimum percentage grants, and

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- (c) assistance under section 42(4) of the Crofters (Scotland) Act 1993 (c. 44).”

**102 Improvement grants: the tolerable standard and standard amenities**

- (1) In section 86(1) (definition of house meeting tolerable standard) of the 1987 Act, after paragraph (f) insert—
- “(fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;”.
- (2) In section 244 (provision of standard amenities) of that Act—
- (a) after subsection (1) insert—
- “(1A) The standard amenities are those amenities referred to in section 86(1) (e), (f) and (fa).
- (1B) An order under section 86(2) may amend the reference to the provisions of that section specified in subsection (1A) of this section.”,
- (b) in subsection (7), after “be” in the first place where it occurs insert “a minimum of”.

*Repairs grants*

**103 Amount of repairs grant**

- In section 248(5) (repairs grants) of the 1987 Act—
- (a) for the words from “247” to “244)” substitute “243 and 245 to 247”,
- (b) for the words from “for the words” to the end substitute “the words from “or such other” to “244(7)” are omitted.”

*Fire escape grants*

**104 Grants for means of escape from fire**

- (1) Section 249 (grants for fire escapes in houses in multiple occupation) of the 1987 Act is amended as follows.
- (2) In subsection (1), for “fire escape” substitute “means of escape from fire”.
- (3) In subsection (3), for the words from “so much” to the end substitute “that amount shall not exceed £20,000 or such other amount as may be prescribed”.
- (4) After that subsection insert—
- “(3A) In relation to an application under this section, the maximum amount that may be fixed under subsection (3) shall be reduced by the total amount of any grants under this section in respect of the same house which have been paid within the period of 10 years preceding the date on which the application is determined.”
- (5) In subsection (6)—

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*Status: This is the original version (as it was originally enacted).*

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- (a) for the words from “239” to “242(1), (3)” substitute “247 (other than sections 240, 241(3)(b), 242(1)(a))”,
- (b) after “except that” insert—
  - “(a) references to the approved expense shall be treated as references to the maximum amount of expenses determined under subsection (3), and
  - (b)”,
- (c) for the words from “for the words” to the end substitute “the words from “or such other” to “244(7)” are omitted.”

*Improvement of energy efficiency and safety*

**105 Improvement of energy efficiency and safety**

After section 250 of the 1987 Act insert—

*“Improvement of energy efficiency and safety*

**250A Encouragement of works to improve energy efficiency and safety**

- (1) This section applies where, in relation to a house—
  - (a) an application for an improvement grant or a repairs grant has been made,
  - (b) on completion of the work to which the application relates, the house will—
    - (i) meet the tolerable standard, and
    - (ii) be in a good state of repair (disregarding the state of internal decorative repair) having regard to the age, character and locality of the house, and
  - (c) the works specified in subsection (2), or any of them, are required for the improvement of the house.
- (2) Those works are—
  - (a) in any case—
    - (i) replacement of unsafe electrical wiring,
    - (ii) installation of mains-powered smoke detectors,
    - (iii) provision of adequate thermal insulation,
  - (b) in the case of a building in common ownership, installation of—
    - (i) a fire-retardant door at the entry to each house,
    - (ii) a main door entry-phone system.
- (3) Where this section applies, the local authority may invite the applicant to make an improvement grant application (or, as the case may be, a further application) in respect of the works specified in subsection (2).”

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*Status: This is the original version (as it was originally enacted).*

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## PART 7

### MISCELLANEOUS AND GENERAL

#### *Miscellaneous*

#### **106 Equal opportunities**

- (1) The Scottish Ministers and local authorities must exercise the functions conferred on them by this Act in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) In providing housing accommodation and related services, registered social landlords must act in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (3) In this section, “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).

#### **107 Local authority maintenance of houses etc. of registered social landlord**

- (1) Section 1 (supply of goods and services by local authorities) of the Local Authorities (Goods and Services) Act 1970 (c. 39) applies in relation to a registered social landlord as if it were a public body within the meaning of subsection (4) of that section.
- (2) In such application, the definition of “works of maintenance” in that subsection has effect as if the word “minor” wherever it occurs were omitted.

#### **108 Meaning of “family” and “spouse”: cohabitation**

- (1) For the purposes of this Act, a person (“A”) is a member of another’s (“B’s”) family if—
  - (a) A is the spouse of B, or A and B live together as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex, or
  - (b) A is B’s parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.
- (2) For the purpose of subsection (1)(b)—
  - (a) a relationship by marriage is to be treated as a relationship by blood,
  - (b) a relationship of the half-blood is to be treated as a relationship of the whole blood,
  - (c) the stepchild of a person is to be treated as that person’s child, and
  - (d) a person brought up or treated by another person as if the person were the child of the other person is to be treated as that person’s child.
- (3) In section 83 (members of a person’s family) of the 1987 Act—
  - (a) in subsection (1)(a), after “wife” insert “or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex”,
  - (b) in subsection (2), after paragraph (c) insert—

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*Status: This is the original version (as it was originally enacted).*

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“(ca) a person brought up or treated by another person as if the person were the child of the other person shall be treated as that person’s child.”,

(c) after subsection (2) insert—

“(3) Except in subsection (1)(a), references in this Act to a person’s spouse include references to another person living together with that person as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex.”

### *General*

## **109 Orders and regulations**

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.
- (2) Any such power includes power—
  - (a) to make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) to make different provision for different purposes and different areas.
- (3) An order under section 87 or 110 may modify any enactment, instrument or document.
- (4) A statutory instrument containing an order or regulations under this Act (except sections 7(3), 93(5) and 113 and, where subsection (5) of this section applies, sections 87 and 110) is subject to annulment in pursuance of a resolution of the Parliament.
- (5) No order under section 87 or 110 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft has been laid before, and approved by resolution of, the Parliament.
- (6) No regulations are to be made under section 7(3), and no order is to be made under section 93(5), unless a draft has been laid before, and approved by resolution of, the Parliament.

## **110 Ancillary provision**

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

## **111 Interpretation**

In this Act, unless the context otherwise requires—

“the 1987 Act” means the Housing (Scotland) Act 1987 (c. 26),

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

“assured tenancy” and “short assured tenancy” have the same meanings as in Part II of the 1988 Act,

“family” and membership of a person’s family are to be construed in accordance with section 108,

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*Status: This is the original version (as it was originally enacted).*

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“flat” means a separate and self-contained set of premises, whether or not on the same floor, forming part of a building from some other part of which it is divided horizontally,

“homeless”, “homelessness” and “threatened with homelessness” are to be construed in accordance with Part II of the 1987 Act,

“hostel” means—

- (a) in relation to a building provided or converted before 3rd January 1962, a building in which is provided, for persons generally or for any class or classes of persons, residential accommodation (otherwise than in separate and self-contained houses) and board, and
- (b) in relation to a building provided or converted on or after that date, a building in which is provided for persons generally or for any class or classes of persons, residential accommodation (otherwise than in houses) and either board or common facilities for the preparation of adequate food to the needs of those persons, or both,

“house” includes—

- (a) any part of a building, being a part which is occupied or intended to be occupied as a separate dwelling, and in particular includes a flat, and
- (b) any yard, garden, outhouses and pertinents belonging to the house or usually enjoyed with it,

“housing accommodation” includes flats, lodging-houses and hostels,

“housing support services” has the meaning given in section 91(8),

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), and “local government area” means the area for which such a council is constituted,

“local authority landlord” has the meaning given in section 11(3),

“registered social landlord” means a body registered in the register maintained under section 57,

“registered tenant organisation” has the meaning given in section 53(6),

“Scottish secure tenancy” is to be construed in accordance with section 11 (and does not include a short Scottish secure tenancy),

“short Scottish secure tenancy” is to be construed in accordance with section 34.

## **112 Modification of enactments**

Schedule 10, which modifies enactments in consequence of the provisions of this Act, has effect.

## **113 Commencement and short title**

- (1) Except for sections 109 and 110 and this section, the provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (2) Different days may be appointed under this section for different purposes or different areas.
- (3) This Act may be cited as the Housing (Scotland) Act 2001.