



# Housing (Scotland) Act 2001

## 2001 asp 10

### 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,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.

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- (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),
  - (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.
- (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.

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## **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,
  - (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—
- (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.

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- (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,

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- (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).