



# Housing (Scotland) Act 2001

## 2001 asp 10

### PART 2

#### TENANTS OF SOCIAL LANDLORDS

#### CHAPTER 1

#### SCOTTISH SECURE TENANCIES

##### *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 ish of the tenancy it may continue—
  - (a) by tacit relocation, or
  - (b) by express agreement,

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and the continued tenancy is a short Scottish secure tenancy despite subsection (1) not being satisfied.

[<sup>F1</sup>(5A) Subsection (5) does not apply to a tenancy mentioned in subsection (6A).]

(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.

[<sup>F2</sup>(6A) A tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 has a term of 12 months from the day on which the tenancy is granted.]

(7) Where a tenancy is a short Scottish secure tenancy by virtue of section 35 or paragraph 1 [<sup>F3</sup>, 2 or 2A] 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).

[<sup>F4</sup>(9) A landlord must have regard to any guidance published by the Scottish Ministers—

- (a) before creating a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6, and
- (b) when taking any steps in relation to such a tenancy with a view to—
  - (i) extending the term of the tenancy under section 35A, or
  - (ii) raising proceedings for the recovery of possession of the house under section 36.

(10) Before publishing any guidance mentioned in subsection (9), the Scottish Ministers must consult such persons as they consider appropriate.]

#### Textual Amendments

- F1** S. 34(5A) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 9(1)(a)**, 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 3, 9)
- F2** S. 34(6A) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 9(1)(b)**, 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 3, 9)
- F3** Words in s. 34(7) substituted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 7(1)(a)**, 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 3, 9)
- F4** S. 34(9)(10) inserted (20.11.2014) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 7(1)(b)**, 104(3); S.S.I. 2014/264, art. 2, sch.

#### Commencement Information

- I1** S. 34 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), **art. 2** (subject to transitional provisions and savings in [arts. 3-5](#))

## 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).

[<sup>F5</sup>(2) The landlord may serve a notice under subsection (3) only where—

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- (a) the tenant (or any one of joint tenants) or a person residing or lodging with, or a subtenant of, the tenant is subject to an antisocial behaviour order under—
    - (i) section 234AA of the Criminal Procedure (Scotland) Act 1995 (c.46), or
    - (ii) section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), or
  - (b) the tenant (or any one of joint tenants), a person residing or lodging with, or a subtenant of, the tenant, or a person visiting the house has, within the period of 3 years preceding the date of service of the notice—
    - (i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person, or
    - (ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person.]
- (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,<sup>F6</sup>...
  - (b) specify the tenant or other person who is subject to the anti-social behaviour order [<sup>F7</sup>or, as the case may be, has behaved as described in subsection (2)(b)],
  - [<sup>F8</sup>(c) if the notice is served under subsection (2)(b), specify—
    - (i) the actions of the tenant or other person which the landlord has taken into account, and
    - (ii) the landlord's reasons for serving the notice, and
  - (d) explain the right of appeal conferred by subsection (5).]
- [<sup>F9</sup>(3A) A short Scottish secure tenancy created by virtue of this section has a term of 12 months from the day on which the landlord serves a notice under subsection (3).]
- [<sup>F10</sup>(4) Where a tenancy becomes a short Scottish secure tenancy by virtue of this section—
- (a) subsection (5) of section 34 does not apply to the tenancy, but
  - (b) otherwise subsection (6) of that section does apply to the tenancy.]
- (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.
- [<sup>F11</sup>(7) In this section —
- “antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,
  - “conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and
  - “harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).]

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#### Textual Amendments

- F5** S. 35(2) substituted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 7(2)(a)**, 104(3); S.S.I. 2018/153, [art. 2](#), [sch.](#) (with [arts. 3, 9](#))
- F6** Word in [s. 35\(3\)](#) repealed (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 7(2)(b)(i)**, 104(3); S.S.I. 2018/153, [art. 2](#), [sch.](#) (with [arts. 3, 9](#))
- F7** Words in [s. 35\(3\)\(b\)](#) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 7(2)(b)(ii)**, 104(3); S.S.I. 2018/153, [art. 2](#), [sch.](#) (with [arts. 3, 9](#))
- F8** [S. 35\(3\)\(c\)\(d\)](#) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 7(2)(b)(iii)**, 104(3); S.S.I. 2018/153, [art. 2](#), [sch.](#) (with [arts. 3, 9](#))
- F9** [S. 35\(3A\)](#) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 9(2)(a)**, 104(3); S.S.I. 2018/153, [art. 2](#), [sch.](#) (with [arts. 3, 9](#))
- F10** [S. 35\(4\)](#) substituted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 9(2)(b)**, 104(3); S.S.I. 2018/153, [art. 2](#), [sch.](#) (with [arts. 3, 9](#))
- F11** [S. 35\(7\)](#) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 7(2)(c)**, 104(3); S.S.I. 2018/153, [art. 2](#), [sch.](#) (with [arts. 3, 9](#))

#### Commencement Information

- I2** S. 35 wholly in force at 30.9.2002, see [s. 113\(1\)\(2\)](#) and [S.S.I. 2002/321](#), **art. 2** (subject to transitional provisions and savings in [arts. 3-5](#))

### [<sup>F12</sup>35A Extension of term of short Scottish secure tenancy

- (1) The landlord under a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 may extend the term of that tenancy by 6 months from the day which would otherwise be the day of expiry of the tenancy.
- (2) Such an extension may not be made unless—
  - (a) the tenant is in receipt of housing support services, and
  - (b) the landlord has, on or before the day which is 2 months before the day which would otherwise be the day of expiry of the tenancy, served on the tenant a notice informing the tenant of—
    - (i) the extension, and
    - (ii) the reasons for the extension.
- (3) A landlord may not give a notice if the landlord has previously given a notice under subsection (2) in relation to that short Scottish secure tenancy.]

#### Textual Amendments

- F12** [S. 35A](#) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 10(1)**, 104(3); S.S.I. 2018/153, [art. 2](#), [sch.](#) (with [arts. 3, 9](#))

### 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),

- <sup>[F13]</sup>(aa) in the case of a short Scottish secure tenancy created by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6, the landlord considers that any obligation of the tenancy has been broken,]
    - (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,
  - <sup>[F14]</sup>(aa) state the reason why the landlord is seeking recovery of possession (including, in a case where subsection (2)(aa) applies, the obligations which the landlord considers to have been broken),]
  - (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.
- 4A) A tenant may, before the end of the period of 14 days beginning with the day of service of a notice under subsection (2), apply to the landlord for a review of a decision to seek recovery of possession of the house which is the subject of the tenancy.
- 4B) If an application for a review under subsection (4A) is made, the landlord must, before the day specified in the notice by virtue of subsection (3)(b)—
  - (a) confirm its decision to seek recovery of possession or withdraw its notice under subsection (2),
  - (b) notify the tenant of its decision on the review, and
  - (c) where its decision on the review is to confirm the decision to seek recovery of possession, notify the tenant of the reasons.
- 4C) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with a review following an application under subsection (4A).]
- (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) <sup>[F16]</sup>or, in a case where subsection (2)(aa) applies, the end of the term applicable to the tenancy in accordance with section 34(6A), 35(3A) or 35A(1)],
  - (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—

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- (a) terminating the tenancy, and
  - (b) giving the landlord the right to recover possession of the house,
- at that date.

[<sup>F17</sup>(6A) Where a landlord raises proceedings under this section, the landlord must give notice of the raising of the proceedings to the local authority in whose area the house in question is situated, unless the landlord is that local authority.

(6B) Notice under subsection (6A) is to be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10).]

(7) This section is without prejudice to sections 14 and 16 [<sup>F18</sup>, but subject to the modification mentioned in subsection (8)].

[<sup>F19</sup>(8) In relation to the recovery of possession of the house which is the subject of a short Scottish secure tenancy, section 14(4) is to be read as if for paragraph (b) there were substituted—

“(b) a date, not earlier than 4 weeks from the date of service of the notice on or after which the landlord may raise proceedings for recovery of possession,”]

#### Textual Amendments

- F13** S. 36(2)(aa) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 11(a)**, 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 3-5, 9)
- F14** S. 36(3)(aa) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 11(b)**, 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 3-5, 9)
- F15** S. 36(4A)-(4C) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 11(c)**, 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 3-5, 9)
- F16** Words in s. 36(5)(a) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 11(d)**, 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 3-5, 9)
- F17** S. 36(6A)(6B) inserted (2.10.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Homelessness etc. \(Scotland\) Act 2003 \(asp 10\)](#), s. 14(1), **sch. para. 4(3)**; S.S.I. 2008/313, art. 2(a)(b)
- F18** Words in s. 36(7) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 11(e)**, 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 3-5, 9)
- F19** S. 36(8) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 11(f)**, 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 3-5, 9)

#### Modifications etc. (not altering text)

- C1** S. 36 temp. modifications made by virtue of [Coronavirus \(Scotland\) Act 2020 \(asp 7\)](#), s. 17(1), sch. 1 para. 7(1)(3) (as amended (3.10.2020) by S.S.I. 2020/270, regs. 1(1), 6(2)) expired (30.3.2022) by [The Coronavirus \(Scotland\) Acts \(Early Expiry of Provisions\) Regulations 2022 \(S.S.I. 2022/64\)](#), reg. 2(a) (with regs. 4, 5)

#### Commencement Information

- I3** S. 36 wholly in force at 30.9.2002, see s. 113(1)(2) and S.S.I. 2002/321, **art. 2** (subject to transitional provisions and savings in [arts. 3-5](#))

## 37 Conversion to Scottish secure tenancy

(1) Where—

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- (a) a tenancy is a short Scottish secure tenancy by virtue of section 35 or paragraph 1 [<sup>F20</sup>, 2 or 2A] of schedule 6, and
- (b) the landlord has not <sup>F21</sup>...served on the tenant a notice under section 14(2) or 36(2) [<sup>F22</sup>before the expiry of the relevant period],

the tenancy becomes, by virtue of this section, a Scottish secure tenancy with effect from the expiry of [<sup>F23</sup>the relevant] period.

[<sup>F24</sup>(1A) In this section, the “relevant period” is—

- (a) the period of 12 months following the creation of the tenancy, or
- (b) if an extension notice has been served under section 35A, the period of 18 months following the creation of the tenancy.]

(2) Where subsection (1)(a) applies and the landlord has, in the [<sup>F25</sup>relevant period ], 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 [<sup>F26</sup>the relevant period ], 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 [<sup>F26</sup>the relevant period ], 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.

[<sup>F27</sup>(5) Subsection (6) applies to a tenancy which—

- (a) became a short Scottish secure tenancy by virtue of section 35, and
- (b) becomes a Scottish secure tenancy by virtue of this section.

(6) The term of the tenancy is the term which applied immediately before the tenancy became a short Scottish secure tenancy.]

#### Textual Amendments

**F20** Words in s. 37(1)(a) substituted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\), ss. 7\(3\), 104\(3\); S.S.I. 2018/153, art. 2, sch. \(with arts. 3, 9\)](#)

**F21** Words in s. 37(1) repealed (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\), ss. 10\(2\)\(a\)\(i\), 104\(3\); S.S.I. 2018/153, art. 2, sch. \(with arts. 3, 9\)](#)

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- F22** Words in s. 37(1) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 10(2)(a)(ii)**, 104(3); [S.S.I. 2018/153](#), art. 2, sch. (with arts. 3, 9)
- F23** Words in s. 37(1) substituted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 10(2)(a)(iii)**, 104(3); [S.S.I. 2018/153](#), art. 2, sch. (with arts. 3, 9)
- F24** S. 37(1A) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 10(2)(b)**, 104(3); [S.S.I. 2018/153](#), art. 2, sch. (with arts. 3, 9)
- F25** Words in s. 37(2) substituted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 10(2)(c)(i)**, 104(3); [S.S.I. 2018/153](#), art. 2, sch. (with arts. 3, 9)
- F26** Words in s. 37(2) substituted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 10(2)(c)(ii)**, 104(3); [S.S.I. 2018/153](#), art. 2, sch. (with arts. 3, 9)
- F27** S. 37(5)(6) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 9(3)**, 104(3); [S.S.I. 2018/153](#), art. 2, sch. (with arts. 3, 9)

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#### **Commencement Information**

- I4** S. 37 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), **art. 2** (subject to transitional provisions and savings in [arts. 3-5](#))



**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5(5A) inserted by [2003 asp 10 s. 5\(4\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S. 5 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 14(1)(a) words renumbered as s. 14(1)(a) by [2021 asp 16 s. 22\(2\)\(a\)\(i\)](#)
- s. 14(1)(b) inserted by [2021 asp 16 s. 22\(2\)\(a\)\(ii\)](#)
- s. 14(1A)(1B) inserted by [2021 asp 16 s. 22\(2\)\(b\)](#)
- s. 14(5C)–(5E) inserted by [2021 asp 16 s. 22\(2\)\(e\)](#)
- s. 16(2)(d)(e) inserted by [2021 asp 16 s. 22\(3\)\(b\)\(ii\)](#)
- s. 16(3ZA)(3ZB) inserted by [2021 asp 16 s. 22\(3\)\(c\)](#)
- s. 16(5C) inserted by [2021 asp 16 s. 22\(3\)\(e\)](#)
- s. 16(7)–(10) inserted by [2021 asp 16 s. 22\(3\)\(f\)](#)
- s. 34(7A)–(7C) inserted by [2003 asp 10 s. 6\(2\)](#) (This amendment not applied to legislation.gov.uk. S. 6 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 34(8)(b) and words inserted by [2003 asp 10 s. 6\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S. 6 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 89(12) inserted by [2019 asp 10 s. 18\(3\)](#)
- sch. 2 para. 15A inserted by [2021 asp 16 s. 22\(4\)](#)
- sch. 6 para. 5A and cross-heading inserted by [2003 asp 10 s. 5\(5\)](#) (This amendment not applied to legislation.gov.uk. S. 5 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)