



Housing (Scotland) Act 2001

2001 asp 10

PART 2

TENANTS OF SOCIAL LANDLORDS

CHAPTER 1

SCOTTISH SECURE TENANCIES

Short Scottish secure tenancies

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),
[^{F1}(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,
 - [^{F2}(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

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- (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(2) ceases to be in force 6 months after the date specified in it in accordance with subsection (3)(b) or when it is withdrawn by the landlord, whichever is earlier.
- [^{F3}(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) [^{F4}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—
- (a) terminating the tenancy, and
 - (b) giving the landlord the right to recover possession of the house, at that date.
- [^{F5}(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 [^{F6}, but subject to the modification mentioned in subsection (8)].
- [^{F7}(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—

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“(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

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)**
- F6** 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)
- F7** 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

- I1** 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**)

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)