

# **PRIVATE RENTED HOUSING (SCOTLAND) ACT 2011**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE ACT**

3. The purpose of the Private Rented Housing (Scotland) Act is to support responsible landlords and address more effectively the problems caused by landlords who act unlawfully, by strengthening the regulation of the private rented sector. This involves changes to the operation of the systems for registration of private landlords and licensing of houses in multiple occupation. The Act also includes provisions intended to deal with problems caused by overcrowding in the private rented sector and to improve the working of the private sector tenancy regime.

### **STRUCTURE AND SUMMARY OF THE ACT**

4. The Act is in 5 parts:  
**Part 1 Registration of Private Landlords** amends legislation concerning the registration of private landlords contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004. This is in relation to:
  - expanding the criteria of the fit and proper person test;
  - allowing a local authority to require a criminal record certificate from a landlord in order to verify information;
  - fees for certain agents;
  - public access to information on applications not yet determined and persons found not to be fit and proper to act as landlords;
  - requiring landlord registration numbers in advertisements of properties to let;
  - an increase in the maximum fine for offences and the ability of a court to impose a ban of up to five years on a convicted landlord;
  - powers for a local authority to obtain information to enable or assist it to carry out its landlord registration functions, including requiring a letting agent to provide information on properties managed for a landlord;

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which received Royal Assent on 20 April 2011*

- a requirement for a local authority to take account of guidance on the use of its enforcement powers issued by the Scottish Ministers; and,
- requiring the Private Rented Housing Panel to pass information on landlords to local authorities so that their registration status can be checked.

**Part 2 Houses in Multiple Occupation** makes changes to the legislation concerning HMO licensing in Part 5 of the Housing (Scotland) Act 2006 to:

- give Ministers a power to bring by order additional types of multi-occupancy property within the scope of HMO licensing;
- give a local authority a power to refuse to consider an application for an HMO licence if it considers that there would be a breach of planning control;
- require a local authority to consider whether there has been subdivision of rooms or adaptations resulting in moved water and drainage pipes when considering whether to grant an HMO licence;
- give a local authority a power to refuse to grant an HMO licence if it considers that there is overprovision of HMOs in the locality;
- increase the maximum fine for offences;
- remove a requirement for a local authority to issue a statement of reasons for every HMO licensing decision; and,
- require a local authority to take account of guidance issued by the Scottish Ministers on the use of its information gathering powers.

**Part 3 Overcrowding Statutory Notices** creates new powers to tackle overcrowding in the Private Rented Sector. This is in relation to:

- powers for a local authority to serve an overcrowding statutory notice on the landlord of a house which is overcrowded; where it considers that the overcrowding is contributing to or connected with adverse effects on health or wellbeing, or on amenity;
- requiring the local authority to provide prescribed information and advice to the occupier of a house when serving an overcrowding statutory notice;
- enabling Scottish Ministers to prescribe by order the form of an overcrowding statutory notice, along with the form and content of the prescribed information and advice;
- powers for a local authority to obtain information from persons connected to the house to enable it to carry out its functions in connection with overcrowding statutory notices; and,
- a requirement for a local authority to take account of guidance issued by the Scottish Ministers on the use of these powers; and,
- a requirement for Scottish Ministers to publish a report once every three years on the use and impact of overcrowding statutory notices.

**Part 4 Miscellaneous** makes changes to the tenancy regime in the Housing (Scotland) Act 2006, the Rent (Scotland) Act 1984, the Housing (Scotland) Act 1988 and the Land Tenure Reform (Scotland) Act 1974 in order to:

- clarify the right to make tenancy charges and the level of such charges;
- require a private landlord to issue specified information to a new tenant;

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- clarify the notices to be served when a landlord seeks possession of a house after a short assured tenancy has reached its contractual end;
- allow a private landlord to seek the assistance of the Private Rented Housing Panel in gaining access to a house for purposes related to the Repairing Standard; and
- introduce new powers to enable Scottish Ministers to prescribe bodies and types of body which can be exempted from the 20 year limit on residential leases and the right to redeem heritable securities.

**Part 5 General** sets out general provisions, such as for the making of orders. It also contains definitions, the short title and provisions for commencement of the Act.

## **Part 1 – Registration of Private Landlords**

5. The provisions in this Part make amendments to the landlord registration provisions contained in Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 ('the 2004 Act').

### **Sections 1 and 2 – Fit and proper person**

6. Section 85 of the 2004 Act describes the material that local authorities must have regard to when considering if a landlord is a fit and proper person (or if a person appointed to act for a landlord is a fit and proper person so to act). To improve protection for private tenants, section 1 of the Act expands the list of offences that have to be considered, to include firearms and sexual offences. Regulations will require these to be declared by an applicant for landlord registration, and section 2 of the Act makes provision for a local authority to require a criminal record certificate to be produced to it, on application or subsequently.
7. Sections 85(3) and (4) of the 2004 Act require a local authority to take into account any information that it deems relevant to the question of whether the landlord or agent is a fit and proper person. To assist local authorities in determining what is relevant, the Act specifies certain information that must be considered when applying this test, specifically:
  - previous convictions under legislation relating to landlord registration or HMO licensing;
  - breaches of the Repairing Standard;
  - complaints and information which come to the local authority's attention (for example from tenants, neighbours and others) where landlords have not paid their share of the cost of communal repairs or payments to property factors;
  - antisocial behaviour by the landlord, the tenant, or at the property;
  - concerns and other information which come to a local authority's attention in relation to a property, through its other functions; for example when investigating noise complaints or carrying out environmental health inspections; and,
  - failure to produce a criminal record certificate where the local authority requires it.
8. **Section 1** also gives Ministers the power to add, amend or remove offences or other unlawful acts that must be taken into account by a local authority in applying the fit and proper test.
9. **Section 2** of the Act adds a new section 85A to the 2004 Act which gives a local authority the power to require a criminal record certificate if it deems this is necessary when applying the fit and proper person test. If an applicant for registration fails to provide this he or she will not be placed on the register. A registered landlord who fails to provide it may be removed from the register.

### ***Section 3 – Landlord registration number***

10. Landlord Registration numbers are currently provided for administrative reasons when landlords are registered but have no legal status. Section 3 therefore amends section 84 of the 2004 Act to put landlord registration numbers on a statutory footing and outlines that local authorities must provide landlords with their registration number when advising them that their registration has been completed.

### ***Section 4 – Appointment of agents***

11. **Section 4** introduces a new subsection (2A) to section 88 of the 2004 Act to allow a local authority to charge a registered landlord a fee when the landlord notifies the local authority of the appointment of an agent. There is currently no power for the local authority to charge a fee for such an addition to the landlord's register entry, although assessing whether the agent is a fit and proper person will involve expense to the local authority. Setting a fee will enable local authorities to recover costs and will be fairer for those landlords and agents who pay fees, because they register at an earlier stage. New subsection (2B) ensures that no fee is payable if the fit and proper test has already been carried out on the agent. New subsection (2C) gives Ministers powers to prescribe by regulations the fees, how fees are to be arrived at, and circumstances in which no fee is payable. The Act further amends section 88 to make it an offence if landlords do not notify local authorities that they have appointed an agent or provide false information. The penalty is a fine on summary conviction not exceeding level 3 on the standard scale.

### ***Section 5 – Access to register: additional information***

12. Information on registered private landlords and their properties is held on a register maintained by the local authority for the area where each property is located. Public access to the register is restricted to prevent misuse. To help protect tenants section 5 of the Act provides two additional categories of information to be made available to the public. Subsection (1) amends section 88A(1) of the 2004 Act to make available information on whether a registration application has been made but not yet determined; and whether a person was refused entry to, or removed from, the register as being not fit and proper to act as a landlord or because the person's agent was found to be not fit and proper. Subsection (2) inserts a new section 92ZA into the 2004 Act. This requires a local authority to note in its register the fact that a person was refused entry to, or removed from, the register as being not fit and proper to act as a landlord, or because the person's agent was found to be not fit and proper. This note must be made when the appeal procedure has been exhausted and must be removed after 12 months or sooner if the person is subsequently registered.

### ***Section 6 – Duty to include certain information in advertisements***

13. To prevent unregistered landlords from advertising their properties, section 6 of the Act inserts a new section 92B into the 2004 Act which requires all adverts for properties for let to include the landlord registration number or, in the case of landlords whose application is yet to be determined, the phrase "landlord registration pending". Reusable 'To Let' boards are exempt from this due to costs for landlords. Where there is more than one owner of the property, only one landlord registration number (or the phrase "landlord registration pending" if relevant) need be included in the advertisement. For a registered landlord the sanction for failing to include a registration number is that they may be removed from the register. For an applicant for registration the sanction is that the application may be refused.

### ***Sections 7 and 8 – Penalties for unregistered landlords***

14. **Sections 7 and 8** give powers to the Courts to impose tougher penalties on the most severe cases of bad landlord practice. To reflect the seriousness of the behaviour of some landlords, the Act increases the maximum fine level in section 93(7) of the 2004 Act,

for offences relating to acting as an unregistered landlord, from level 5 on the standard scale to £50,000 and introduces a new section 93A to allow the court to disqualify a person operating as an unregistered landlord from being registered as a landlord by any local authority in Scotland, for up to five years. These provisions bring landlord registration in line with HMO licensing. The Act outlines the landlord's right of appeal and makes provision for revocation of any disqualification order, though no revocation can occur unless there has been a change of circumstances, and even then not within the first year of the order taking effect.

### ***Section 9 – Power to obtain information***

15. **Section 9** inserts new section 97A into the 2004 Act. Section 97A details powers for a local authority to obtain information to enable or assist it to carry out its functions under Part 8. This information can be obtained from various specified persons. The local authority can serve a notice requiring such a person to provide information on the nature of their interest in the house; specified information about other people with an interest in the house or who act in relation to a lease or occupancy arrangement; and such other information about the house or such a person as can be reasonably requested. To help local authorities identify unregistered landlords, the Act contains a power for local authorities to require a letting agent to provide information in relation to any house in the area in relation to which the agent acts, including the address of the house and the name and address of the owner.
16. **Section 9** also outlines the methods a local authority must use to advise the person that they are required to provide information, which may include electronic service. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence with a fine on summary conviction not exceeding level 2 on the standard scale.

### ***Section 10 – Part 8 of the 2004 Act: Guidance***

17. **Section 10** of the Act makes an amendment to the 2004 Act by introducing a new section 99A which requires local authorities to have regard to any guidance issued by Scottish Ministers when carrying out their functions in respect of landlord registration. Ministers are required to consult local authorities and, if they think fit, others before issuing any such guidance.

### ***Section 11 – Private Rented Housing Panel: information to be given to a local authority***

18. To further help local authorities identify unregistered landlords, section 11 of the Act amends the 2006 Act by inserting new section 22A which requires the Private Rented Housing Panel to pass onto the local authority details about the landlord and property, which must include the landlord registration number if known and details of any agent the panel knows is acting on the landlord's behalf. This requirement arises where an application is made to the panel by a tenant relating to the repairing standard.

## **Part 2 - Houses in Multiple Occupation**

19. The provisions in this Part make amendments to the legislation concerning the licensing of houses in multiple occupation under the Housing (Scotland) Act 2006 (the "2006 Act").

### ***Section 13 – Amendment of HMO licensing regime***

20. Section 125 of the Housing (Scotland) Act 2006 defines a house in multiple occupation (HMO). Section 13 inserts into section 125(1) a new paragraph (b), which allows Ministers to define in secondary legislation additional categories of multi-occupancy accommodation, specified by type or manner of occupation, as licensable HMOs. Any such category must meet the usual requirement of a licensable HMO that there are three

or more occupants being members of more than two families. However, it does not necessarily have to be a house or premises in terms of the 2006 Act, nor does it have to be the only or main residence of the occupants. Before making such an order, the Scottish Ministers must consult relevant persons.

21. **Section 13** also inserts new section 129A into the 2006 Act to give a local authority the discretionary power to refuse to consider an application for an HMO licence if it considers that occupation of the accommodation as an HMO would be a breach of planning control. If the applicant subsequently obtains planning permission or a certificate of lawful use or development and makes a further application for a licence within 28 days, no fee may be charged in relation to that application. If an application is refused before an existing licence for the HMO has expired, the existing licence will expire either on its normal expiry date or on a later date that the local authority considers reasonable, given the circumstances.
22. Section 131 of the 2006 Act provides that a local authority may only grant an HMO licence if it considers that the accommodation is suitable or can be made suitable for occupation as an HMO. Section 13(3) inserts new paragraphs (da) and (db) into section 131(2) requiring a local authority, when carrying out this assessment, to consider whether any rooms have been subdivided, and whether any have been adapted where this has resulted in the moving of water and drainage pipes.
23. This section also inserts new section 131A into Part 5 of the 2006 Act to give a local authority the discretionary power to refuse to grant an HMO licence if it considers that there is, or that the grant of the licence could result in, overprovision of HMOs in the locality. It is for the local authority to determine the locality. In considering whether to refuse to grant a licence on this ground, the authority must have regard to whether there is an existing HMO licence in effect in respect of the living accommodation, the views of the applicant and any occupants, and any other matters specified by the Scottish Ministers by order. In considering whether there is overprovision, the authority must have regard to the number and capacity of licensed HMOs in the locality, as well as the need for HMO accommodation in the locality and any other matters specified by the Scottish Ministers by order. Before making an order under section 131A, the Scottish Ministers must consult local authorities, representatives of landlords and occupiers, and any other persons or bodies whom they consider appropriate.

#### ***Section 14 - Penalties for certain HMO offences***

24. In line with the provision outlined above for landlord registration offences, section 14 of the Act gives powers to the Courts to impose tougher penalties for HMO offences by increasing the maximum fine in section 156(1)(a) of the 2006 Act to £50,000.

#### ***Section 15 – Statement of reasons for decisions***

25. Under the HMO licensing regime a local authority must provide a statement of reasons for an HMO decision. Local authorities have raised concerns that this may cause significant costs, and be unnecessary in many cases. For example, where a licence is granted without any concerns having been raised or identified, an applicant may neither need nor wish reasons. Section 15 therefore amends Part 5 of the 2006 Act at section 158(12)(a) so that a statement of reasons need only be provided when this is requested by any person who receives the decision. The Act outlines the time periods for local authorities to issue the statement of reasons and for the person to request that they be provided. Where such a request is made, reasons must be provided.

#### ***Section 16 - Guidance***

26. Section 186 of the 2006 Act allows a local authority to require certain people to provide information relating to the land or premises to help it carry out its functions under HMO licensing. Any person who is required to provide such information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an

offence with a fine on summary conviction not exceeding level 2 on the standard scale. Section 16 of the Act amends section 163(1) of the 2006 Act to enable the Scottish Ministers to give guidance over the use of the information gathering powers contained in section 186. Such guidance may be used to inform local authorities how best to deal with vulnerable persons who are reluctant or unwilling to provide information for fear of reprisals.

### **Part 3 – Overcrowding Statutory Notices**

27. This Part introduces powers to enable local authorities to deal with overcrowding in the private rented sector.

#### ***Section 17 – Overcrowding statutory notice***

28. **Section 17** gives a local authority the power to serve an overcrowding statutory notice on the landlord of a house which is overcrowded, where the local authority considers that the overcrowding is having an adverse effect on the health or wellbeing of any person or on the amenity of the house or its locality. This will allow enforcement action to be taken in the worst cases of overcrowding in the sector, where it is creating adverse effects for occupants, neighbours and others in the locality. The notice will set out the steps to be taken by the landlord to rectify the situation (that is, to reduce the occupancy level to the maximum permitted by the Housing (Scotland) Act 1987), the period within which the steps must be taken, and any other conditions considered appropriate by the local authority. Section 17(7) allows the Scottish Ministers to prescribe by order the form of an overcrowding statutory notice and such other information to be included in the notice as they see fit, plus the persons who must be given a copy of the notice. Ministers are required to consult local authorities, representatives of landlords and occupiers, and such others as they consider appropriate, before making an order.

#### ***Section 18 – Matters to be considered prior to service of an overcrowding statutory notice***

29. **Section 18** sets out matters which a local authority must consider before serving an overcrowding statutory notice. The authority must assess whether serving the notice is reasonable and proportionate in the circumstances. In so doing, the authority must weigh up the nature of the adverse effect, and the degree to which the overcrowding is contributing or connected to it, as well as the likely effects of serving a notice, and whether there are other means to address the problem. In addition to this assessment of reasonableness and proportionality, the local authority must, in deciding whether to serve a notice, take account of the views of the landlord, occupier and others living in the house and examine the particular circumstances of the occupier and others living in the house. In particular, the authority is required to consider whether the overcrowding is causing homelessness as defined in section 24 of the Housing (Scotland) Act 1987 or whether the service of a notice may have this effect.

#### ***Section 19 – Information and advice for occupiers***

30. **Section 19** requires the local authority to provide information and advice to the occupier of a house at the same time as serving an overcrowding statutory notice. This must take the form of a notice containing prescribed information and advice. The Scottish Ministers have a power by order to prescribe the content and form of the notice but before making such an order must consult local authorities, representatives of landlords and occupiers and other appropriate bodies and persons. In addition to the information notice, the local authority must provide information or advice reasonably requested by the occupier or other people living in the house in connection with the notice and may give the occupier such additional information and advice as it considers appropriate.

### **Sections 20 to 26 and 28 – Overcrowding: further provisions**

31. Sections 20 to 26 and 28 of the Act make further provision about the content and duration of notices and the procedure for making them, outline the appeals procedure and provide that failure by a landlord to comply with a notice will be an offence attracting a fine not exceeding level 5 on the standard scale. They also make provision for variation of notices, though not so as to shorten their duration. A local authority may revoke a notice at any time.

### **Section 27 – Power to obtain information**

32. Section 27 gives a local authority the power to obtain certain information from persons connected to the house to enable it to carry out its functions in connection with overcrowding statutory notices. Any person who is required to provide information and fails to do so, or knowingly or recklessly provides false or misleading information, is guilty of an offence attracting a fine not exceeding level 2 on the standard scale.

### **Section 29 – Guidance**

33. Section 29 requires local authorities to have regard to any guidance issued by the Scottish Ministers in relation to their functions under Part 3. Ministers are required to consult local authorities, representatives of landlords and occupiers, and such others as they deem appropriate before issuing any such guidance.

### **Section 30 – Reports**

34. Section 30 requires the Scottish Ministers to publish a report every 3 years outlining the number of overcrowding statutory notices issued in each local authority area during the 3 year period and their impact on reducing overcrowding, along with any other measures to reduce overcrowding that have been considered by local authorities. The report must also outline the extent to which overcrowding statutory notices have created homelessness.

### **Part 4 – Miscellaneous**

35. Part 4 makes a number of miscellaneous amendments to legislation relating to the private sector tenancy regime.

### **Section 32 - Premiums**

36. Section 82 of the Rent (Scotland) Act 1984 makes it an offence to charge or receive any premium or make any loan, in addition to the rent, a condition of the grant, renewal or continuance of a protected tenancy. Despite this, there is evidence that some confusion exists about what it means in practice and a variety of charges are made to tenants. Section 32 of the Act clarifies that all charges in connection with the grant, renewal or continuance of a tenancy are illegal apart from certain specified, reasonable charges. It inserts a new section 89A into the 1984 Act, giving Ministers powers to outline in secondary legislation charges that will be allowed in connection with the grant, renewal or continuance of a protected tenancy. The regulations will be able to specify categories of payment that are not to be treated as premiums in terms of section 82 and to set a maximum limit to the amount of any such payment that could be charged. Ministers must, before making regulations, consult representatives of tenants, private landlords and landlords' agents, as well as such other persons (including tenants, private landlords and landlords' agents) as they consider appropriate.
37. Any such regulations may also apply to assured tenancies (including short assured tenancies) because new section 89A will constitute part of the sequence of sections 86 to 90 of the 1984 Act referred to in section 27 of the Housing (Scotland) Act 1988.



### ***Section 33 - Tenant information packs***

38. To improve knowledge about housing legislation and regulation among private tenants and landlords, section 33 of the Act places a duty on private landlords to provide new tenants with specified documents by inserting new section 30A into the Housing (Scotland) Act 1988. Failure to do so (without reasonable excuse) is an offence attracting a fine not exceeding level 2.
39. New section 30B gives Ministers the power to specify the documents that must be provided, through secondary legislation. For example, this might include documents containing information about the tenancy (such as a tenancy agreement), about the house (such as the permitted level of occupancy), about the landlord (such as his or her landlord registration number), and about the rights and responsibilities of tenants, landlords and agents. They may include documents that the landlord is already required to provide under other sections of the 1988 Act. An order may make further provision, including about the form of the documents and the information to be included in (or expressly excluded from) any of them. It may provide that supply of a document in accordance with such an order will satisfy another statutory obligation to give a document, the intention of this provision being to remove duplication. It may provide for documents to be provided separately or at the same time.
40. **Section 30B(2)** requires the Scottish Ministers, before using the order-making power, to consult representatives of tenants, private landlords and landlords' agents, as well as such other persons (including tenants, private landlords and landlords' agents) as they consider appropriate.

### ***Section 34 - Notices required for termination of a short assured tenancy***

41. Section 19 of the Housing (Scotland) Act 1988 states that a sheriff will not consider proceedings to gain possession of a house let as an assured tenancy (which includes a short assured tenancy) unless the landlord has served a notice of proceedings. There is evidence of some uncertainty as to whether this requirement also applies to section 33 of the 1988 Act; section 33 of the 1988 Act relates to recovery of possession in respect of short assured tenancies which have come to the end of their normal contractual agreement. Therefore section 34 of this Act is intended to clarify that in such cases a notice of proceedings is not required by explicitly stating that sections 18 and 19 of the 1988 Act do not apply to proceedings under section 33 of the 1988 Act.

### ***Section 35 - Landlord applications to the private rented housing panel***

42. Section 14 of the Housing (Scotland) Act 2006 places a duty on a landlord in certain tenancies to ensure that the house meets the Repairing Standard (set out in section 13 of the Act) and allows a tenant who considers that the landlord has failed to comply with this duty to apply to the Private Rented Housing Panel for assistance.
43. The Act also gives a landlord, or a person authorised by the landlord, the right to enter the house in respect of carrying out this duty; i.e., to inspect the premises or carry out works. Section 35 of the Act amends the 2006 Act by introducing a new section 28A to enable a landlord to apply to the Private Rented Housing Panel for assistance in exercising these entry rights in order to comply with the Repairing Standard where the tenant has been uncooperative, without the need for court action or waiting until the end of the tenancy. Such an application will be considered by a single member of the Panel.
44. New section 28B gives Ministers power to make by regulations further provision about applications made under section 28A. Such provision may relate to the form and content of applications, the prescription of a fee to accompany applications, the procedure to be followed by applicants and the Panel, the time limits for making decisions and the determination of applications and action following determination, amongst other things.

45. New section 28C outlines the arrangements that the panel member must make and the procedure that must be followed for a suitable time for access. This procedure commences where the panel member decides to offer assistance, at which point a notice is served under section 28A(5) and the member liaises with the landlord and tenant with a view to agreeing a date and time for access (section 28C(2)). If the tenant makes representations to the panel member that entry is inappropriate or unnecessary (for example, when the panel member calls to try to agree a date for access) the member has to decide whether to continue to assist the landlord, and may contact the landlord before reaching that decision (section 28A(7)). If the tenant fails to respond, or refuses to agree a date and time, the panel member may fix them (section 28C(4)). Either the landlord or tenant can request that the panel member attend at the property at the time fixed. Section 35(5) of the Act amends section 29 of the 2006 Act to provide for the recording and reporting of instances where landlord applications are made, houses attended to by a member following a request for attendance, and instances where a warrant for entry is sought.

### ***Sections 36 and 37 - Long leases and heritable securities***

46. **Sections 36 and 37** amend the “20 year rules” - sections 8 and 11 of the Land Tenure Reform (Scotland) Act 1974. The amendments introduce powers for Scottish Ministers to prescribe bodies or types of body, which will alter how the rules apply to them.
47. Section 8 of the 1974 Act restricts the ability of landlords and tenants (other than social landlords and rural housing bodies) to enter into residential leases for more than 20 years. The amendment by section 36 means that other bodies or types of body can be exempted from this restriction. In prescribing a body or a type of body Ministers have the power to set conditions and restrictions. The conditions may include the type of leases to be exempted, what happens if the conditions or restrictions are breached and make provision that, in the event of a breach, will protect the interests of tenants and residents. Scottish Ministers also have power to amend legislation if that is required.
48. Section 11 of the 1974 Act allows a debtor to redeem a heritable security over residential property after 20 years have elapsed, regardless of any longer contractual term. Social landlords, their connected bodies and rural housing bodies are able to renounce their right to redeem. The amendment by section 37 allows bodies and types of body to be prescribed so that they too will gain this ability. This could be useful, for example, if a landlord wishes to participate in a long-term fixed interest bond issue which relies on the bond holder retaining security over the underlying housing assets for more than 20 years. Scottish Ministers have the power to set conditions and restrictions which a prescribed body or type of body must meet and to specify the sort of securities in respect of which renunciation can be made.

## **Part 5 – General**

### ***Section 38 - Interpretation***

49. **Section 38** defines various expressions used in the Act.

### ***Section 39 - Ancillary provision***

50. **Section 39** confers on Ministers a power to make by order such consequential supplementary, incidental, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, in consequence of, or for the purposes of giving full effect to, any provision of the Act. Such an order may modify any enactment.

### ***Section 40 - Orders***

51. **Section 40** provides procedural requirements for orders and regulations made under the Act.

**Section 41 - Short title and Commencement**

52. Section 41 gives the short title of the Act and provides that the provisions of the Act (except sections 38 to 41, which come into force at the beginning of the day following the day on which the Bill receives Royal Assent) will come into force on a date or dates determined by order, made by Ministers.

**PARLIAMENTARY HISTORY**

53. The table below sets out, for each Stage of the Scottish Parliament proceedings on the Bill for this Act, the dates on which the proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee reports and other papers relating to the Bill were published. The table includes links to the reports and papers.

<b>PROCEEDINGS AND REPORTS</b>	<b>REFERENCE</b>
<b>Introduction</b>	
Bill as introduced (4 October 2010)	<a href="http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54s3-introd.pdf">http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54s3-introd.pdf</a>
Policy memorandum	<a href="http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54s3-introd-pm.pdf">http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54s3-introd-pm.pdf</a>
Explanatory notes	<a href="http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54s3-introd-en.pdf">http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54s3-introd-en.pdf</a>
Delegated Powers memorandum	<a href="http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54s3-introd-dpm.pdf">http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54s3-introd-dpm.pdf</a>
Equality Impact Assessment	<a href="http://www.scotland.gov.uk/Topics/People/Equality/18507/EQIADetails/Q/Type/10/Id/533">http://www.scotland.gov.uk/Topics/People/Equality/18507/EQIADetails/Q/Type/10/Id/533</a>
Regulatory Impact Assessment	<a href="http://www.scotland.gov.uk/Publications/2011/04/Impactassessment">http://www.scotland.gov.uk/Publications/2011/04/Impactassessment</a>
<b>Stage 1</b>	
<b>Local Government and Communities Committee (lead Committee)</b>	
Meeting on 10 November 2010	<a href="http://www.scottish.parliament.uk/s3/committees/lgc/or-10/lg10-2601.htm">http://www.scottish.parliament.uk/s3/committees/lgc/or-10/lg10-2601.htm</a> (Columns 3689-3718)
Meeting on 17 November 2010	<a href="http://www.scottish.parliament.uk/s3/committees/lgc/or-10/lg10-2701.htm">http://www.scottish.parliament.uk/s3/committees/lgc/or-10/lg10-2701.htm</a> (Cols 3726-3747)
Meeting on 1 December 2010	<a href="http://www.scottish.parliament.uk/s3/committees/lgc/or-10/lg10-2901.htm">http://www.scottish.parliament.uk/s3/committees/lgc/or-10/lg10-2901.htm</a> (Cols 3857-3878)
Stage 1 report	<a href="http://www.scottish.parliament.uk/s3/committees/lgc/reports-11/lgr11-02.htm">http://www.scottish.parliament.uk/s3/committees/lgc/reports-11/lgr11-02.htm</a> Stage 1 Report SP Paper 560)
<b>Subordinate Legislation Committee</b>	

*These notes relate to the Private Rented Housing (Scotland) Act 2011 (asp 14)  
which received Royal Assent on 20 April 2011*

<b>PROCEEDINGS AND REPORTS</b>	<b>REFERENCE</b>
Meeting on 9 November 2010	<a href="http://www.scottish.parliament.uk/s3/committees/subleg/or-10/su10-3002.htm#Col1158">http://www.scottish.parliament.uk/s3/committees/subleg/or-10/su10-3002.htm#Col1158</a>
<b>Consideration by Parliament</b>	
Stage 1 debate – 27 January 2011	<a href="http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/2011.htm#1">http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/2011.htm#1</a> (Cols 32746-32786)
<b>After Stage 1</b> Meeting of Subordinate Legislation Committee on 8 February 2011	<a href="http://www.scottish.parliament.uk/s3/committees/subleg/or-11/su11-0402.htm#Col1298">http://www.scottish.parliament.uk/s3/committees/subleg/or-11/su11-0402.htm#Col1298</a> (Col 1298)
<b>Stage 2 – Consideration by the Local Government and Communities Committee</b>	
Meeting on 23 February 2011	<a href="http://www.scottish.parliament.uk/s3/committees/lgc/or-11/lg11-0601.htm">http://www.scottish.parliament.uk/s3/committees/lgc/or-11/lg11-0601.htm</a> (cols 4180-4212)
<b>After Stage 2</b> Bill as amended at Stage 2	<a href="http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54as3-stage2.pdf">http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54as3-stage2.pdf</a>
Subordinate Legislation Committee report	<a href="http://www.scottish.parliament.uk/s3/committees/subleg/reports-11/sur11-22.htm">http://www.scottish.parliament.uk/s3/committees/subleg/reports-11/sur11-22.htm</a>
Revised explanatory notes	<a href="http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54as3-stage2-en-rev.pdf">http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54as3-stage2-en-rev.pdf</a>
Supplementary Delegated Powers memorandum	<a href="http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54as3-stage2-dpm.pdf">http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54as3-stage2-dpm.pdf</a>
<b>Stage 3 – Consideration by the Parliament</b>	
17 March 2011	<a href="http://www.scottish.parliament.uk/Apps2/Business/ORSearch/ReportView.aspx?r=6191&amp;mode=html">http://www.scottish.parliament.uk/Apps2/Business/ORSearch/ReportView.aspx?r=6191&amp;mode=html</a> (Cols 34644-34686)
Bill passed, 17 March 2011	<a href="http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54bs3-aspassed.pdf">http://www.scottish.parliament.uk/s3/bills/54-prHousing/b54bs3-aspassed.pdf</a>
<b>Royal Assent</b>	
Royal Assent, 20 April 2011	<a href="http://www.legislation.gov.uk/asp/2011/14/contents/enacted">http://www.legislation.gov.uk/asp/2011/14/contents/enacted</a>