

HOUSING (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part Three – Private Rented Housing

32. [Part 3](#) (at sections 16 to 20) makes provision in relation to the transfer of responsibility for hearing civil cases relating to the private rented sector from the Scottish courts to the Scottish Tribunals.

Transfer of sheriff’s jurisdiction to First-tier Tribunal

33. [Sections 16 to 20](#) and schedule 1 to the Bill make provision to transfer the types of civil private rented sector housing court actions specified in these provisions from the jurisdiction of the sheriff court to the jurisdiction of the First-tier Tribunal (“FTT”). These actions include repossession cases and various non-repossession related cases. The FTT is due to be established under the Tribunals (Scotland) Act 2014 (“the Tribunals Act”). Provisions and powers provided in the Tribunals Act will allow for operational detail such as the establishment of tribunal rules and appointment of members to the FTT. The Explanatory Notes in relation to this Part of the Act should, therefore, be read in conjunction with the Tribunals Act.
34. [Section 16](#) provides for the functions and jurisdiction of the sheriff court in relation to civil actions arising from regulated tenancies within the meaning of section 8 of the Rent (Scotland) Act 1984 (“the 1984 Act”), Part VII contracts within the meaning of section 63 of the 1984 Act and assured tenancies within the meaning of section 12 of the Housing (Scotland) Act 1988 (“the 1988 Act”), to be transferred to the FTT. This includes matters of eviction.
35. [Part 1](#) of schedule 1 makes consequential amendments to this effect.
36. [Section 17\(2\)](#) amends section 18 of the Housing (Scotland) Act 2006 (“the 2006 Act”) to provide that applications from a landlord or tenant for an order to exclude or modify the application of sections 14, 15 and 17 of the 2006 Act to the tenancy (with regards to the landlord’s duty to repair and maintain, and the prohibition on contracting out of the landlord’s duty to repair and maintain) are transferred from the jurisdiction of the sheriff court to the jurisdiction of the FTT.
37. [Section 17\(4\)](#) amends section 57 of the 2006 Act to provide that where the section applies, the FTT, as opposed to the sheriff, may order a person who prevents or obstructs another person from doing anything which that person is required, authorised or entitled to do under Part 1 of the 2006 Act, to permit that person to do all things which they are required, authorised or entitled to do.
38. [Part 2](#) of schedule 1 makes consequential amendments to this effect.
39. [Section 18](#) inserts new section 66A into the 2006 Act. New section 66A provides the ability for tenants to appeal a landlord’s refusal of, or imposition of conditions on, consent to adapt a rented house for a disabled person or for energy efficiency. The effect of the insertion of this section is to transfer jurisdiction to the FTT.

40. [Part 3](#) of schedule 1 makes consequential amendments.
41. [Section 19](#) provides for the jurisdiction to decide civil matters relating to landlord registration arising from the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) (appeals against local authority decisions regarding landlord registration) to be transferred from the sheriff court to the FTT.
42. [Part 4](#) of schedule 1 makes consequential amendments.
43. [Section 20\(1\)\(a\)](#) provides a power for the Scottish Ministers, by regulations, to transfer jurisdiction to decide cases under section 153(2) of the 2006 Act (where a person has obstructed another person from completing an action in relation to breaches of houses in multiple occupation (“HMO”) licences or local authority amenity notices) from the sheriff to the FTT.
44. [Section 20\(1\)\(b\)](#) provides that the Scottish Ministers may also, by regulations, transfer appeals against decisions of local authorities to which section 158 of the 2006 Act applies (against decisions relating to HMOs) and applications to extend the period mentioned in paragraph 9(1) of schedule 4 to that Act and warrants for ejection under paragraph 2 of schedule 5 to that Act in relation to premises or land, from the sheriff to the FTT.
45. [Section 20\(2\)](#) provides that regulations under subsection (1) may also:
 - disapply section 153(2) of the 2006 Act (regarding orders in cases where a person has obstructed another person under sections 145(2), 146(2), 151 or schedule 5 of that Act) which would become appropriate if all powers to make orders in these cases have been transferred to the FTT,
 - disapply section 159(1) and paragraph 9(2) of schedule 4 to the 2006 Act (which allow any decision of a local authority in relation to HMOs to be appealed by summary application to the sheriff and the sheriff to extend the period in which a local authority must decide whether to grant or refuse an HMO licence application),
 - disapply paragraph 3(1) of schedule 5 to the 2006 Act (which relates to warrants for ejection where a person has not complied with a requirement to evacuate to allow work to be carried out), and
 - make other consequential amendments to the 2006 Act and any other enactment as the Scottish Ministers consider appropriate.

Landlord registration

46. [Part 3](#) of the Act also amends the 2004 Act by including provisions for the introduction of a time limit of 12 months for the determination of landlord registration applications.
47. [Section 21](#) inserts a new section 85B into the 2004 Act and requires that local authorities determine applications for registration (as required by section 84 of the 2004 Act) made by relevant persons under section 83 of the 2004 Act, within 12 months of receipt of the application.
48. New section 85B(3) allows a local authority to apply to the FTT for an extension to this 12 month period. The period may be extended by such a period as the FTT thinks is appropriate, but may not be extended unless the application is made before the 12 month period expires (subsection (4)). The person making the application for registration is entitled to be party to any application for an extension to the 12 month period (subsection (5)). The decision of the FTT on the application will be final (subsection (6)).
49. New section 85B(7) provides that in the event of a local authority failure to determine the landlord application within the 12 month period, authorisation is deemed to have been granted automatically by the local authority. The authority is to be treated as

having entered the relevant person in the register maintained by it under section 82(1) of the 2004 Act on the day by which the authority was required to determine the application. Unless the relevant person is otherwise removed from the register in accordance with Part 8 of the 2004 Act, that person is to be treated as being removed from the register on the expiry of the period of 12 months from that date (subsection (7) (b)).

50. Where new section 85B(7) applies (where the local authority has not determined an application within 12 months of its receipt), details of the relevant person's name and registration number must be entered in the register maintained by the authority under section 82(1) of the 2004 Act (subsection (8)). Subsection (9) provides that (subject to the modifications specified in subsection (10)) the relevant person is treated for all purposes as having been registered by virtue of section 84(2)(a) of the 2004 Act (in other words, as if the authority has made a positive determination of the application). The requirement for an authority to remove the entry from the register three years from the day on which the entry is made in the register in terms of section 84(6) of the 2004 Act does not apply to deemed granted applications (in other words to those applications entered by virtue of a local authority having not determined it within 12 months of the date of receipt of the application) (subsection (10)(c)) .
51. The other modifications specified in subsection (10) are that in the case where an applicant does not specify the name of a person who acts for the landlord in respect of a property specified in the application under section 83(1)(c), the applicant is to be treated as being registered by virtue of section 84(3). Where an applicant specifies at least one house, and the name and address of someone acting in respect of a property specified in the application under section 83(1)(c), the applicant is to be treated as being registered by virtue of section 84(4).
52. [Section 21\(2\)](#) amends section 86(1)(a) of the 2004 Act so that a person entered into the register by virtue of a deemed granted application is notified of that fact as soon as practicable after the entry has been made.

Repairing standard

53. [Part 3](#) of the Act (at sections 22 to 24) also makes provision to amend the repairing standard for private rented housing in Part 1 of the 2006 Act.
54. [Section 22](#) amends section 13 of the 2006 Act by inserting a subsection (1)(g) which requires that, in order to meet the repairing standard, a privately rented house must have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. A new section 13(6) of the 2006 Act provides that, in determining whether a house has satisfactory provision for giving warning of carbon monoxide, regard is to be had to both building regulations and guidance issued by the Scottish Ministers.
55. [Section 23](#) inserts a section 13(4A) into the 2006 Act which requires that, in determining whether a house meets the parts of the repairing standard which require that the installations in a privately rented house for the supply of electricity and any electrical appliances provided by the landlord are in a reasonable state of repair and in proper working order, regard is to be had to any guidance on electrical safety standards issued by the Scottish Ministers.
56. [Section 23](#) also inserts section 19A into the 2006 Act. New section 19A requires landlords to arrange electrical safety inspections every five years to identify any work needed to meet the repairing standard in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances. An inspection must be carried out before a new tenancy starts, unless there has been an inspection within the previous five years. Section 19A requires landlords to provide copies of inspection reports to tenants. The duty to carry out an inspection is treated as part of the repairing standard

for the purposes of applications to the private rented housing panel and for enforcement of the repairing standard by the private rented housing panel.

57. **Section 23** also inserts new section 19B into the 2006 Act. Section 19B provides that an inspection carried out for the purposes of section 19A must be carried out by a competent person and specifies information which must be included in the record of the inspection, which must be retained by the landlord for six years. Section 19B also provides that the Scottish Ministers must publish guidance and that, in determining whether someone is a competent person as required by section 19B(1), landlords must have regard to this guidance.
58. **Section 24** inserts section 20A into the 2006 Act. Section 20A provides that the Scottish Ministers may amend the provisions of the 2006 Act which set out the repairing standard and the duty of landlords to ensure that privately rented homes meet the repairing standard. Section 24(2) requires that any such regulations are made by the affirmative procedure.

Enforcement of repairing standard

59. **Part 3** of the Act (at sections 25 to 27) also makes provision to expand access to the private rented housing panel by enabling third party applications by local authorities to enforce the repairing standard.
60. Section 25(1)(a) amends section 22 of the 2006 Act by inserting subsections (1A) and (1B), to enable a third party to apply to the private rented housing panel for a determination of whether a landlord has failed to comply with the repairing standard which is provided for in section 13 of the 2006 Act (section 14(1)(b) of the 2006 Act provides that the landlord in a tenancy must ensure that the house meets the repairing standard at all times during the tenancy). New section 22(1B) defines such a third party applicant as a local authority, or a person specified by order by the Scottish Ministers.
61. Section 25(1)(b) amends section 22(2) of the 2006 Act to require that an application made by a third party must set out the third party applicant's reasons for considering that the repairing standard is not met.
62. Section 25(1)(c) amends section 22(3) of the 2006 Act to provide that an application in respect of the repairing standard cannot be made unless the person making the application has informed the landlord that work needs to be carried out for the purpose of complying with the repairing standard. Section 25(1)(d) amends section 22(4) to provide that applications made under this amended section (both by tenants and by third party applicants) cannot be made if the landlord is a local authority landlord, a registered social landlord, Scottish Water or Scottish Homes.
63. New section 22(4A) as inserted by section 25(1)(e) of the Act makes provision that the tenant of the house concerned is entitled to be a party to the determination of any application by a third party to the private rented housing panel.
64. Section 25(3) amends section 22A(1) of the 2006 Act to provide that on receipt of an application by a tenant or third party applicant (other than a local authority third party applicant), the private rented housing panel must provide the information specified in section 22A(2) to the local authority for the area in which the house is situated for the purpose of the local authority maintaining the register under section 82(1) of the 2004 Act (landlord register).
65. Section 25(4) of the Act amends section 23 of the 2006 Act so that the processes whereby the president of the private rented housing panel decides whether to refer an application to a private rented housing committee or to reject it will also apply to applications made by a third party. Notification of rejected third party applications must be given to the third party applicant and the tenant, setting out the reasons for rejection and the procedures for appealing against it (new subsection (4A) as inserted into section 23 of the 2006 Act).

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(asp 14) which received Royal Assent on 1 August 2014*

66. Section 25(5) amends section 24 of the 2006 Act so that the private rented housing committee must make a determination of applications made by a tenant or a third party as to whether the landlord has failed to comply with the repairing standard (in other words the landlord's duty under section 14(1)(b)).
67. Section 25(6) amends section 181 of the 2006 Act to provide a new power of entry for third parties in relation to the repairing standard. This provides for the right of entry by a person authorised by a third party applicant, for the purposes of deciding whether an application is to be made to the PRHP under section 22(1A) of the 2006 Act.
68. Section 25(7)(a) amends section 182 of the 2006 Act, which outlines circumstances where a sheriff or justice of the peace may issue a warrant to enter a house, by force if necessary, to include that a warrant may be issued for the purposes of deciding whether an application is to be made to the PRHP under section 22(1A) of the 2006 Act. Section 25(7)(b) provides that the reference to the 'occupier' in section 182(3) for the purposes of an application for an warrant under section 181(1A) includes the tenant, the landlord and any known agent of the landlord. Section 25(8) inserts a new subsection (4A) into section 184 of the 2006 Act so that the requirement under section 184(4) for at least 24 hours' notice to be given to the occupants of the land or premises concerned before exercising the right of entry under section 181(1A), is read as requiring notice to be given to the tenant, landlord and any known agent of the landlord.
69. Section 25(9) amends section 187 of the 2006 Act which sets out the means by which a formal communication under the Act is served, submitted, given, made or issued to a person, by substituting for the reference to "the recorded delivery service" a reference to "a service which provides for the delivery of the communication to be recorded".
70. Section 25(10) amends section 194(1) of the 2006 Act (interpretation) to include 'third party applicant', which is to be interpreted as a local authority or a person specified by order made by the Scottish Ministers.
71. Section 25(11) repeals section 35(3) of the Private Rented Housing (Scotland) Act 2011, which (if commenced) would have inserted the word "Tenant" at the start of the title of section 22 of the 2006 Act, entitled 'Application to the Private Rented Housing Panel'.

Procedure for third party applications

72. [Section 26](#) amends schedule 2 to the 2006 Act so that the procedures to be adopted by a private rented housing committee in determining an application to the private rented housing panel in relation to a landlord's failure to comply with the repairing standard (in terms of section 14(1)(b) of the 2006 Act), take account of applications made by a third party. In the case of a third party application, the third party must be notified and given the opportunity to make written or oral representations. Any changes made at the request of a third party applicant to the date by which evidence must be provided must be notified to the third party, the tenant and landlords.
73. The procedures followed by a committee in making other inquiries must include consideration of any written or oral representations, and any report about the state of the property concerned, by third party applicants (in terms of section 26(2) which amends paragraph 2 of schedule 2 to the 2006 Act).
74. The committee may cite any person to give evidence or information, including a third party applicant (in terms of section 26(3) which amends paragraph 3 of schedule 2 to the 2006 Act). No allowances or expenses are payable to the landlords, tenant, tenant or landlord representatives of third party applicants (in terms of section 26(4) which amends paragraph 5 of schedule 2 to the 2006 Act).
75. [Section 26\(5\)](#) also amends the procedures for recording and notification of decisions in paragraph 6 of schedule 2 to the 2006 Act, to include third party applications. Once a private rented housing committee reaches its decision it must send notification to the

landlord, tenant, and any person acting for the tenant in relation to the application and the local authority, unless that authority is the third party applicant.

76. [Section 26\(6\)](#) amends paragraph 7(1) of schedule 2 to the 2006 Act to provide that a third party applicant may withdraw the application under new section 22A(1A) of the 2006 Act. Paragraph 7(2), however, provides that, despite the withdrawal the committee may continue to consider the case and make a repairing standard enforcement order if appropriate.

Appeals in relation to third party applications

77. [Section 27\(1\)](#) amends section 64 of the 2006 Act to give a third party applicant aggrieved by a decision by a private rented housing committee mentioned in subsection (4)(a) to (f) of section 64, the right to appeal such a decision to the sheriff within 21 days of notification of the decision (new subsection (4A)).
78. Section 65(2) of the 2006 Act is amended by section 27(2) to provide that the sheriff may determine appeals by third party applicants by confirming the decision, remitting the decision to the president or the private rented housing committee as the case may be for reconsideration or quashing the decision made.
79. New section 66(3A) (as inserted by section 27(3)) makes provision for the third party applicant to be a party to proceedings, and for the tenant to be entitled to be party to the proceedings, where a landlord appeals a decision relating to a third party application to the sheriff under section 64(4) of the 2006 Act.
80. Under new section 66(3B) (also as inserted by section 27(3)), where a tenant appeals a decision of a committee in respect of a third party application to the sheriff under section 64(4) of the 2006 Act, the landlord and third party applicant are to be parties to the proceedings.
81. Under new section 66(3C) (also as inserted by section 27(3)), where a third party applicant appeals to the sheriff under new section 64(4A) against a decision of the committee in relation to that application, the landlord is to be party to the proceedings and the tenant is entitled to be a party.

Private Rented Housing: Enhanced Enforcement Areas

82. [Part 3](#) of the Act also makes provision for Enhanced Enforcement Areas. Section 28 of the Act requires that the Scottish Ministers must by regulations introduce a scheme whereby a local authority can apply for additional discretionary powers to enable it to target enforcement in an area subject to poor housing conditions in the private rented sector.
83. [Section 28\(2\)\(a\)](#) specifies that the scheme must provide that a local authority may apply to the Scottish Ministers for an area to be designated as an Enhanced Enforcement Area (EEA) where an area is characterised by an overprovision or concentration of private rented housing of poor environmental standard, overcrowding and a prevalence of antisocial behaviour as defined by section 81(4) of the Antisocial Behaviour etc. (Scotland) Act 2004.
84. [Section 28\(2\)\(b\)](#) requires the scheme to provide that where an area is designated as an EEA, the local authority will acquire such additional discretionary powers as the Scottish Ministers consider appropriate for prescribed purposes, which purposes include checks carried out prior to registering a landlord under Part 8 of the 2004 Act and inspection of properties let by a registered landlord.
85. [Section 28\(2\)\(c\)](#) requires the scheme to provide that the local authority must advertise the fact that an area is designated as an EEA and that the designation will apply for a period of five years starting from the date on which the Scottish Ministers notify the

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local authority of their decision. The local authority may reapply for the area to be designated as an EEA before the expiry of the first designation.

86. [Section 28\(3\)](#) requires that the Scottish Ministers must consult with local authorities, those representing the interests of landlords and tenants and any other persons or bodies considered appropriate, before making regulations under subsection (1).
87. [Section 28\(4\)](#) requires that draft regulations under subsection (1) must be laid before the Scottish Parliament by 1 April 2015.
88. New section 28(5) makes provision for regulations under subsection (1) to modify or disapply any provision of any enactment, including this Act.