

PRIVATE HOUSING (TENANCIES) (SCOTLAND) ACT 2016

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 5 – Termination

Chapter 1 – Security of tenure

71. [Section 44](#) provides that a landlord and tenant can only bring a private residential tenancy to an end in accordance with Part 5 of the Act.
72. [Section 45](#) ensures that a private residential tenancy is not ended when the original landlord transfers his or her interest in the let property. If, for example, the original landlord sells the let property without first obtaining vacant possession, the purchaser will automatically become the landlord under the lease. Where the landlord's interest transfers, section 328 of the Housing (Scotland) Act 1987 requires the person to whom it has been transferred to tell the tenant.
73. [Section 46](#) provides that, subject to section 47, a lawful sub-tenant with a private residential tenancy will be protected from eviction where his or her landlord's tenancy has been brought to an end. The sub-tenant then becomes the tenant under a new tenancy which has the same terms as the sub-tenancy. Subsection (3) defines the concept of lawful sub-tenancy. It explains that a person is lawfully a sub-tenant if either the sub-tenancy has been granted in accordance with the terms of the grantor's tenancy, or if the sub-tenancy was granted in breach of the terms of the grantor's tenancy but has nevertheless been tolerated by a person who could have taken action as a result of it being granted in breach of the grantor's tenancy (e.g. the grantor's landlord).
74. [Section 47](#) provides that the sub-tenant protection provided by section 46 does not apply if the First-tier Tribunal expressly disapplies it or if the tenancy of the person who was the sub-tenant's landlord was brought to an end by an eviction order issued on the basis of one of the eviction grounds listed in subsection (2).

Chapter 2 – Termination by tenant

75. [Sections 48](#) and [49](#) provide that a tenant can only bring the tenancy to an end by writing to the landlord to advise him or her of the date the tenancy will end. The tenant must give the landlord a minimum amount of notice (see discussion of section 49(3) below). Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out (rebuttable) presumptions as to when a document that has been served by post or electronically is deemed to be received. The notice given by the tenant to the landlord must be given freely, without coercion and cannot be submitted before the tenant is occupying the let property. If it can be proved that the tenant was coerced into giving notice, the notice will be void.
76. [Section 48\(3\)](#) provides that a tenancy will not come to an end if the tenant has given the landlord notice that he or she is leaving but, before the specified leaving date arrives,

the tenant makes a request to the landlord to remain in the property and the landlord agrees to the tenant's request.

77. [Section 49\(2\)](#) provides that a landlord can waive the tenant's minimum notice period. The landlord's agreement to this must be in writing.
78. [Section 49\(3\)](#) sets out the minimum notice a tenant must give a landlord. It is whatever period the parties agree or, if they do not agree a period, it is 28 days. [Section 49\(4\)](#) provides that any agreement between the parties as to the notice period must be in writing and cannot be made before the tenancy becomes a private residential tenancy.

Chapter 3 – Termination at landlord's instigation

Consensual termination

79. [Section 50](#) provides that where the tenant has received from the landlord a notice to leave (see [section 62](#)) and moves out without requiring the landlord to obtain an eviction order, the private residential tenancy comes to an end on the later of either the day specified in the notice to leave or the day the tenant ceases to occupy the property. Subsection (3) signposts that the tenancy can be brought to an end earlier than [section 50](#) would do, by means of the tenant giving notice under [section 48](#) (in which event, the landlord could accept a shorter notice period or no notice period by virtue of [section 49\(2\)](#)).

Eviction order

80. [Section 51](#) provides a power for the Tribunal to issue an eviction order against a tenant when a landlord makes an application and the Tribunal finds that one of the eviction grounds named in [schedule 3](#) applies. The Tribunal can only find that an eviction ground named in [schedule 3](#) applies in the circumstances in which the schedule states that the Tribunal may or must find that the ground applies. The Tribunal cannot find that an eviction ground applies by considering only the name assigned to the ground by the first sub-paragraph of the relevant paragraph of [schedule 3](#).
81. An eviction order brings a tenancy to an end on the date specified by the Tribunal in the order ([section 51\(4\)](#)).
82. [Section 52](#) makes provision about applying to the First-tier Tribunal for an eviction order, and how the Tribunal is to deal with applications.
83. Subsection (1) makes clear that any one of a number of joint landlords can apply for an eviction order.
84. Subsection (2) provides that the Tribunal will not consider an application for eviction if the landlord has not first fulfilled the requirements of [sections 54 to 56](#) and also supplied a copy of a notice to leave with the application. But, subsection (4) goes on to give the Tribunal discretion to accept an application even although the requirement in [section 54](#) has not been complied with.
85. Subsection (5) provides that the Tribunal cannot consider whether an eviction ground applies unless it has either been stated in the notice to leave as a ground under which the landlord is seeking eviction or, with the Tribunal's permission, been included in the application to the Tribunal.
86. [Section 53](#) provides that in a case where a sub-tenant with a private residential tenancy would have had protection from eviction and become the tenant (see [paragraph 73](#) above), the Tribunal can, if it considers it reasonable to do so, state in the eviction order that the sub-tenant's protection is not to apply. In such cases, the Tribunal must offer the sub-tenant the opportunity to make representations to the Tribunal.

Restrictions on applying for eviction order

87. **Section 54** provides that a landlord cannot make an application to the Tribunal for an eviction order until the expiry of the relevant notice period in relation to the notice to leave. The relevant notice periods are 28 days if the tenant has been entitled to occupy the property for six months or less, or if the repossession ground (or grounds) the landlord is using is one or more of the following: failure to occupy as only or principal home, breach of tenancy agreement; rent arrears for three or more consecutive months; relevant criminal conviction; relevant anti-social behaviour; or association with a person who has a relevant conviction or has engaged in relevant anti-social behaviour. The notice period is 84 days if the tenant has been entitled to occupy the property for over six months and the notice to leave does not rely exclusively on the eviction grounds mentioned in subsection (3)(b). The notice period is calculated from the date of the tenant's receipt of the notice. When the landlord is completing a notice which is to be served on a tenant, section 62(5) specifies the time that should be factored in for delivery for the purpose of the notice.
88. **Section 55** sets out that a landlord cannot apply to the Tribunal for an eviction order using a copy of a notice to leave if it has been more than six months since the expiry of the relevant notice period.
89. **Section 56** provides that before submitting an application to the Tribunal for an eviction order, the landlord must inform the local authority of his or her intention to apply to the Tribunal. The notice to the local authority must be given in the manner and form prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.

Wrongful termination

90. **Section 57** provides that where a tenancy has been ended by eviction order and the tenant is not satisfied that the landlord was genuinely entitled to recover possession of the property under one of the specified eviction grounds, meaning that the Tribunal was misled into issuing an eviction order, the tenant can apply to the Tribunal for a wrongful-termination order. In such cases – and in the case of section 58 wrongful termination applications – the test will be whether the landlord genuinely intended to use the property in the way that the eviction ground required (even if, for some reason, that intention has not come to fruition). For example, a landlord might evict his or her tenant because he or she wants to sell the let property. However, after a year on the open market, the property has not sold and the landlord can no longer afford to maintain the mortgage repayments on it, so is forced to withdraw the property from the open market and re-let it to a different tenant. In such a case, if required, it is likely that the landlord could present a strong case to the Tribunal to demonstrate his or her genuine intent to sell.
91. **Section 58** provides that where a tenancy has been brought to an end as a result of the tenant leaving following receipt of a notice to leave from the landlord, the former tenant can apply to the Tribunal for a wrongful-termination order on the basis that he or she was misled into leaving the property by the landlord.
92. **Section 59** provides that the compensation specified in a wrongful-termination order may not exceed six months' rent. Where a case involves joint landlords, the Tribunal can make the wrongful-termination order against all, some or only one of the landlords.
93. **Section 60** places the Tribunal under a duty to issue a copy of any wrongful-termination order to the local authority or authorities with which the landlord is registered under the Antisocial Behaviour etc. (Scotland) Act 2004. Receiving a wrongful termination order may prompt a local authority to review the landlord's existing registration.

Sub-tenancies

94. **Section 61** provides that if the property is sub-let, in addition to serving a notice to leave on the tenant, a landlord may give notice to any sub-tenant, regardless of what type of tenancy the sub-tenant possesses. A sub-tenancy notice to leave is a notice which includes the notice to leave given to his or her landlord (the superior landlord's tenant) and which meets any other requirements set down by the Scottish Ministers in regulations.
95. The point of a sub-tenancy notice to leave is that it puts the sub-tenant on notice that he or she may face eviction proceedings. If the sub-tenant remains a tenant of the let property by virtue of the sub-tenant protection given by section 46, the sub-tenancy notice to leave can be treated as a notice to leave so that the landlord can proceed to eviction proceedings without having to serve another notice to leave and wait for a new notice period to expire before applying to the Tribunal for an eviction order.

Chapter 4 – Interpretation of Part

96. **Section 62** sets out that the prescribed notice to leave issued by a landlord must: be in writing; specify the day on which the landlord expects to be entitled to make an application to the Tribunal for an eviction order; state the ground, or grounds, on which the landlord proposes to end the tenancy; and fulfil any other requirements set out in regulations made by the Scottish Ministers. The day specified in the notice to leave will be the day after the relevant notice period ends (see section 54).
97. **Section 63** ensures that a lender who has a security over the let property (a mortgage) and is entitled to sell the property because the owner has defaulted on his or her repayments can apply for an eviction order against a tenant of the let property in the same way as a landlord can.
98. **Section 64** provides that with the exception of the references to six months in section 59, any reference to a period of six months in Part 5 means either the same day six months after the month in which it began or, if the month in which the period ends has no such day, the final day of that month. For example if the start of the six month period was 4 February the last day of the six month period would be 4 August, and if the start date was 31 August the last day would be 28 or 29 February, depending on whether or not it was a leap year.