

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

Part 2 – Termination of Scottish secure tenancies in cases involving abusive behaviour

Section 22 – Additional ground for ending tenant’s interest in house

Powers of court in possession proceedings

148. Section 22(3) amends section 16 of the 2001 Act.
149. Section 22(3)(a) amends section 16(1) of the 2001 Act so that the court can also adjourn proceedings on the new ground at paragraph 15A of schedule 2 of the 2001 Act.
150. Section 22(3)(b) inserts new paragraphs (d) and (e) into section 16(2) of the 2001 Act to give the court the powers necessary, if it appears to the court that the new ground at paragraph 15A of the 2001 Act is established, to grant an order for recovery of possession (where person T is the sole tenant). New paragraphs (d) and (e) are inserted into section 16(2) of the 2001 Act by section 22(3)(b)(ii), setting out additional circumstances in which the court must make an order for recovery of possession. They require the court to make the order if the landlord has a ground for it under the new ground at paragraph 15A of schedule 2 of the 2001 Act, the tenant is the sole tenant, and either: it is reasonable to make the order, or the tenant has in the preceding year been convicted of an offence in respect of the abusive behaviour referred to in the new ground which is punishable by imprisonment. Section 22(3)(b)(i) makes a consequential amendment to section 16(2) of the 2001 Act.
151. Section 22(3)(c) inserts new subsection (3ZA) into section 16 of the 2001 Act, requiring the court, where person P and person T have a joint tenancy (whether or not with others), to make an order for termination of person T’s interest in the joint tenancy if the landlord has a ground for it under the new ground at paragraph 15A of the 2001 Act and either: it is reasonable to make the order, or the tenant has in the preceding year been convicted of an offence in respect of the abusive behaviour referred to in the new ground which is punishable by imprisonment. Section 22(3)(d) makes a consequential amendment to section 16(3A) of the 2001 Act.
152. Section 22(3)(c) also inserts new subsection (3ZB) into section 16 of the 2001 Act, requiring the court, when considering whether it is reasonable to make an order under section 16(2)(d)(iii) or (3ZA)(a)(ii) of the 2001 Act, to have regard to any risk that the tenant will engage in further behaviour of the kind mentioned in the new ground at paragraph 15A of the 2001 Act.
153. By virtue of new subsection (5C) of section 16 of the 2001 Act (inserted by section 22(3)(e)), the effect of an order made under new subsection (3ZA) is that person T’s interest in the joint tenancy ends on a date specified in the order.

*These notes relate to the Domestic Abuse (Protection) (Scotland)
Act 2021 (asp 16) which received Royal Assent on 5 May 2021*

154. Section 22(3)(f) adds new subsections (7) to (10) to section 16 of the 2001 Act. As explained above, where person T is the sole tenant, one of the conditions for the new ground for recovery of possession set out in new paragraph 15A of schedule 2 of the 2001 Act to be met is that the landlord wishes to recover possession of the tenancy in order to instead enter into a tenancy with person P (so enabling person P to stay in their home). New subsection (7) of section 16 applies where an order is made under that section terminating person T's tenancy. It ensures that the landlord then acts on the intention referred to in paragraph 15A(2)(d)(i) of schedule 2, by requiring the landlord to offer the tenancy to person P within 28 days of the termination of person T's tenancy. That new tenancy is to begin as soon as reasonably practicable. But new subsection (8) of section 16 provides that this need not be done where it would be impossible or inappropriate (for example, because the landlord cannot locate person P in order to offer the tenancy to them). New subsection (9) of section 16 requires landlords to have regard to any guidance issued by the Scottish Ministers about new subsections (7) and (8).
155. [Section 22\(5\) to \(8\)](#) make consequential changes to titles and headings in relation to sections 14 and 16, and schedule 2, of the 2001 Act.