

DOMESTIC ABUSE (PROTECTION) (SCOTLAND) ACT 2021

EXPLANATORY NOTES

THE ACT

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

137. The Housing (Scotland) Act 2001 (“the 2001 Act”) creates and regulates a class of residential tenancies known as Scottish secure tenancies. These are tenancies in the social sector, where the landlord is either a local authority landlord, a registered social landlord (such as a housing association) or Scottish Water. A Scottish secure tenancy may not be brought to an end except in the circumstances specified in section 12(1) of the 2001 Act. One of those circumstances is where a landlord obtains a court order under section 16(2) of the 2001 Act for recovery of possession. A landlord is only entitled to recover possession on certain grounds, set out in schedule 2 of the 2001 Act. Section 14 of the 2001 Act sets out a process which a landlord must follow before the landlord can raise proceedings (by way of summary cause) for recovery of possession. The landlord must serve notice on the tenant specifying a ground or grounds on which recovery is sought. Proceedings may not be raised until the period of time specified in section 14(4) of the 2001 Act has passed after service of the notice.
138. Part 2 of the Act creates one new ground for recovery of possession by a landlord, namely that the tenant, who is a sole tenant, has engaged in behaviour which is abusive of a partner or ex-partner. This is to allow the landlord to enter into a new tenancy with the partner or ex-partner who is the victim of the abusive behaviour.
139. Part 2 also allows a landlord to apply for an order terminating a tenant’s interest in a Scottish secure tenancy, where that tenant is a joint tenant with the partner or ex-partner, and has engaged in behaviour which is abusive of the partner or ex-partner.

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

140. Section 22 amends sections 14 and 16 and schedule 2 of the 2001 Act to make provision for recovery of possession, or termination of a joint tenant’s interest, on that ground.

Additional ground

141. Section 22(4) inserts paragraph 15A into schedule 2 of the 2001 Act, creating a new ground on which the landlord under a Scottish secure tenancy may raise court proceedings under section 14 of the 2001 Act. On this new ground, the landlord may raise proceedings either: for recovery of possession of the house (in the case of a sole tenant), or for termination of the tenant’s interest in the tenancy (in the case of a joint tenant).
142. Sub-paragraphs (1) and (2) of the new ground require that a person (“person T”) who is the tenant or one of the joint tenants has engaged in behaviour which is abusive of a person (“person P”) who is a partner or ex-partner of person T. In addition, the house to

which the tenancy relates must be person P's only or principal home, and person P must wish to continue living in the house. Where person T is the sole tenant, the landlord must also wish to recover possession of the house from person T for the purpose of entering into a tenancy with person P instead.

Proceedings by the landlord for possession

143. Where person P and person T are joint tenants (whether with or without others) (see paragraph 15A(2)(a) of schedule 2 of the 2001 Act, as inserted by section 22(4)), then the landlord may raise proceedings for an order to terminate person T's interest in the tenancy. Section 22(2)(a) and (b) amends section 14(1) of the 2001 Act, and inserts a new section 14(1A), accordingly. Section 22(2)(d) makes consequential amendments to section 14(4) of the 2001 Act.
144. Where person T is the sole tenant, then the new paragraph 15A is added (by section 22(4)) to the other grounds in schedule 2 of the 2001 Act on which a landlord may raise proceedings for recovery of possession, by virtue of section 14(1)(a) of the 2001 Act. As set out in paragraph 15A(2)(d)(i) of schedule 2 of the 2001 Act, the purpose of recovering possession from person T is to enter into a tenancy with person P instead.
145. Sub-paragraph (3) of the new ground defines the "partner or ex-partner of person T" to be either a spouse or former spouse, or civil partner or former civil partner, or a person with whom person T has lived with in the house to which the tenancy relates as if a spouse, for a period of at least six months in the twelve months prior to the proceedings being raised. This can include intermittent periods that amount to six months in total within the last twelve months. It also ensures that references to abusive behaviour by person T are construed in accordance with sections 2 and 3 (in Part 1 of the Act).
146. Section 22(2)(c) makes a number of amendments to subsection (2B) of section 14 of the 2001 Act. The effect of these amendments is that a landlord must have regard to any relevant guidance issued by the Scottish Ministers before raising proceedings on the new ground set out in new paragraph 15A of schedule 2 of the 2001 Act. This applies regardless of whether the proceedings are raised under section 14(1)(a) (recovery of possession – that is, where person T is the sole tenant) or 14(1)(b) (termination of person T's interest in the tenancy – that is, where person T is a joint tenant). Before publishing any such guidance, the Scottish Ministers must consult as they consider appropriate, by virtue of existing subsection (2C) of section 14.
147. Section 22(2)(e) inserts new subsections (5C) to (5E) into section 14 of the 2001 Act. Where a landlord raises proceedings under section 14 which include the additional ground at paragraph 15A of schedule 2 of the 2001 Act, new subsection (5C) requires the landlord to give the tenant, as well as any qualifying occupier, advice and assistance regarding alternative accommodation. This advice and assistance must be provided as soon as is reasonably practicable after raising the proceedings. In providing such advice and assistance, the landlord must have regard to any relevant guidance issued by the Scottish Ministers (new subsection (5D)). Before publishing any such guidance, the Scottish Ministers must consult as they consider appropriate (new subsection (5E)).

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

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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.
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.