

POLICY NOTE

THE PRIVATE RESIDENTIAL TENANCY (STATUTORY TERMS) (SCOTLAND) REGULATIONS 2017

SSI 2017/408

The above instrument was made in exercise of the powers conferred by section 7(1) and (3) and 8(3) of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act). The instrument is subject to affirmative procedure.

Policy Objectives

The Act will introduce a new type of tenancy for all future lets in the private rented sector. The purpose of the new private residential tenancy is to improve security, stability and predictability for tenants and provide appropriate safeguards for landlords, lenders and investors.

Section 7 of the Act provides the Scottish Ministers with the power to make regulations to prescribe statutory terms which will be terms of every private residential tenancy.

Section 8 makes further provision about regulations under section 7. It provides that regulations cannot be made under section 7 unless they include the terms outlined in schedule 2 of the Act. But, the requirement to include the terms in schedule 2 does not prevent regulations under section 7 from providing for circumstances where the term may be modified as agreed between the landlord and tenant or circumstances where the term may be disapplied. Section 8 also requires the Scottish Ministers to consult before making regulations under section 7. Regulation 2 introduces the schedule within which the statutory terms are set out.

Schedule 2 of the Act contains 6 statutory terms which outline provisions on: rent receipts; rent increases; notification about other residents; subletting etc. and access for repairs etc. With the exception of the terms on rent receipts, the terms in these Regulations remain the same as those contained in schedule 2. In addition, a statutory term has been added to clarify how a private residential tenancy may be terminated.

Paragraph 1 of the schedule sets out that where rent is paid in cash, a written receipt must be provided to the tenant which includes the date of payment, amount paid and either confirmation of any amount outstanding or confirmation that no arrears are outstanding. This term differs from the term in schedule 2 insofar as the term specified in these regulations also requires the date of payment to be included on any written receipt.

Paragraph 2 provides that the rent can be increased in accordance with the process set out in Chapter 2 of Part 4 and by this process alone.

Paragraph 3 specifies that the tenant cannot sublet the property (or any part of it), take in a lodger, assign his or her interest in the let property (or any part of it), or otherwise part with possession of the property, without the written agreement of the landlord.

Paragraphs 4 and 5 make provision about the persons that may live with the tenant without the requirement for the landlord's written agreement. The let property must be that person's only or principal home and the tenant must tell the landlord in writing that person's name and relationship to the tenant. If a landlord has been told in writing about such a person occupying the let property, the tenant must tell the landlord if that person subsequently ceases to live there as the person's only or principal home.

Regulation 3 permits the landlord and tenant to agree that this term may be modified where the person living with the tenant (who is not a joint tenant) is a person who is not in a qualifying relationship with the tenant within the meaning in section 70(1)(a) of the Act; not a member of the tenant's family within the meaning of section 70(1)(b) of the Act; or not a resident carer as defined in section 69(5) of the Act. A person mentioned in these sections of the Act may have an entitlement to succeed to the tenancy under Part 6 of the Act. Landlords may have a greater interest in those persons living in the property with the tenant rather than a person who would have no right of succession.

Paragraphs 6 to 8 of the schedule provide that the tenant must allow reasonable access to the let property for an authorised purpose. Authorised purposes are: carrying out work on the property which the landlord is entitled or obliged to carry out, inspecting the property in order to determine what (if any) work of that nature to carry out, or inspecting it in pursuance of any other inspection right the landlord may have, and valuing the let property.

Where the statutory term is invoked by the landlord, it may be used by him or her to allow access by others – for example, by tradesmen or by Rent Officers who are valuing the property or a particular improvement that has been made to it.

The tenant is obliged to allow reasonable access where either 48 hours' notice has been given or where access is required urgently for the purposes specified, but this would not preclude a tenant from allowing more generous rights of access if both parties want to resolve a non-urgent problem more promptly.

These access rights are not exhaustive and, as with all of the statutory terms, the fact that certain rights will be included as statutory terms does not prevent the parties from supplementing those terms, provided that the additional term does not directly conflict with (and therefore displace) the statutory term.

Paragraph 9 is a new statutory term and provides that the private residential tenancy may not be brought to an end by the landlord, tenant, nor any agreement between them except in accordance with Part 5 of the Act.

Consultation

The Scottish Government publically consulted on the statutory terms to be included in these regulations in its consultation titled '*Proposals for regulations and policy supporting the Private Housing (Tenancies) (Scotland) Act 2016*'. A total of 70 responses were received to that consultation. The comments received were considered carefully and helped shape the terms included in these regulations. The consultation document, analysis paper and a full list of those who responded and who also agreed to the release of their response are available on the Scottish Government's website at <https://consult.scotland.gov.uk/private-rented-sector-policy/regulations-and-policy-private-housing/>.

A number of consultation respondents called for the Scottish Government to repeat in these regulations the text of obligations which already appear in either other existing primary, or subordinate legislation. For example, including as a statutory term the requirements under the Equality Act 2010 or duties under the Repairing Standard. The Scottish Government confirms that duplicating these requirements is unnecessary as they already appear in the statute book and could lead to confusion over enforcement.

Impact Assessments

An Equality Impact Assessment and a Children's Rights and Welfare Impact Assessment were undertaken in relation to the provisions in Private Housing (Tenancies) (Scotland) Bill prior to its introduction to the Scottish Parliament. The findings were:

Equality Impact Assessment

The Scottish Government found that none of the proposals are discriminatory and that there are no significant issues that we consider would impact negatively upon the various groups.

Children's Rights and Welfare Impact Assessment

The Scottish Government has found that none of the proposals impinge upon articles on the UNCRC or the indicators of wellbeing (SHANARRI) and that there are no issues that will impact negatively upon children and young people in the PRS.

Financial Effects

The Scottish Government does not consider that implementation of these regulations will impose any additional costs on tenants or landlords.

Scottish Government
Directorate for Housing and Social Justice

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