



# Housing (Scotland) Act 1988

## 1988 CHAPTER 43

### PART II

#### RENTED ACCOMMODATION

##### *Assured tenancies—miscellaneous*

#### **27 Prohibition of premiums etc. on assured tenancies**

Sections 82, 83 and 86 to 90 of the Rent (Scotland) Act 1984 (which make it an offence to require premiums and advance payment of rent in respect of protected tenancies and make related provision) shall apply in relation to assured tenancies as they apply in relation to protected tenancies (including protected tenancies which are regulated tenancies), but with the following modifications—

- (a) section 83(5) shall not apply; and
- (b) section 88(1) shall apply as if for the references to 12th August 1971 there were substituted references to the date of commencement of this section.

#### **28 Effect of termination of tenancy on sub-tenancies which are or are under assured tenancies**

- (1) If the sheriff makes an order for possession of a house from a tenant nothing in the order shall affect the right of any sub-tenant to whom the house or any part of it has been lawfully sublet on an assured tenancy before the commencement of the proceedings to retain possession by virtue of this Part of this Act, nor shall the order operate to give a right to possession as against any such sub-let.
- (2) Where an assured tenancy of a house is terminated, either as a result of an order for possession or for any other reason, any sub-tenant to whom the house or any part of it has been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenant's assured tenancy had continued.

- (3) A tenancy which, but for paragraph 2 of Schedule 4 to this Act, would have been an assured tenancy shall be treated for the purposes of subsection (2) above as an assured tenancy.

## **29 Restriction on diligence**

No diligence shall be done in respect of the rent of any house let on an assured tenancy except with the leave of the sheriff; and the sheriff shall, with respect to any application for such leave, have the same powers with respect to adjournment, sisting, suspension, postponement and otherwise as are conferred by section 20 above in relation to proceedings for possession of such a house.

## **30 Duty of landlord under assured tenancy to provide written tenancy document and weekly rent book**

- (1) It shall be the duty of the landlord under an assured tenancy (of whatever duration)—
- (a) to draw up a document stating (whether expressly or by reference) the terms of the tenancy;
  - (b) to ensure that it is so drawn up and executed that it is probative or holograph of the parties; and
  - (c) to give a copy of it to the tenant.
- (2) On summary application by a tenant under an assured tenancy, the sheriff shall by order—
- (a) where it appears to him that the landlord has failed to draw up a document which fairly reflects the existing terms of the tenancy, draw up such a document or, as the case may be, adjust accordingly the terms of such document as there is; and
  - (b) in any case, declare that the document (as originally drawn up or, where he has drawn it up or adjusted it, as so drawn up or adjusted) fairly reflects the terms of the assured tenancy;
- and, where the sheriff has made such a declaration in relation to a document which he has drawn up or adjusted, it shall be deemed to have been duly executed by the parties as so drawn up or adjusted.
- (3) A tenant shall not be required to make payment in respect of anything done under subsection (1) above.
- (4) Where, under an assured tenancy, rent is payable weekly, it shall be the duty of the landlord to provide a rent book.
- (5) A rent book shall contain such notices which shall be in such form and shall relate to such matters as may be prescribed and otherwise shall comply with such requirements as may be prescribed.
- (6) If, at any time, the landlord fails to comply with any requirement imposed by or under subsection (4) or (5) above he and any person who on his behalf demands or receives rent in respect of the tenancy shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (7) Where an offence under subsection (6) above committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the

body corporate, or a person purporting to act in any such capacity, he, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished accordingly.

### **31 Right of succession of spouse**

- (1) In any case where—
- (a) the sole tenant under an assured tenancy dies; and
  - (b) immediately before the death the tenant's spouse was occupying the house as his or her only or principal home; and
  - (c) the tenant was not himself a successor as explained in subsection (2) or (3) below,
- the tenant's spouse shall, as from the death and for so long as he or she retains possession of the house without being entitled to do so under a contractual tenancy, be entitled to a statutory assured tenancy of the house.
- (2) For the purposes of this section, a tenant was a successor in relation to a tenancy—
- (a) if the tenancy had become vested in him either by virtue of this section or under the will or intestacy of a previous tenant; or
  - (b) if he was a statutory assured tenant by virtue of section 3A of the Rent (Scotland) Act 1984; or
  - (c) if at some time before the tenant's death the tenancy was a joint tenancy held by him and one or more other persons and, prior to his death, he had become the sole tenant by survivorship; or
  - (d) in the case of a tenancy (hereinafter referred to as "the new tenancy") which was granted to him (alone or jointly with others) if—
    - (i) at some time before the grant of the new tenancy he was, by virtue of paragraph (a), (b) or (c) above, a successor to an earlier tenancy of the same or substantially the same house as is let under the new tenancy; and
    - (ii) at all times since he became such a successor he has been a tenant (alone or jointly with others) of the house which is let under the new tenancy or of a house which is substantially the same as that house.
- (3) No order for possession under Ground 7 of Schedule 5 to this Act shall be made—
- (a) in relation to a case to which this section relates by virtue of subsection (1) above; or
  - (b) where the tenant's spouse succeeds to the tenancy under the will or intestacy of the tenant.
- (4) For the purposes of this section a person who was living with the tenant at the time of the tenant's death as his or her wife or husband shall be treated as the tenant's spouse.