

Housing (Scotland) Act 2001

2001 asp 10

PART 2

TENANTS OF SOCIAL LANDLORDS

CHAPTER 1

SCOTTISH SECURE TENANCIES

Creation and termination of tenancy

11 Scottish secure tenancy

- (1) A tenancy of a house is a Scottish secure tenancy if—
- (a) the house is let as a separate dwelling,
 - (b) the landlord is—
 - (i) a local authority landlord, ^{F1}or]
 - (ii) a registered social landlord, ^{F2}...
 - ^{F2}(iii)specified, or of a description specified, in an order made by the Scottish Ministers, ^{F3}or is Scottish Water,]
 - (c) the tenant is an individual and the house is the tenant's only or principal home,
 - (d) where the landlord is a registered social landlord which is a co-operative housing association, the tenant is a member of the association, and
 - (e) the tenancy—
 - (i) was created on or after such date as the order may specify in relation to the landlord, or
 - (ii) was created before that date and is of a description specified in the order in relation to the landlord.
- (2) An order under subsection (1) may, without prejudice to section 109(2) or 110, make provision for ensuring that rights of the landlord, the tenant and any other person under or in relation to a tenancy which becomes a Scottish secure tenancy by virtue of the order are not adversely affected by the tenancy becoming a Scottish secure tenancy.

Changes to legislation: Housing (Scotland) Act 2001, Cross Heading: Creation and termination of tenancy is up to date with all changes known to be in force on or before 14 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) In this Act, “local authority landlord” means a landlord which is a local authority, a joint board or joint committee of two or more local authorities, or the common good of a local authority, or any trust under the control of a local authority.
- (4) A tenancy is not a Scottish secure tenancy if it is a tenancy of a kind mentioned in schedule 1.
- (5) The tenant under a Scottish secure tenancy and one or more other individuals falling within subsection (6) may jointly apply in writing to the landlord for the other individuals to be included with the tenant as joint tenants under the tenancy; and the landlord must consent to the alteration of the tenancy unless it has reasonable grounds for not doing so.
- (6) An individual falls within this subsection if the house in question is ^{F4}... that person’s only or principal home.
- [^{F5}(6A) An application under subsection (5) may be made only where the house in question has been the only or principal home of the person falling within subsection (6) throughout the period of 12 months ending with the date of the application.
- (6B) For the purposes of subsection (6A) a period may be considered in relation to a person only if, at any time before that period began, the landlord was notified by—
- (a) the person, or
 - (b) any other person who was the tenant of the house in question when the notice was given,
- that the house in question was the person's only or principal home.]
- (7) It is a term of every Scottish secure tenancy that the tenant complies with paragraphs (c) and (d) of subsection (1).
- (8) Without prejudice to sections 14 and 16 and schedule 2, a tenancy which is a Scottish secure tenancy continues to be a Scottish secure tenancy even if subsection (1)(b), (c) or (d) is no longer satisfied.
- (9) Where—
- (a) the house which a tenant under a Scottish secure tenancy normally occupies is not available for occupation, and
 - (b) the tenant is accommodated temporarily in another house the landlord of which is a local authority landlord or a registered social landlord,
- the other house is to be taken, for the purposes of this Chapter except sections 12 to 16 and paragraph 4 of schedule 1, to be the house which the tenant normally occupies.

Textual Amendments

- F1** Word in s. 11(1)(b) inserted (25.6.2003) by [The Water Industry \(Scotland\) Act 2002 \(Consequential Provisions\) Order 2003 \(S.S.I. 2003/331\)](#), **sch. para. 8(2)(a)(i)**
- F2** S. 11(1)(b)(iii) and word repealed (25.6.2003) by [The Water Industry \(Scotland\) Act 2002 \(Consequential Provisions\) Order 2003 \(S.S.I. 2003/331\)](#), **sch. para. 8(2)(a)(ii)**
- F3** Words in s. 11(1)(b) inserted (25.6.2003) by [The Water Industry \(Scotland\) Act 2002 \(Consequential Provisions\) Order 2003 \(S.S.I. 2003/331\)](#), **sch. para. 8(2)(b)**
- F4** Words in s. 11(6) repealed (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 12(1)(a)**, 104(3); [S.S.I. 2018/153](#), **art. 2**, **sch.** (with **arts. 6, 7, 9**)

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F5 S. 11(6A)(6B) inserted (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 12(1)(b)**, 104(3); [S.S.I. 2018/153](#), **art. 2**, **sch.** (with **arts. 6, 7, 9**)

Commencement Information

I1 S. 11 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), **art. 2** (subject to transitional provisions and savings in [arts. 3-5](#))

12 Restriction on termination of tenancy

- (1) Despite anything in the tenancy agreement, a Scottish secure tenancy may not be brought to an end except—
- (a) by an order for recovery of possession under section 16(2),
 - (b) by operation of section 18(2),
 - (c) by operation of section 22,
 - (d) by operation of section 35,
 - (e) by written agreement between the landlord and the tenant, or
 - (f) by 4 weeks' notice given by the tenant to the landlord.
- (2) Subsection (3) applies where—
- (a) the house which a tenant under a Scottish secure tenancy normally occupies is not available for occupation, and
 - (b) the tenant is—
 - (i) by agreement, or
 - (ii) following an order under section 16(2) (where an order has also been made under subsection (6) of that section),
accommodated temporarily in another house the landlord of which is a landlord mentioned in section 11(1)(b).
- (3) Where this subsection applies, the landlord is not entitled to bring the tenant's occupation of the other house to an end before the house which the tenant normally occupies is available for occupation unless the Scottish secure tenancy has been brought to an end.

Commencement Information

I2 S. 12 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), **art. 2** (subject to transitional provisions and savings in [arts. 3-5](#))

13 Termination of joint tenant's interest in tenancy

A joint tenant under a Scottish secure tenancy may bring to an end that tenant's interest in the tenancy by 4 weeks' notice given to the landlord and each of the other joint tenants under the tenancy.

Commencement Information

I3 S. 13 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), **art. 2** (subject to transitional provisions and savings in [arts. 3-5](#))

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14 Proceedings for possession

- (1) The landlord under a Scottish secure tenancy may raise proceedings by way of summary cause for recovery of possession of the house.
- (2) Such proceedings may not be raised unless—
 - (a) the landlord has served on the tenant and any qualifying occupier a notice complying with subsection (4),
 - (b) the proceedings are raised on or after the date specified in the notice, and
 - (c) the notice is in force at the time when the proceedings are raised.

[^{F6}(2A) Where such proceedings are to include the ground that rent lawfully due from the tenant has not been paid (as set out in paragraph 1 of schedule 2)—

- (a) the notice under subsection (2) must not be served unless the landlord has complied with the pre-action requirements in section 14A, and
- (b) the proceedings may not be raised unless the landlord has confirmed to the court in such form as the Scottish Ministers may prescribe by regulations that those requirements have been complied with.]

[^{F7}(2B) Where such proceedings are to include a ground for recovery of possession set out in paragraph 2 of schedule 2, the landlord must have regard to any guidance published by the Scottish Ministers before raising such proceedings in relation to recovering possession of the house.

(2C) Before publishing any guidance mentioned in subsection (2B), the Scottish Ministers must consult such persons as they consider appropriate.]

(3) Before serving a notice under subsection (2) the landlord must make such inquiries as may be necessary to establish so far as is reasonably practicable whether there are any qualifying occupiers of the house and, if so, their identities.

(4) A notice under subsection (2) must be in such form as the Scottish Ministers may prescribe by regulations, and must specify—

(a) the ground, being a ground set out in Part 1 of schedule 2, on which proceedings for recovery of possession are to be raised, ^{F8}...

(b) a date, not earlier than—

[^{F9}(i) the date calculated in accordance with—

(A) subsection (4A), where the notice is served before 3 October 2020,

(B) subsection (4E), where the notice is served on or after 3 October 2020, or]

(ii) the date on which the tenancy could have been brought to an end by a notice to quit had it not been a Scottish secure tenancy,

whichever is later, on or after which the landlord may raise proceedings for recovery of possession [^{F10}, and

(c) where subsection (2A) applies, the steps taken by the landlord which the landlord considers to constitute compliance with the pre-action requirements in section 14A.]

[^{F11}(4A) For the purpose of subsection (4)(b)(i)(A), the date is the date falling—

- (a) 4 weeks after the date of service of the notice if subsection (4B) applies,
- (b) 3 months after the date of service of the notice if subsection (4C) applies,
- (c) 6 months after the date of service of the notice if subsection (4D) applies.

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- (4B) This subsection applies if the notice under subsection (2) specifies only the ground set out in paragraph 5 of schedule 2.
- (4C) This subsection applies if the notice under subsection (2) specifies a ground set out in any of the following paragraphs of schedule 2 (whether with or without also specifying the ground referred to in subsection (4B))—
- (a) paragraph 2,
 - (b) paragraphs 6 to 8.
- (4D) This subsection applies if the notice under subsection (2) specifies a ground set out in any of the following paragraphs of schedule 2 (whether with or without other grounds)—
- (a) paragraph 1,
 - (b) paragraph 3 or 4,
 - (c) paragraphs 9 to 15.
- (4E) For the purpose of subsection (4)(b)(i)(B), the date is the date falling—
- (a) 4 weeks after the date of service of the notice if subsection (4F) applies,
 - (b) 3 months after the date of service of the notice if subsection (4G) applies,
 - (c) 6 months after the date of service of the notice if subsection (4H) applies.
- (4F) This subsection applies if the notice under subsection (2) specifies only a ground, or grounds, set out in any of the following paragraphs of schedule 2—
- (a) paragraph 2,
 - (b) paragraph 5,
 - (c) paragraph 7 or 8.
- (4G) This subsection applies if the notice under subsection (2) specifies the ground set out in paragraph 6 of schedule 2 (whether with or without also specifying one or more of the grounds referred to in subsection (4F)).
- (4H) This subsection applies if the notice under subsection (2) specifies a ground set out in any of the following paragraphs of schedule 2 (whether with or without other grounds)—
- (a) paragraph 1,
 - (b) paragraph 3 or 4,
 - (c) paragraphs 9 to 15.]
- (5) A notice under subsection (2) ceases to be in force 6 months after the date specified in it in accordance with subsection (4)(b) or when it is withdrawn by the landlord, whichever is earlier.
- [^{F12}(5A) Where a landlord raises proceedings under this section, the landlord must give notice of the raising of the proceedings to the local authority in whose area the house in question is situated, unless the landlord is that local authority.
- (5B) Notice under subsection (5A) is to be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10).]
- (6) In this section and section 15, “qualifying occupier” means a person who occupies the house as that person’s only or principal home and who is—
- (a) a member of the tenant’s family aged at least 16 years,

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- (b) a person to whom the tenant has, with the landlord's consent under section 32(1), assigned, sublet or otherwise given up possession of the house or any part of it, or
- (c) a person whom the tenant has, with such consent, taken in as a lodger.

Textual Amendments

- F6** S. 14(2A) inserted (22.2.2012 for specified purposes, 1.8.2012 in so far as not already in force) by Housing (Scotland) Act 2010 (asp 17), **ss. 155(a)(i)**, 166(2); S.S.I. 2012/19, art. 2(c); S.I. 2012/91, art. 2(a)
- F7** S. 14(2B)(2C) inserted (20.11.2014) by Housing (Scotland) Act 2014 (asp 14), **ss. 14(1)**, 104(3); S.S.I. 2014/264, art. 2, sch.
- F8** Word in s. 14(4)(a) repealed (22.2.2012 for specified purposes, 1.8.2012 in so far as not already in force) by Housing (Scotland) Act 2010 (asp 17), **ss. 155(a)(ii)**, 166(2); S.S.I. 2012/19, art. 2(c); S.I. 2012/91, art. 2(a)
- F9** S. 14(4)(b)(i) substituted (temp.) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), sch. 1 para. 7(1)(2)(a) (as substituted (3.10.2020) by The Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 (S.S.I. 2020/270), regs. 1(1), **6(1)(a)**) (with **ss. 11-13**, sch. 1 paras. 8, 10)
- F10** S. 14(4)(c) and words inserted (22.2.2012 for specified purposes, 1.8.2012 in so far as not already in force) by Housing (Scotland) Act 2010 (asp 17), **ss. 155(a)(iii)**, 166(2); S.S.I. 2012/19, art. 2(c); S.I. 2012/91, art. 2(a)
- F11** S. 14(4A)-(4H) inserted (temp.) by virtue of Coronavirus (Scotland) Act 2020 (asp 7), s. 17(1), sch. 1 para. 7(1)(2)(b) (as amended (3.10.2020) by The Coronavirus (Scotland) Act 2020 (Eviction from Dwelling-houses) (Notice Periods) Modification Regulations 2020 (S.S.I. 2020/270), regs. 1(1), **6(1)(b)**) (with **ss. 11-13**, sch. 1 paras. 8, 10)
- F12** S. 14(5A)(5B) inserted (2.10.2008 for specified purposes, 1.4.2009 in so far as not already in force) by Homelessness etc. (Scotland) Act 2003 (asp 10), s. 14(1), **sch. para. 4(2)**; S.S.I. 2008/313, art. 2(a)(b)

Commencement Information

- I4** S. 14 wholly in force at 30.9.2002, see s. 113(1)(2) and S.S.I. 2002/321, **art. 2** (subject to transitional provisions and savings in **arts. 3-5**)

^{F13}14A Pre-action requirements where grounds for possession include rent arrears

- (1) The pre-action requirements referred to in section 14(2A) are set out in subsections (2) to (7) below.
- (2) The landlord must provide the tenant with clear information about—
 - (a) the terms of the tenancy agreement, and
 - (b) outstanding rent and any other outstanding financial obligation of the tenancy.
- (3) The landlord must make reasonable efforts to provide the tenant with advice and assistance on the tenant's eligibility to receive—
 - (a) housing benefit, and
 - (b) other types of financial assistance (for example, other benefits or grants).
- (4) The landlord must provide the tenant with information about sources of advice and assistance in relation to management of debt.
- (5) The landlord must make reasonable efforts to agree with the tenant a reasonable plan for future payments to the landlord, such plan to include proposals in respect of—

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- (a) future payments of rent, and
 - (b) outstanding rent and any other outstanding financial obligation of the tenancy.
- (6) The landlord must not serve a notice under section 14(2) if—
- (a) an application for housing benefit for the tenant—
 - (i) has been made but has not yet been determined, and
 - (ii) is, in the opinion of the landlord, likely to result in the benefit being paid at a level allowing the tenant to pay, or reduce by an amount acceptable to the landlord, the outstanding rent and any other outstanding financial obligation of the tenancy,
 - (b) the tenant is taking other steps which, in the opinion of the landlord, are likely to result in the payment to the landlord within a reasonable time of—
 - (i) the outstanding rent, and
 - (ii) any other outstanding financial obligation of the tenancy, or
 - (c) the tenant is complying with the terms of a plan agreed to in accordance with subsection (5).
- (7) The landlord, unless it is a local authority landlord, must encourage the tenant to contact the local authority in whose area the house is situated.
- (8) In complying with the pre-action requirements the landlord must have regard to any guidance issued by the Scottish Ministers.
- (9) The Scottish Ministers may by order make further provision about the pre-action requirements, including provision—
- (a) specifying particular steps to be taken, or not to be taken, by a landlord in complying with any requirement;
 - (b) modifying or removing any requirement.
- (10) In this section, “housing benefit” has the same meaning as in section 123 of the Social Security Contributions and Benefits Act 1992 (c.4).]

Textual Amendments

- F13** S. 14A inserted (22.2.2012 for specified purposes, 1.8.2012 in so far as not already in force) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), **ss. 155(b)**, 166(2); [S.S.I. 2012/19](#), art. 2(c); [S.I. 2012/91](#), art. 2(a)

15 Rights of qualifying occupiers in possession proceedings

Where a qualifying occupier applies to the court to be sisted as a party to proceedings under section 14, the court must grant the application.

Commencement Information

- I5** S. 15 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), **art. 2** (subject to transitional provisions and savings in [arts. 3-5](#))

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16 Powers of court in possession proceedings

- (1) The court may, as it thinks fit, adjourn proceedings under section 14 on a ground set out in any of paragraphs 1 to 7 and 15 of schedule 2 for a period or periods, with or without imposing conditions as to payment of outstanding rent or otherwise.
- (2) Subject to subsection (1), in proceedings under section 14 the court must make an order for recovery of possession if it appears to the court—
 - (a) that—
 - (i) the landlord has a ground for recovery of possession set out in any of paragraphs 1 to 7 of that schedule and specified in the notice required by section 14, and
 - (ii) it is reasonable to make the order,
 - [^{F14}(aa) whether or not paragraph (a) applies, that—
 - (i) the landlord has a ground for recovery of possession set out in paragraph 2 of that schedule and so specified, and
 - (ii) the landlord served the notice under section 14(2) before the day which is 12 months after—
 - (A) the day on which the person was convicted of the offence forming the ground for recovery of possession, or
 - (B) where that conviction was appealed, the day on which the appeal is dismissed or abandoned,]
 - (b) that—
 - (i) the landlord has a ground for recovery of possession set out in any of paragraphs 8 to 14 of that schedule and so specified, and
 - (ii) other suitable accommodation will be available for the tenant when the order takes effect, or
 - (c) that—
 - (i) the landlord has a ground for recovery of possession set out in paragraph 15 of that schedule and so specified,
 - (ii) it is reasonable to make the order, and
 - (iii) other suitable accommodation will be available for the tenant when the order takes effect.
- (3) For the purposes of subsection (2)(a)(ii) the court is to have regard, in particular, to—
 - (a) the nature, frequency and duration of—
 - (i) where the ground for recovery of possession is one set out in any of paragraphs 1 and 3 to 7 of schedule 2, the conduct taken into account by the court in concluding that the ground is established,
 - (ii) where the ground for recovery of possession is that set out in paragraph 2 of that schedule, the conduct in respect of which the person in question was convicted,
 - (b) the extent to which that conduct is or was conduct of, or a consequence of acts or omissions of, persons other than the tenant,
 - (c) the effect which that conduct has had, is having and is likely to have on any person other than the tenant, and
 - (d) any action taken by the landlord, before raising the proceedings, with a view to securing the cessation of that conduct.

[^{F15}(3A) Subsection (2) does not affect any other rights that the tenant may have by virtue of any other enactment or rule of law.]

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- (4) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (2)(b) or (c).
- (5) An order under subsection (2) must appoint a date for recovery of possession and has the effect of—
- (a) terminating the tenancy, and
 - (b) giving the landlord the right to recover possession of the house, at that date.
- [^{F16}(5A) Where an order is made under subsection (2) in proceedings under section 14 on the ground that rent lawfully due from the tenant has not been paid (as set out in paragraph 1 of schedule 2) or on grounds including that ground—
- (a) subsection (5)(a) does not apply,
 - (b) the tenancy is terminated only if the landlord recovers possession of the house in pursuance of the order,
 - (c) the order must specify the period for which the landlord's right to recover possession of the house is to have effect (being no longer than any maximum period which the Scottish Ministers by order prescribe), and
 - (d) the landlord must have regard to any guidance issued by the Scottish Ministers about recovery of possession in pursuance of the order.
- (5B) Before making an order under subsection (5A)(c) or issuing guidance under subsection (5A)(d), the Scottish Ministers must consult—
- (a) such bodies representing local authorities,
 - (b) such registered social landlords or bodies representing them,
 - (c) such bodies representing tenants' interests, and
 - (d) such other persons,
- as they think fit.]
- (6) Where, in proceedings under section 14 on the ground set out in paragraph 10 of schedule 2, it appears to the court that the landlord intends that—
- (a) substantial work will be carried out on the building (or a part of the building) which comprises or includes the house, and
 - (b) the tenant should return to the house after the work is completed,
- the court must make an order that the tenant is entitled to return to the house after the work is completed; and subsection (5)(a) does not apply in such a case.

Textual Amendments

- F14** S. 16(2)(aa) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 14(2)(a)**, 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 5, 9)
- F15** S. 16(3A) inserted (1.5.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 14(2)(b)**, 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 5, 9)
- F16** S. 16(5A)(5B) inserted (20.3.2011 for specified purposes, 22.2.2012 for specified purposes, 1.8.2012 in so far as not already in force) by [Housing \(Scotland\) Act 2010 \(asp 17\)](#), **ss. 153(a)**, 166(2); S.S.I. 2011/181, art. 2; S.S.I. 2012/19, art. 2(a); S.I. 2012/91, art. 2(a) (with art. 3)

Commencement Information

- I6** S. 16 wholly in force at 30.9.2002, see s. 113(1)(2) and S.S.I. 2002/321, **art. 2** (subject to transitional provisions and savings in arts. 3-5)

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17 Abandoned tenancies

- (1) This section applies where a landlord under a Scottish secure tenancy has reasonable grounds for believing that—
 - (a) the house is unoccupied, and
 - (b) the tenant does not intend to occupy it as the tenant’s home.
- (2) The landlord may enter the house at any time for the purpose of securing the house and any fittings, fixtures or furniture against vandalism.
- (3) For the purposes of subsection (2), the landlord and its servants or agents may open, by force if necessary, doors and lockfast places.
- (4) The landlord may take possession of the house in accordance with section 18.

Commencement Information

- I7** S. 17 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), [art. 2](#) (subject to transitional provisions and savings in [arts. 3-5](#))

18 Repossession

- (1) A landlord wishing to take possession of a house under section 17(4) must serve on the tenant a notice—
 - (a) stating that the landlord has reason to believe that the house is unoccupied and that the tenant does not intend to occupy it as the tenant’s home,
 - (b) requiring the tenant to inform the landlord in writing within 4 weeks of service of the notice if the tenant intends to occupy the house as the tenant’s home, and
 - (c) informing the tenant that, if it appears to the landlord at the end of that period that the tenant does not intend so to occupy the house, the tenancy will be terminated with immediate effect.
- (2) Where—
 - (a) the landlord has—
 - (i) served on the tenant a notice complying with subsection (1), and
 - (ii) made such inquiries as may be necessary to satisfy the landlord that the house is unoccupied and that the tenant does not intend to occupy it as the tenant’s home, and
 - (b) at the end of the period mentioned in subsection (1)(b) the landlord is so satisfied,
 the landlord may serve a further notice on the tenant bringing the tenancy to an end with immediate effect.
- (3) Where a tenancy has been terminated in accordance with this section the landlord is entitled to take possession of the house without any further proceedings.
- (4) The Scottish Ministers may by order make provision for the landlord, in taking possession of the house, to secure the safe custody and delivery to the tenant of any property which is found in a house to which this section applies and, in particular—
 - (a) for requiring charges to be paid in respect of such property before it is delivered to the tenant, and

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- (b) for authorising the disposal of such property, if the tenant has not arranged for its delivery to the tenant before the expiry of such period as the order may specify, and the application of any proceeds towards any costs incurred by the landlord and any rent due but unpaid by the tenant to the landlord.

Commencement Information

- 18** S. 18 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), [art. 2](#) (subject to transitional provisions and savings in [arts. 3-5](#))

19 Tenant's recourse to court

- (1) A tenant under a Scottish secure tenancy who is aggrieved by termination of the tenancy by the landlord under section 18(2) may raise proceedings by summary application within 6 months after the date of the termination.
- (2) Subsection (3) applies where, in proceedings under this section, it appears to the court that the landlord—
 - (a) has failed to comply with any provision of section 18,
 - (b) did not have reasonable grounds for finding—
 - (i) that the house was unoccupied, or
 - (ii) that the tenant did not intend to occupy it as the tenant's home, or
 - (c) was in error in finding that the tenant did not intend to occupy the house as the tenant's home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of the tenant's intention so to occupy it.
- (3) Where this subsection applies the court must—
 - (a) if the house has not been let to a new tenant, grant a declarator that the notice under section 18(2) is of no effect, or
 - (b) in any other case, direct the landlord to make other suitable accommodation available to the tenant.
- (4) On granting a declarator under subsection (3)(a) the court may make such further order in relation to the Scottish secure tenancy as it thinks fit.
- (5) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (3)(b).

Commencement Information

- 19** S. 19 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), [art. 2](#) (subject to transitional provisions and savings in [arts. 3-5](#))

20 Abandonment by joint tenant

- (1) This section applies where a landlord under a Scottish secure tenancy has reasonable grounds for believing that a joint tenant under the tenancy (the “abandoning tenant”)—
 - (a) is not occupying the house, and
 - (b) does not intend to occupy it as the tenant's home.

Changes to legislation: Housing (Scotland) Act 2001, Cross Heading: Creation and termination of tenancy is up to date with all changes known to be in force on or before 14 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (2) A landlord wishing to bring to an end the interest of an abandoning tenant in the tenancy must serve on the abandoning tenant a notice—
- (a) stating that the landlord has reason to believe that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant’s home,
 - (b) requiring the abandoning tenant to inform the landlord in writing within 4 weeks of service of the notice if the abandoning tenant intends to occupy the house as the tenant’s home, and
 - (c) informing the abandoning tenant that, if it appears to the landlord at the end of that period that the abandoning tenant does not intend so to occupy the house, the abandoning tenant’s interest in the tenancy will be brought to an end by the service of a notice under subsection (3).
- (3) Where—
- (a) the landlord has—
 - (i) served on the abandoning tenant a notice complying with subsection (2), and
 - (ii) made such inquiries as may be necessary to satisfy the landlord that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant’s home, and
 - (b) at the end of the period mentioned in subsection (2)(b) the landlord is so satisfied,
- the landlord may serve a further notice on the abandoning tenant bringing the abandoning tenant’s interest in the tenancy to an end with effect from a date specified in the notice, being a date not earlier than 8 weeks after the date of service of the notice.
- (4) A landlord serving a notice on an abandoning tenant under subsection (2) or (3) must serve a copy of the notice on each of the other joint tenants under the tenancy.

Commencement Information

I10 S. 20 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321, art. 2](#) (subject to transitional provisions and savings in [arts. 3-5](#))

21 Joint tenancies: abandoning tenant’s recourse to court

- (1) A joint tenant under a Scottish secure tenancy who is aggrieved by the bringing to an end of the tenant’s interest in the tenancy under subsection (3) of section 20 may raise proceedings by summary application within 8 weeks after the date of service of the notice under that subsection.
- (2) Subsection (3) of this section applies where, in proceedings under this section, it appears to the court that the landlord—
- (a) has failed to comply with any provision of section 20,
 - (b) did not have reasonable grounds for finding that the tenant—
 - (i) was not occupying the house, or
 - (ii) did not intend to occupy it as the tenant’s home, or
 - (c) was in error in finding that the tenant did not intend to occupy the house as the tenant’s home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of the tenant’s intention so to occupy it.

Changes to legislation: Housing (Scotland) Act 2001, Cross Heading: Creation and termination of tenancy is up to date with all changes known to be in force on or before 14 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) Where this subsection applies, the court must—
 - (a) grant a declarator that the notice under section 20(3) is of no effect, or
 - (b) if it would be unreasonable to grant such a declarator, direct the landlord to make other suitable accommodation available to the tenant.
- (4) On granting a declarator under subsection (3)(a) the court may make such further order in relation to the tenant's interest in the tenancy as it thinks fit.
- (5) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (3)(b).

Commencement Information

I11 S. 21 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), [art. 2](#) (subject to transitional provisions and savings in [arts. 3-5](#))

Changes to legislation:

Housing (Scotland) Act 2001, Cross Heading: Creation and termination of tenancy is up to date with all changes known to be in force on or before 14 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5(5A) inserted by [2003 asp 10 s. 5\(4\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S. 5 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 34(7A)-(7C) inserted by [2003 asp 10 s. 6\(2\)](#) (This amendment not applied to legislation.gov.uk. S. 6 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 34(8)(b) and words inserted by [2003 asp 10 s. 6\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S. 6 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 89(12) inserted by [2019 asp 10 s. 18\(3\)](#)
- sch. 6 para. 5A and cross-heading inserted by [2003 asp 10 s. 5\(5\)](#) (This amendment not applied to legislation.gov.uk. S. 5 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)