

Changes to legislation: Housing (Scotland) Act 2001, SCHEDULE 2 is up to date with all changes known to be in force on or before 24 October 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

SCHEDULE 2

(introduced by sections 14, 16, 19, 21 and 22)

SCOTTISH SECURE TENANCY: GROUNDS FOR RECOVERY OF POSSESSION OF HOUSE

Commencement Information

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

PART 1

GROUNDS ON WHICH COURT MAY ORDER RECOVERY OF POSSESSION

- 1 Rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy has been broken.
- 2 The tenant (or any one of joint tenants), a person residing or lodging in the house with, or subtenant of, the tenant, or a person visiting the house has been convicted of—
 - (a) using the house or allowing it to be used for immoral or illegal purposes, or
 - (b) an offence punishable by imprisonment committed in, or in the locality of, the house.
- 3 (1) The condition of the house or of any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant (or any one of joint tenants) or any person residing or lodging with, or any subtenant of, the tenant; and in the case of acts of waste by, or the neglect or default of, a person residing or lodging with, or subtenant of, a tenant, the tenant has not, before the making of the order in question, taken such steps as the tenant ought reasonably to have taken for the removal of that person.
(2) In sub-paragraph (1), “the common parts” means any part of a building containing the house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other houses.
- 4 The condition of any furniture provided for use under the tenancy, or for use in any of the common parts (within the meaning given in paragraph 3(2)), has deteriorated owing to ill-treatment by the tenant (or any one of joint tenants) or any person residing or lodging with, or any subtenant of, the tenant; and in the case of ill-treatment by a person residing or lodging with, or subtenant of, a tenant, the tenant has not, before the making of the order in question, taken such steps as the tenant ought reasonably to have taken for the removal of that person.
- 5 The tenant and—
 - (a) the tenant’s spouse [^{F1}or civil partner] , or
 - (b) any person with whom the tenant has, for a period of at least 6 months immediately prior to the commencement of the period referred to below, been living in the house as husband and wife or in a relationship which has the characteristics of the relationship between [^{F2}civil partners] ,have been absent from the house without reasonable cause for a continuous period exceeding 6 months or have ceased to occupy the house as their principal home.

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Textual Amendments

- F1** Words in sch. 2 para. 5(a) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 65\(2\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F2** Words in sch. 2 para. 5(b) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 65\(2\)\(b\)](#); S.S.I. 2005/604, arts. 2(c), 4

- 6 The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by the tenant.
- 7 (1) The tenant (or any one of joint tenants), a person residing or lodging in the house with, or any subtenant of, the tenant, or a person visiting the house has—
- (a) acted in an anti-social manner in relation to a person residing in, visiting or otherwise engaged in lawful activity in the locality, or
 - (b) pursued a course of conduct amounting to harassment of such a person, or a course of conduct which is otherwise anti-social conduct in relation to such a person,
- and it is not reasonable in all the circumstances that the landlord should be required to make other accommodation available to the tenant.
- (2) In sub-paragraph (1)—
- “anti-social”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,
- “conduct” includes speech, and a course of conduct must involve conduct on at least two occasions,
- “harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).
- 8 (1) The tenant (or any one of joint tenants) or any person residing or lodging with, or any subtenant of, the tenant—
- (a) has been guilty of conduct in or in the vicinity of the house which is a nuisance or annoyance, or
 - (b) has pursued a course of conduct amounting to harassment of a person residing in, visiting or otherwise engaged in lawful activity in the locality,
- and in the opinion of the landlord it is appropriate in the circumstances to require the tenant to move to other accommodation.
- (2) In sub-paragraph (1), “conduct” and “harassment” have the same meanings as in paragraph 7.
- 9 The house is overcrowded, within the meaning of section 135 of the 1987 Act, in such circumstances as to render the occupier guilty of an offence.
- 10 (1) It is intended within a reasonable period of time to demolish, or carry out substantial work on, the building or a part of the building which comprises or includes the house, and such demolition or work cannot reasonably take place without the landlord obtaining possession of the house.
- (2) For the purposes of sub-paragraph (1), “demolition” is to be construed in accordance with section 338(3) of the 1987 Act.
- 11 The house has been designed or adapted for occupation by a person whose special needs require accommodation of the kind provided by the house and—

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- (a) there is no ^{F3}... person with such special needs occupying the house, and
- (b) the landlord requires it for occupation (whether alone or with other members of the person's family) by a person who has such special needs.

Textual Amendments

F3 Words in sch. 2 para. 11(a) repealed (1.5.2019) by Housing (Scotland) Act 2014 (asp 14), ss. 15(a), 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 5, 9)

- 12 The house forms part of a group of houses which has been designed, or which has been provided with or located near facilities, for persons with special needs, and—
- (a) there is no ^{F4}... person with such a need occupying the house, and
 - (b) the landlord requires it for occupation (whether alone or with other members of the person's family) by a person who has such a need.

Textual Amendments

F4 Words in sch. 2 para. 12(a) repealed (1.5.2019) by Housing (Scotland) Act 2014 (asp 14), ss. 15(b), 104(3); S.S.I. 2018/153, art. 2, sch. (with arts. 5, 9)

- 13 The interest of the landlord in the house is that of a lessee under a lease and that lease either—
- (a) has terminated, or
 - (b) will terminate within a period of 6 months from the date of raising of proceedings for recovery of possession.
- 14 The landlord is Orkney Islands Council, Shetland Islands Council or Western Isles Council and—
- (a) the house is—
 - (i) held by the council for the purposes of its functions as education authority, and
 - (ii) required for the accommodation of a person who is or will be employed by the council for those purposes,
 - (b) the council cannot reasonably provide a suitable alternative house for the accommodation referred to in sub-paragraph (a)(ii), and
 - (c) the tenant (or any one of joint tenants) is, or at any time during the tenancy has been or, where the tenancy passed to the existing tenant under section 22, the previous tenant at any time during the tenancy was, employed by the council for the purposes of its functions as education authority and such employment has terminated or notice of termination has been given.
- 15 The landlord wishes to transfer the tenancy of the house to—
- (a) the tenant's spouse [^{F5}or civil partner (or former spouse or former civil partner)], or
 - (b) a person with whom the tenant has, for a period of at least 6 months immediately prior to the date of the application for transfer, been living in the house as husband and wife or in a relationship which has the characteristics of the relationship between [^{F6}civil partners] ,

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who has applied to the landlord for such transfer; and the tenant or (as the case may be) the spouse or other person no longer wishes to live together with the other in the house.

Textual Amendments

- F5** Words in sch. 2 para. 15(a) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 65\(3\)\(a\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F6** Words in sch. 2 para. 15(b) substituted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\), s. 263\(10\)\(c\), Sch. 28 para. 65\(3\)\(b\)](#); S.S.I. 2005/604, arts. 2(c), 4

PART 2

SUITABILITY OF ACCOMMODATION

- 16 For the purposes of sections 16(4), 19(5), 21(5) and 22(7), accommodation is suitable if—
- (a) it consists of premises which are to be let as a separate dwelling under a Scottish secure tenancy or under [^{F7}a private residential tenancy] , and
 - (b) it is reasonably suitable to the needs of the tenant and the tenant’s family.

Textual Amendments

- F7** Words in sch. 2 para. 16(a) substituted (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\), s. 79\(2\), sch. 4 para. 7\(5\)](#); S.S.I. 2017/346, reg. 2, sch.

- 17 In determining whether accommodation is reasonably suitable to the needs of the tenant and the tenant’s family, regard is to be had to—
- (a) its proximity to the place of work (including attendance at an educational institution) of the tenant and of members of the tenant’s family, compared with the tenant’s existing house,
 - (b) the extent of the accommodation required by the tenant and the tenant’s family,
 - (c) the character of the accommodation offered compared to the tenant’s existing house,
 - (d) the terms on which the accommodation is offered to the tenant compared with the terms of the tenant’s existing tenancy,
 - (e) if any furniture was provided by the landlord for use under the existing tenancy, whether furniture is to be provided for use under the new tenancy which is of a comparable nature in relation to the needs of the tenant and the tenant’s family,
 - (f) any special needs of the tenant or the tenant’s family.
- 18 If the landlord has made an offer in writing to the tenant of new accommodation which complies with paragraph 16(a) and which appears to it to be suitable, specifying the date when the accommodation will be available and the date (not being less than 14 days from the date of the offer) by which the offer must be accepted, the accommodation so offered is deemed to be suitable if—
- (a) the landlord shows that the tenant accepted the offer within the time duly specified in the offer, or

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- (b) the landlord shows that the tenant did not so accept the offer, and the tenant does not satisfy the court that the tenant acted reasonably in failing to accept the offer.

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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)