

PRIVATE RENTED HOUSING (SCOTLAND) ACT 2011

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 4 – Miscellaneous

35. **Part 4** makes a number of miscellaneous amendments to legislation relating to the private sector tenancy regime.

Section 32 - Premiums

36. Section 82 of the Rent (Scotland) Act 1984 makes it an offence to charge or receive any premium or make any loan, in addition to the rent, a condition of the grant, renewal or continuance of a protected tenancy. Despite this, there is evidence that some confusion exists about what it means in practice and a variety of charges are made to tenants. Section 32 of the Act clarifies that all charges in connection with the grant, renewal or continuance of a tenancy are illegal apart from certain specified, reasonable charges. It inserts a new section 89A into the 1984 Act, giving Ministers powers to outline in secondary legislation charges that will be allowed in connection with the grant, renewal or continuance of a protected tenancy. The regulations will be able to specify categories of payment that are not to be treated as premiums in terms of section 82 and to set a maximum limit to the amount of any such payment that could be charged. Ministers must, before making regulations, consult representatives of tenants, private landlords and landlords' agents, as well as such other persons (including tenants, private landlords and landlords' agents) as they consider appropriate.
37. Any such regulations may also apply to assured tenancies (including short assured tenancies) because new section 89A will constitute part of the sequence of sections 86 to 90 of the 1984 Act referred to in section 27 of the Housing (Scotland) Act 1988.

Section 33 - Tenant information packs

38. To improve knowledge about housing legislation and regulation among private tenants and landlords, section 33 of the Act places a duty on private landlords to provide new tenants with specified documents by inserting new section 30A into the Housing (Scotland) Act 1988. Failure to do so (without reasonable excuse) is an offence attracting a fine not exceeding level 2.
39. New section 30B gives Ministers the power to specify the documents that must be provided, through secondary legislation. For example, this might include documents containing information about the tenancy (such as a tenancy agreement), about the house (such as the permitted level of occupancy), about the landlord (such as his or her landlord registration number), and about the rights and responsibilities of tenants, landlords and agents. They may include documents that the landlord is already required to provide under other sections of the 1988 Act. An order may make further provision, including about the form of the documents and the information to be included in (or

expressly excluded from) any of them. It may provide that supply of a document in accordance with such an order will satisfy another statutory obligation to give a document, the intention of this provision being to remove duplication. It may provide for documents to be provided separately or at the same time.

40. Section 30B(2) requires the Scottish Ministers, before using the order-making power, to consult representatives of tenants, private landlords and landlords' agents, as well as such other persons (including tenants, private landlords and landlords' agents) as they consider appropriate.

Section 34 - Notices required for termination of a short assured tenancy

41. Section 19 of the Housing (Scotland) Act 1988 states that a sheriff will not consider proceedings to gain possession of a house let as an assured tenancy (which includes a short assured tenancy) unless the landlord has served a notice of proceedings. There is evidence of some uncertainty as to whether this requirement also applies to section 33 of the 1988 Act; section 33 of the 1988 Act relates to recovery of possession in respect of short assured tenancies which have come to the end of their normal contractual agreement. Therefore section 34 of this Act is intended to clarify that in such cases a notice of proceedings is not required by explicitly stating that sections 18 and 19 of the 1988 Act do not apply to proceedings under section 33 of the 1988 Act.

Section 35 - Landlord applications to the private rented housing panel

42. Section 14 of the Housing (Scotland) Act 2006 places a duty on a landlord in certain tenancies to ensure that the house meets the Repairing Standard (set out in section 13 of the Act) and allows a tenant who considers that the landlord has failed to comply with this duty to apply to the Private Rented Housing Panel for assistance.
43. The Act also gives a landlord, or a person authorised by the landlord, the right to enter the house in respect of carrying out this duty; i.e., to inspect the premises or carry out works. Section 35 of the Act amends the 2006 Act by introducing a new section 28A to enable a landlord to apply to the Private Rented Housing Panel for assistance in exercising these entry rights in order to comply with the Repairing Standard where the tenant has been uncooperative, without the need for court action or waiting until the end of the tenancy. Such an application will be considered by a single member of the Panel.
44. New section 28B gives Ministers power to make by regulations further provision about applications made under section 28A. Such provision may relate to the form and content of applications, the prescription of a fee to accompany applications, the procedure to be followed by applicants and the Panel, the time limits for making decisions and the determination of applications and action following determination, amongst other things.
45. New section 28C outlines the arrangements that the panel member must make and the procedure that must be followed for a suitable time for access. This procedure commences where the panel member decides to offer assistance, at which point a notice is served under section 28A(5) and the member liaises with the landlord and tenant with a view to agreeing a date and time for access (section 28C(2)). If the tenant makes representations to the panel member that entry is inappropriate or unnecessary (for example, when the panel member calls to try to agree a date for access) the member has to decide whether to continue to assist the landlord, and may contact the landlord before reaching that decision (section 28A(7)). If the tenant fails to respond, or refuses to agree a date and time, the panel member may fix them (section 28C(4)). Either the landlord or tenant can request that the panel member attend at the property at the time fixed. Section 35(5) of the Act amends section 29 of the 2006 Act to provide for the recording and reporting of instances where landlord applications are made, houses attended to by a member following a request for attendance, and instances where a warrant for entry is sought.

Sections 36 and 37 - Long leases and heritable securities

46. Sections 36 and 37 amend the “20 year rules” - sections 8 and 11 of the Land Tenure Reform (Scotland) Act 1974. The amendments introduce powers for Scottish Ministers to prescribe bodies or types of body, which will alter how the rules apply to them.
47. Section 8 of the 1974 Act restricts the ability of landlords and tenants (other than social landlords and rural housing bodies) to enter into residential leases for more than 20 years. The amendment by section 36 means that other bodies or types of body can be exempted from this restriction. In prescribing a body or a type of body Ministers have the power to set conditions and restrictions. The conditions may include the type of leases to be exempted, what happens if the conditions or restrictions are breached and make provision that, in the event of a breach, will protect the interests of tenants and residents. Scottish Ministers also have power to amend legislation if that is required.
48. Section 11 of the 1974 Act allows a debtor to redeem a heritable security over residential property after 20 years have elapsed, regardless of any longer contractual term. Social landlords, their connected bodies and rural housing bodies are able to renounce their right to redeem. The amendment by section 37 allows bodies and types of body to be prescribed so that they too will gain this ability. This could be useful, for example, if a landlord wishes to participate in a long-term fixed interest bond issue which relies on the bond holder retaining security over the underlying housing assets for more than 20 years. Scottish Ministers have the power to set conditions and restrictions which a prescribed body or type of body must meet and to specify the sort of securities in respect of which renunciation can be made.