

HOUSING (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part Two – Social Housing

13. **Part 2** amends the Housing (Scotland) Act 1987 (“the 1987 Act”) and the Housing (Scotland) Act 2001 (“the 2001 Act”). The changes relate to social landlords’ powers to allocate social housing and grant Scottish secure tenancies and short Scottish secure tenancies.

Allocation of social housing

Reasonable preference in allocation of social housing

14. **Section 3** amends section 20 of the 1987 Act to replace the existing categories of persons to whom social landlords must give reasonable preference when allocating social housing. It states that reasonable preference in allocations must be given to persons who are homeless or threatened with homelessness and persons who are living under unsatisfactory housing conditions, in each case where that person’s housing needs are not capable of being met by other housing options which are available. Reasonable preference must also be given to the tenants of any social landlord whom a social landlord considers to be under-occupying a property.

Rules on priority of allocation of housing: consultation

15. **Section 4** inserts new section 20A into the 1987 Act. New section 20A requires social landlords to consult those mentioned in subsection 20A(2) and prepare and publish a report on the consultation, before determining the priority of allocation of houses held by it for housing purposes. When making or amending the allocation policy, subsection (2) amends section 21 of the 1987 Act to require social landlords to take account of any local housing strategy and any guidance issued by the Scottish Ministers. Before publishing any guidance on the priority of allocation of housing, the Scottish Ministers must consult such persons as they consider appropriate. Subsection (2) also enables the Scottish Ministers to make regulations subject to the affirmative procedure, which prescribe the type or description of persons whom social landlords must include in their rules governing the priority of allocation of houses. This is intended as a safeguard to ensure that categories of persons are not routinely omitted from an individual landlord’s allocation policies.
16. **Section 5** amends section 20 of the 1987 Act to ensure that social landlords take no account of the ownership of or value of heritable property owned by the applicant or by a person who lives with or who it is proposed will live with the applicant, in the limited circumstances set out in new subsection (2C). These circumstances include, for example, where a property has not been let and the owner cannot secure entry to that property or where it is probable that occupation of the property will lead to abuse from some other person residing in that property.
17. **Section 6** amends section 20 and inserts new section 20B in the 1987 Act to allow social landlords to impose a minimum period before the applicant is eligible for the allocation of housing, if certain circumstances apply. A minimum period requirement cannot

be placed on homeless applicants to whom the local authority has a duty to provide settled accommodation (new section 20B(2)(b)). A social landlord may determine that an applicant is ineligible for the allocation of social housing if any of the circumstances in new section 20B(6) apply in relation to the applicant. Some of the circumstances also apply in relation to a person who it is proposed will reside with the applicant. The circumstances include antisocial behaviour, harassment, using a house for immoral or illegal purposes or offences punishable by imprisonment that were committed in the vicinity of the house. Subsection 20B(3) provides the Scottish Ministers with the power to issue guidance on any matter relating to section 20B and requires that the guidance should be consulted on before publication. Subsection 20B(5) provides the Scottish Ministers with the power by regulations to prescribe the maximum period preceding the application that a social landlord may consider any of the circumstances in section 20B(6). Subsection 20B(5) also provides the Scottish Ministers with the power by regulations to prescribe a maximum period for an application to have remained in force before an applicant is eligible for housing to be allocated when a landlord imposes such a period under any of those circumstances. Where a social landlord has imposed a minimum period before the applicant is eligible for the allocation of social housing, subsection 20B(9) enables the landlord to withdraw or reduce the minimum period. Subsection (10) provides applicants with a right to appeal to the sheriff against a landlord's decision to make them ineligible for a period for the allocation of housing.

Short Scottish secure tenancy

18. [Section 7\(1\)](#) provides the Scottish Ministers with a power to issue guidance on the creation of a short Scottish secure tenancy for antisocial behaviour and on taking certain steps in relation to such a tenancy. Before publishing this guidance, the Scottish Ministers must consult with such persons as they consider appropriate. Subsection (1) also amends section 34(7) of the 2001 Act to require the landlord to provide, or ensure provision of, the housing support services it considers appropriate to enable the conversion of the tenancy to a Scottish secure tenancy.
19. [Section 7\(2\)](#) substitutes a new subsection (2) in section 35 of the 2001 Act. New section 35(2) extends the circumstances in which a landlord may serve a notice on a tenant under subsection (3) (a notice stating that the Scottish secure tenancy becomes a short Scottish secure tenancy). The circumstances include where a tenant or person associated with the tenant has, within the period of three years preceding the date of service of the notice, acted in an antisocial manner, pursued a course of conduct amounting to harassment or a course of conduct which is otherwise antisocial in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality. Section 7(2) also amends section 35(3) of the 2001 Act in relation to the information that must be included in the notice to the tenant. Where no anti-social behaviour order applies, this must include the name of the person who has behaved in an antisocial manner, the actions of the tenant or other person which the landlord has taken into account, the landlord's reasons for serving the notice and an explanation of the tenant's right of appeal to a court. Subsection 7(3) makes a consequential amendment to section 37(1) (conversion to a Scottish secure tenancy) of the 2001 Act.
20. [Section 7\(4\)](#) inserts new paragraph 2A in schedule 6 to the 2001 Act to provide that the conduct referred to in new section 34(2)(b) if carried out by the persons referred to in new paragraph 2A(2), within the period of three years preceding the date of service of the notice, is a new ground for granting applicants a short Scottish secure tenancy. It also amends paragraph 6 of schedule 6 to the 2001 Act so that the ground for granting a short Scottish secure tenancy related to accommodation for a person in receipt of housing support only applies when no other paragraph in that schedule applies and where the person is in receipt of a housing support service. Section 7(5) makes another consequential amendment to section 31(5) of the 1987 Act to include new paragraph 2A as accommodation considered to be permanent accommodation under the duties of local authorities to persons found to be homeless.

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(asp 14) which received Royal Assent on 1 August 2014*

21. **Section 8** creates a new ground for granting a short Scottish secure tenancy, for homeowners, where the house is to be let expressly on a temporary basis to a person who owns heritable property, or where a person who it is proposed will reside with them owns heritable property. This is to allow them to make arrangements in respect of the heritable property they own, including sale or installation of adaptations, that will allow the person's housing needs to be met.
22. **Section 9(1)** amends section 34 of the 2001 Act to give short Scottish secure tenancies granted on the grounds of antisocial behaviour or a previous eviction order a term of 12 months. It also amends section 34 to provide that, at the end of the 12-month term, the tenancy cannot continue as a short Scottish secure tenancy on the same terms and conditions. Subsection (2) amends section 35 of the 2001 Act to provide that a short Scottish secure tenancy created by virtue of that section also has a term of 12 months. It also provides that, at the end of the 12-month term, the tenancy cannot continue as a short Scottish secure tenancy on the same terms and conditions. Subsection (3) inserts new subsection (5) and (6) into section 37 of the 2001 Act (conversion to Scottish secure tenancy) to provide that after this period, the short Scottish secure tenancy will automatically convert to a Scottish secure tenancy (unless the social landlord has taken steps to extend the short Scottish secure tenancy by a further six months or to seek repossession of the tenancy) on the term which applied before the tenancy became a short Scottish secure tenancy.
23. **Section 10** inserts new section 35A in the 2001 Act to provide that the term of a short Scottish secure tenancy granted on antisocial behaviour or previous eviction grounds may be extended by a further period of six months from the date which would otherwise be the expiry day of that tenancy. Tenants must have been given two months' notice of the extension (including the reasons for the extension) and must be being given housing support services. An extension may be required because the tenant requires support for a further period in order for the tenant to be able to sustain a Scottish secure tenancy. Subsection (2) makes consequential amendments to section 37 of the 2001 Act.
24. **Section 11** amends section 36 of the 2001 Act. Section 11(a) inserts a new subparagraph (aa) in section 36(2) to provide that proceedings for recovery of possession may not be raised, in the case of short Scottish secure tenancies created by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 (those granted on antisocial behaviour or previous eviction grounds), unless the landlord considers that any obligation of the tenancy has been broken. Section 11(b) inserts a new subparagraph (aa) into section 36(3) to require landlords of such tenancies to give tenants reasons why they are seeking recovery of possession of the tenancy (including, if new subsection (2) (aa) applies, the obligations the landlord considers have been broken). This section also gives tenants a right to request that their landlord review the decision to seek recovery of possession before the case goes to court (new subsection (4A)). New subsection (4C) gives the Scottish Ministers the power by regulations to make provisions about the procedure to be followed in such reviews. Section 11(d) provides that, in cases where section 36(2)(aa) applies, the court must make an order for recovery of possession of the tenancy where the tenancy has reached the end of its 12-month term (or, in a case where an extension applies, the 18-month term applicable to it) and the landlord considers that an obligation of the tenancy has been broken. Section 11(f) inserts a new subsection (8) into section 36 of the 2001 Act to allow the procedure for recovery of possession (with respect to the serving of the notice for recovery of possession) under Scottish secure tenancies to also be used with short Scottish secure tenancies so long as the tenant has been given four weeks' notice prior to the landlord raising proceedings for recovery of possession.

Scottish secure tenancy

25. **Section 12(1)** amends section 11 of the 2001 Act to introduce a 12-month qualifying period, where a person has used the house in question as the person's only or principal home, before a person can apply to be added to a tenancy as a joint tenant. Subsection (2)(a) amends section 32 of the 2001 Act to replace a six-month qualifying period with

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a 12-month qualifying period before a tenant can apply to assign the tenancy to another person. The proposed assignee will also have to have lived at the property and used it as their only or principal home for 12 months before they may be assigned the property. It also introduces a 12-month qualifying period before a tenant can apply to sublet the tenancy to another person. In joint tenancy and assignation cases, the individual or the tenant of the house in question must have notified the landlord that the individual is living in the property as their only or principal home before the 12-month period begins. The 12-month qualifying period for applying to sublet a tenancy is satisfied where the tenant was the tenant of the house in question throughout the 12-month period ending with the date of application (new subsection (1B) as inserted into section 32 by 12(2)(b)). Section 12(2)(c) inserts new subparagraphs (f) and (g) into section 32(3) to provide new grounds for reasonable refusal of consent.

26. **Section 13** amends schedule 3 to the 2001 Act for the purpose of succession to a Scottish secure tenancy. This schedule makes provision as to who are qualified persons to whom a Scottish secure tenancy passes by operation of law on the death of a tenant. Currently paragraph 2(2) of schedule 3 provides that a person living with a tenant as husband and wife or in a relationship of this character, except that they are of the same sex, is a qualified person if the house has been their only or principal home for a period of 6 months preceding the tenant's death. Section 13(a) replaces this six month qualifying period with a 12-month qualifying period.
27. Paragraph 3 of schedule 3 is amended to provide that a member of the tenant's family aged at least 16 years is a qualifying person for the purposes of succession to a Scottish secure tenancy, provided the house was their only or principal home throughout the 12 months ending in the tenant's death. This is a change to the existing requirement that such a family member is a qualifying person where the house was their only or principal home at the time of the tenant's death.
28. Paragraph 4(b) of schedule 3 is amended to provide that a carer providing, or who has provided, care for the tenant or a member of the tenant's family where the house was the carer's only or principal home throughout the period of 12 months ending with the tenant's death is a qualifying person. This is a change to the existing requirement that such a carer is a qualifying person where the house was the carer's only or principal home at the time of the tenant's death and the carer had given up a previous only or principal home.
29. In all cases where a qualifying period applies in section 13, the individual or the tenant must have notified the landlord that the individual is living in the property as their only or principal home before the 12-month period can begin (new paragraph 4A).
30. **Section 14(1)** provides the Scottish Ministers with the power to issue guidance on any matter relating to recovering possession of a house where such proceedings are to include a ground for recovery of possession set out in paragraph 2 of schedule 2 to the 2001 Act. The Scottish Ministers are also required to consult such persons as they consider appropriate before publication of the guidance. Subsection (2) inserts paragraph (aa) in section 16(2) of the 2001 Act to remove a requirement that the court considers whether it is reasonable to make an order for eviction, in cases where another court has already convicted a tenant of using the house for immoral or illegal purposes or of an offence punishable by imprisonment, committed in, or in the locality of, the house. The landlord will have to have such grounds for seeking recovery of possession of the property and have, within 12 months of the tenant's conviction or appeal, served a notice on the tenant that the landlord intends to seek recovery of possession of the property. The tenant retains a right to challenge the court action.
31. **Section 15** amends schedule 2 to the 2001 Act to allow landlords to seek recovery of possession of adapted property where it has been allocated to persons who do not need adaptations. Landlords have an existing duty under section 16(2)(b) of the 2001 Act to rehouse any such persons in suitable alternative accommodation.