



# Housing (Scotland) Act 2014

## 2014 asp 14

### PART 2

#### SOCIAL HOUSING

##### *Allocation of social housing*

### **3 Reasonable preference in allocation of social housing**

In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), for subsection (1) substitute—

“(1) A social landlord must, in relation to all houses held by it for housing purposes, secure that in the selection of its tenants a reasonable preference is given to the persons mentioned in subsection (1ZA).

(1ZA) The persons are—

- (a) persons who—
  - (i) subject to subsection (1A), are homeless persons and persons threatened with homelessness (within the meaning of Part 2), and
  - (ii) have unmet housing needs,
- (b) persons who—
  - (i) are living under unsatisfactory housing conditions, and
  - (ii) have unmet housing needs, and
- (c) tenants of houses which—
  - (i) are held by a social landlord, and
  - (ii) the social landlord selecting its tenants considers to be under-occupied.

(1ZB) For the purposes of subsection (1ZA), persons have unmet housing needs where the social landlord considers the persons to have housing needs which are not capable of being met by housing options which are available.”.

#### 4 Rules on priority of allocation of housing: consultation

- (1) After section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), insert—

**“20A Rules on priority of allocation of housing: consultation**

- (1) Before making or altering its rules governing the priority of allocation of houses, a social landlord must—
- (a) consult the persons mentioned in subsection (2), and
  - (b) prepare and publish a report on the consultation.
- (2) The persons are—
- (a) applicants on its housing list (within the meaning of section 19),
  - (b) tenants of the landlord,
  - (c) bodies for the time being registered in the register of tenant organisations maintained by the landlord under section 53(3) of the Housing (Scotland) Act 2001 (asp 10), and
  - (d) such other persons as the landlord thinks fit.
- (3) A social landlord may publish a consultation report mentioned in subsection (1)(b) in such manner as it thinks fit (and may in particular publish a joint report with any other social landlord).”.

- (2) In section 21 of the 1987 Act, after subsection (3) insert—

“(3A) In making or altering its rules governing the priority of allocation of houses, a social landlord must have regard to—

- (a) any local housing strategy (within the meaning of section 89(1)(b) of the Housing (Scotland) Act 2001) for its area, and
- (b) any guidance published by the Scottish Ministers.

(3B) Before publishing any guidance mentioned in subsection (3A), the Scottish Ministers must consult such persons as they consider appropriate.

(3C) The Scottish Ministers may by regulations prescribe persons of a description or type who a social landlord must include in its rules governing the priority of allocation of houses.

(3D) Regulations under subsection (3C) are subject to the affirmative procedure.”.

- (3) The title of section 21 of the 1987 Act becomes “**Rules relating to the housing list and to transfer of tenants**”.

#### 5 Factors which may be considered in allocation: ownership of property

- (1) In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing), for subsection (2)(a)(viii) substitute—

“(viii) where any of the circumstances in subsection (2C) apply to that person, the ownership of, or value of, heritable property owned by—

- (A) the applicant,
- (B) a person who normally resides with the applicant, or

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(C) a person who it is proposed will reside with the applicant.”.

(2) After subsection (2B) insert—

“(2C) The circumstances are that—

- (a) in the case of a property which has not been let, the owner cannot secure entry to that property,
- (b) it is probable that occupation of the property will lead to abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 ([asp 14](#))) from some other person residing in that property,
- (c) it is probable that occupation of it will lead to abuse (within the meaning of that Act) from some other person who previously resided with that person, whether in that property or elsewhere,
- (d) occupation of the property may endanger the health of the occupants and there are no reasonable steps which can be taken by the applicant to prevent that danger.”.

## 6 Determination of minimum period for application to remain in force

(1) In section 20 of the 1987 Act (persons to have priority on housing list and allocation of housing)—

- (a) in subsection (2)(a)(iii), at the beginning insert “except to the extent permitted by section 20B,”, and
- (b) in subsection (2)(b)(i), at the beginning insert “except to the extent permitted by section 20B,”.

(2) After section 20A of the 1987 Act (inserted by section 4(1)), insert—

### “20B Determination of minimum period for application to remain in force

- (1) A social landlord may impose a requirement that an application must have remained in force for a minimum period before the applicant is eligible for the allocation of housing falling within section 20(1) if, before making that application, any of the circumstances mentioned—
  - (a) in subsection (6) applied in relation to the applicant, or
  - (b) in paragraphs (a) to (g) of subsection (6) applied in relation to a person who it is proposed will reside with the applicant.
- (2) But a social landlord may not impose a requirement under subsection (1) if the landlord—
  - (a) in relation to the same application has previously relied on the same circumstance as it applied to an applicant or a person who it is proposed will reside with the applicant to impose a requirement under subsection (1), or
  - (b) is a local authority and has a duty to the applicant under section 31(2) (duty to secure accommodation where applicant is homeless).
- (3) In considering whether to impose a requirement under subsection (1), a social landlord must have regard to any guidance about this section (including the matters mentioned in subsection (5)) published by the Scottish Ministers.

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- (4) Before publishing any guidance mentioned in subsection (3), the Scottish Ministers must consult such persons as they consider appropriate.
- (5) The Scottish Ministers may by regulations prescribe—
- (a) the maximum period preceding the application which a social landlord may consider in relation to any circumstances mentioned in subsection (6),
  - (b) the maximum period for an application to have remained in force which a social landlord may impose in relation to any circumstances mentioned in subsection (6), and such regulations may make different provision for different cases.
- (6) The circumstances are—
- (a) the person has—
    - (i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person,
    - (ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person, or
    - (iii) acted in an antisocial manner, or pursued a course of conduct which is antisocial conduct, in relation to an employee of the social landlord in the course of making the application,
  - (b) the person has been, or has resided with a person who has been, convicted of—
    - (i) using a house or allowing it to be used for immoral or illegal purposes, or
    - (ii) an offence punishable by imprisonment which was committed in, or in the locality of, a house occupied by the person,
  - (c) an order for recovery of possession has been made against the person in proceedings under—
    - (i) the Housing (Northern Ireland) Order 1983 (S.I. 1983/1118),
    - (ii) the Housing Act 1985 (c.68),
    - (iii) this Act,
    - (iv) the Housing (Scotland) Act 1988 (c.43),
    - (v) the Housing (Scotland) Act 2001 (asp 10),
  - (d) the person's tenancy has been terminated by the landlord under section 18(2) of the Housing (Scotland) Act 2001 (repossession where abandoned tenancy),
  - (e) the person's interest in a tenancy has been terminated by the landlord under section 20(3) of the Housing (Scotland) Act 2001 (abandonment by joint tenant),
  - (f) in relation to a house where the person was a tenant, a court has ordered recovery of possession on the ground set out in paragraph 3 or 4 of schedule 2 to the Housing (Scotland) Act 2001,
  - (g) there is or was any outstanding liability (for payment of rent or otherwise) in relation to a house which—
    - (i) is attributable to the person's tenancy of the house, and

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- (ii) either—
    - (A) section 20(2A) would not be satisfied in respect of that debt, or
    - (B) in the case of a debt which is no longer outstanding, section 20(2A) would not have been satisfied at any time while that debt remained outstanding,
  - (h) the person knowingly or recklessly made a false statement in any application for housing held by a social landlord,
  - (i) the person has refused one or more offers of housing falling within section 20(1) and the landlord considers the refusal of that number of offers to be unreasonable.
- (7) In subsection (6)—
- “antisocial”, 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, and  
“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).
- (8) The Scottish Ministers may by regulations modify subsections (6) and (7).
- (9) After the social landlord imposes a requirement under subsection (1) (whether or not previously varied under this subsection), it may—
- (a) withdraw the requirement, or
  - (b) vary the requirement in order to shorten the period imposed for the application to have remained in force.
- (10) An applicant may by summary application appeal to the sheriff against any decision of a social landlord under subsection (1).
- (11) Regulations under subsection (5) and under subsection (8) are subject to the affirmative procedure.”.

#### *Short Scottish secure tenancy*

### **7 Creation of short Scottish secure tenancy: antisocial behaviour**

- (1) In section 34 of the 2001 Act (short Scottish secure tenancies)—
- (a) in subsection (7), for “or 2” substitute “, 2 or 2A”, and
  - (b) after subsection (8), insert—
- “(9) A landlord must have regard to any guidance published by the Scottish Ministers—
- (a) before creating a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6, and
  - (b) when taking any steps in relation to such a tenancy with a view to—
    - (i) extending the term of the tenancy under section 35A, or

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(ii) raising proceedings for the recovery of possession of the house under section 36.

(10) Before publishing any guidance mentioned in subsection (9), the Scottish Ministers must consult such persons as they consider appropriate.”.

(2) In section 35 of the 2001 Act (conversion to a short Scottish secure tenancy)—

(a) for subsection (2) substitute—

“(2) The landlord may serve a notice under subsection (3) only where—

(a) the tenant (or any one of joint tenants) or a person residing or lodging with, or a subtenant of, the tenant is subject to an antisocial behaviour order under—

(i) section 234AA of the Criminal Procedure (Scotland) Act 1995 (c.46), or

(ii) section 4 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), or

(b) the tenant (or any one of joint tenants), a person residing or lodging with, or a subtenant of, the tenant, or a person visiting the house has, within the period of 3 years preceding the date of service of the notice—

(i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person, or

(ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person.”,

(b) in subsection (3)—

(i) the word “and” immediately preceding paragraph (b) is repealed,

(ii) in paragraph (b), after “order” insert “or, as the case may be, has behaved as described in subsection (2)(b)”, and

(iii) after paragraph (b), insert—

“(c) if the notice is served under subsection (2)(b), specify—

(i) the actions of the tenant or other person which the landlord has taken into account, and

(ii) the landlord’s reasons for serving the notice, and

(d) explain the right of appeal conferred by subsection (5).” and

(c) after subsection (6), insert—

“(7) In this section —

“antisocial”, in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,

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“conduct” includes speech, and a course of conduct must involve conduct on at least two occasions, and  
“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).”.

- (3) In section 37(1) of the 2001 Act (conversion to Scottish secure tenancy), in paragraph (a) for “or 2” substitute “, 2 or 2A”.
- (4) In schedule 6 to the 2001 Act (grounds for granting short Scottish secure tenancy)—
- (a) after paragraph 2 insert—

*“Other antisocial behaviour*

2A (1) A person mentioned in sub-paragraph (2) has, within the period of 3 years preceding the date of service of the notice—

- (a) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the prospective tenant or by a person who it is proposed will reside with the prospective tenant, or
- (b) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person.

(2) The persons are—

- (a) the prospective tenant,
- (b) any one of prospective joint tenants,
- (c) a person visiting a house occupied by the prospective tenant or by a person who it is proposed will reside with the prospective tenant, and
- (d) a person who it is proposed will reside with the prospective tenant.

(3) In sub-paragraph (1)—

“antisocial”, 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, and

“harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).”, and

(b) for paragraph 6 substitute—

*“Accommodation for person in receipt of housing support*

6 The house is to be let expressly on a temporary basis to a person—

- (a) to whom no other paragraph of this schedule applies, and
- (b) who is in receipt of a housing support service.”.

- (5) In section 31(5) of the 1987 Act (permanent accommodation where duty to secure accommodation for persons found to be homeless), in paragraph (c) for “or 2” substitute “, 2 or 2A”.

## **8 Grant of short Scottish secure tenancy: homeowners**

In schedule 6 to the 2001 Act (grounds for granting short Scottish secure tenancy), after paragraph 7 insert—

*“Temporary letting where other property owned*

- 7A (1) The house is to be let expressly on a temporary basis to a person pending the making of arrangements in relation to a property mentioned in subparagraph (2) which will allow the person’s housing needs to be met.
- (2) The property is heritable property owned by the person or a person who it is proposed will reside with that person.”

## **9 Short Scottish secure tenancy: term**

- (1) In section 34 of the 2001 Act (short Scottish secure tenancies)—
- (a) after subsection (5), insert—
- “(5A) Subsection (5) does not apply to a tenancy mentioned in subsection (6A).”
- (b) after subsection (6) insert—
- “(6A) A tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 has a term of 12 months from the day on which the tenancy is granted.”
- (2) In section 35 of the 2001 Act (conversion to short Scottish secure tenancy)—
- (a) after subsection (3) insert—
- “(3A) A short Scottish secure tenancy created by virtue of this section has a term of 12 months from the day on which the landlord serves a notice under subsection (3).”
- (b) for subsection (4), substitute—
- “(4) Where a tenancy becomes a short Scottish secure tenancy by virtue of this section—
- (a) subsection (5) of section 34 does not apply to the tenancy, but
- (b) otherwise subsection (6) of that section does apply to the tenancy.”
- (3) In section 37 of the 2001 Act (conversion to Scottish secure tenancy), after subsection (4) insert—
- “(5) Subsection (6) applies to a tenancy which—
- (a) became a short Scottish secure tenancy by virtue of section 35, and
- (b) becomes a Scottish secure tenancy by virtue of this section.



- (6) The term of the tenancy is the term which applied immediately before the tenancy became a short Scottish secure tenancy.”.

## **10 Short Scottish secure tenancy: extension of term**

- (1) After section 35 of the 2001 Act, insert—

### **“35A Extension of term of short Scottish secure tenancy**

- (1) The landlord under a tenancy which is a short Scottish secure tenancy by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6 may extend the term of that tenancy by 6 months from the day which would otherwise be the day of expiry of the tenancy.
- (2) Such an extension may not be made unless—
- (a) the tenant is in receipt of housing support services, and
  - (b) the landlord has, on or before the day which is 2 months before the day which would otherwise be the day of expiry of the tenancy, served on the tenant a notice informing the tenant of—
    - (i) the extension, and
    - (ii) the reasons for the extension.
- (3) A landlord may not give a notice if the landlord has previously given a notice under subsection (2) in relation to that short Scottish secure tenancy.”.
- (2) In section 37 of the 2001 Act (conversion to Scottish secure tenancy)—
- (a) in subsection (1)—
    - (i) the words “, in the period of 12 months following the creation of the tenancy,” are repealed,
    - (ii) after “36(2)” insert “before the expiry of the relevant period”, and
    - (iii) for “that” substitute “the relevant”,
  - (b) after subsection (1), insert—

“(1A) In this section, the “relevant period” is—

    - (a) the period of 12 months following the creation of the tenancy, or
    - (b) if an extension notice has been served under section 35A, the period of 18 months following the creation of the tenancy.”.
  - (c) in subsection (2)—
    - (i) for “period of 12 months following the creation of the tenancy” substitute “relevant period”, and
    - (ii) for “that period of 12 months”, in both places where it occurs, substitute “the relevant period”.

## **11 Short Scottish secure tenancy: recovery of possession**

In section 36 of the 2001 Act (recovery of possession)—

- (a) in subsection (2), after paragraph (a) insert—

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- “(aa) in the case of a short Scottish secure tenancy created by virtue of section 35 or paragraph 1, 2 or 2A of schedule 6, the landlord considers that any obligation of the tenancy has been broken,”
- (b) in subsection (3), after paragraph (a) insert—
  - “(aa) state the reason why the landlord is seeking recovery of possession (including, in a case where subsection (2)(aa) applies, the obligations which the landlord considers to have been broken),”
- (c) after subsection (4), insert—
  - “(4A) A tenant may, before the end of the period of 14 days beginning with the day of service of a notice under subsection (2), apply to the landlord for a review of a decision to seek recovery of possession of the house which is the subject of the tenancy.
  - (4B) If an application for a review under subsection (4A) is made, the landlord must, before the day specified in the notice by virtue of subsection (3)(b)—
    - (a) confirm its decision to seek recovery of possession or withdraw its notice under subsection (2),
    - (b) notify the tenant of its decision on the review, and
    - (c) where its decision on the review is to confirm the decision to seek recovery of possession, notify the tenant of the reasons.
  - (4C) The Scottish Ministers may by regulations make further provision about the procedure to be followed in connection with a review following an application under subsection (4A).”
- (d) in subsection (5)(a), after “34(5)” insert “or, in a case where subsection (2)(aa) applies, the end of the term applicable to the tenancy in accordance with section 34(6A), 35(3A) or 35A(1)”,
- (e) in subsection (7), after “16” insert “, but subject to the modification mentioned in subsection (8)”, and
- (f) after subsection (7), insert—
  - “(8) In relation to the recovery of possession of the house which is the subject of a short Scottish secure tenancy, section 14(4) is to be read as if for paragraph (b) there were substituted—
    - “(b) a date, not earlier than 4 weeks from the date of service of the notice on or after which the landlord may raise proceedings for recovery of possession,””

*Scottish secure tenancy*

## 12 **Assignment, sublet and joint tenancy of Scottish secure tenancy**

- (1) In section 11 of the 2001 Act (Scottish secure tenancy)—
  - (a) in subsection (6) , the words “, or is intended to be,” are repealed, and
  - (b) after subsection (6) insert
    - “(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

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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.”.

(2) In section 32 of the 2001 Act (assignment, subletting, etc.)—

(a) in subsection (1)—

- (i) the word “and” immediately preceding paragraph (b) is repealed,
- (ii) in paragraph (b), after “been” insert “the tenant’s and”,
- (iii) in paragraph (b), for “6” substitute “12”, and
- (iv) after paragraph (b), insert “ and
- (c) in the case of a sublet, only where the house has been the tenant’s only or principal home throughout the period of 12 months ending with the date of the application for the landlord’s consent to the sublet under paragraph 9 of schedule 5.”,

(b) after subsection (1), insert—

“(1A) For the purposes of an assignment mentioned in subsection (1)(b), a period may be considered in relation to a person only if—

- (a) the person was the tenant of the house throughout that period, or
- (b) at any time before that period began, the landlord was notified by—
  - (i) the person, or
  - (ii) 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.

(1B) For the purposes of a sublet mentioned in subsection (1)(c), a period may be considered in relation to a tenant only if—

- (a) the tenant was the tenant of the house throughout that period, or
- (b) at any time before that period began, the landlord was notified by—
  - (i) the tenant, or
  - (ii) any other person who was the tenant of the house in question when the notice was given,

that the house in question was the tenant’s only or principal home.”, and

(c) in subsection (3)—

- (i) the word “or” immediately preceding paragraph (e) is repealed, and
- (ii) after paragraph (e), insert—

- “(f) in the case of consent to an assignation by a local authority or a registered social landlord, if the proposed assignee is not a person to whom that local authority or registered social landlord would give a reasonable preference when selecting tenants under section 20(1) of the 1987 Act, or
- (g) in the case of consent to an assignation, if the assignation would in the opinion of the landlord, result in the house being under-occupied.”.

### 13 Succession to Scottish secure tenancy

In schedule 3 to the 2001 Act (succession to Scottish secure tenancy: qualified persons)

- (a) in paragraph 2(2), for “6” insert “12”,
- (b) in paragraph 3, for “at the time of” substitute “throughout the period of 12 months ending with”,
- (c) in paragraph 4(b), for “at the time of” substitute “throughout the period of 12 months ending with”, and
- (d) after paragraph 4, insert—

*“Only or principal home*

- 4A For the purposes of paragraph 2, 3 or 4 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.”.

### 14 Grounds for eviction: antisocial behaviour

- (1) In section 14 of the 2001 Act (proceedings for possession), after subsection (2A) insert—

“(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.”.

- (2) In section 16 of the 2001 Act (powers of court in possession proceedings)—

- (a) in subsection (2), after paragraph (a) insert—
  - “(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,” and
- (b) after subsection (3), insert—
  - “(3A) Subsection (2) does not affect any other rights that the tenant may have by virtue of any other enactment or rule of law.”.

## **15 Recovery of possession of properties designed for special needs**

In schedule 2 to the 2001 Act (grounds for recovery of possession of house)—

- (a) in paragraph 11(a), the words “longer a” are repealed, and
- (b) in paragraph 12(a), the words “longer a” are repealed.