



# Housing (Scotland) Act 2014

## 2014 asp 14

### PART 3

#### PRIVATE RENTED HOUSING

##### *Transfer of sheriff's jurisdiction to First-tier Tribunal*

#### **16 Regulated and assured tenancies etc.**

- (1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal—
  - (a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),
  - (b) a Part VII contract (within the meaning of section 63 of that Act),
  - (c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).
- (2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.
- (3) Part 1 of schedule 1 makes minor and consequential amendments.

#### **17 Repairing standard**

- (1) The 2006 Act is amended as follows.
- (2) In section 18—
  - (a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,
  - (b) in subsection (2)(b), for “sheriff” substitute “Tribunal”.
- (3) The title of section 18 becomes “**Contracting out with consent of First-tier Tribunal**”.
- (4) In section 57—
  - (a) in subsection (2), for “sheriff” substitute “relevant authority”,
  - (b) after subsection (2) insert—

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“(2A) In subsection (2), the relevant authority is—

- (a) where the requirement or thing which the person is authorised or entitled to do relates to the repairing standard, the First-tier Tribunal,
- (b) in any other case, the sheriff.”.

(5) Part 2 of schedule 1 makes minor and consequential amendments.

## **18 Right to adapt rented houses**

(1) After section 66 of the 2006 Act insert—

### **“66A Appeals in relation to section 52**

(1) A tenant aggrieved by a decision by a landlord—

- (a) to impose any condition on a consent to carry out work in pursuance of section 52(2), or
- (b) to refuse to consent to the carrying out of any such work,

may appeal to the First-tier Tribunal within 6 months of being notified of that decision.

(2) The First-tier Tribunal may, on cause shown, hear an appeal after the deadline set by subsection (1).

(3) The First-tier Tribunal must, unless the Tribunal considers the condition or, as the case may be, refusal appealed against to be reasonable, determine an appeal under subsection (1) by quashing the decision and directing the landlord to withdraw the condition (or to vary it in such manner as the Tribunal may specify) or, as the case may be, to consent to the application (with or without such conditions as the Tribunal may specify).

(4) In determining whether a condition or refusal appealed against under subsection (1) is reasonable, the First-tier Tribunal must, where the appeal relates to an application made for the purposes of section 52(2)(a), have regard to any code of practice issued by the Commission for Equality and Human Rights which relates to section 52 or 53.

(5) The First-tier Tribunal’s determination on an appeal under subsection (1) is final.”.

(2) Part 3 of schedule 1 makes minor and consequential amendments.

## **19 Landlord registration**

(1) The 2004 Act is amended as follows.

(2) In section 92(2), for “sheriff” substitute “First-tier Tribunal”.

(3) In section 97—

- (a) in subsection (1), for “sheriff” substitute “First-tier Tribunal”,
- (b) in subsection (2), for “sheriff” substitute “First-tier Tribunal”.

(4) Part 4 of schedule 1 makes minor and consequential amendments.

## **20 Houses in multiple occupation**

- (1) The Scottish Ministers may by regulations—
- (a) provide that the First-tier Tribunal may make an order of the kind mentioned in section 153(2) of the 2006 Act instead of the sheriff,
  - (b) provide that the following may be made to the First-tier Tribunal instead of the sheriff—
    - (i) appeals against decisions of local authorities to which section 158 of that Act applies,
    - (ii) applications to extend the period mentioned in paragraph 9(1) of schedule 4 to that Act,
    - (iii) applications for a warrant for the ejection of the occupant from land or premises where the occupant has not complied with a requirement under paragraph 2 of schedule 5 to that Act in relation to the land or premises.
- (2) Regulations under subsection (1) may—
- (a) disapply the following provisions of the 2006 Act—
    - (i) section 153(2),
    - (ii) section 159(1),
    - (iii) paragraph 9(2) of schedule 4,
    - (iv) paragraph 3(1) of schedule 5,
  - (b) make such other consequential modifications to the 2006 Act and any other enactment as the Scottish Ministers consider appropriate.

*Landlord registration: time limit for determining application*

## **21 Landlord registration: time limit for determining application**

- (1) After section 85A of the 2004 Act, insert—

### **“85B Time limit for determining application**

- (1) This section applies where a relevant person makes an application to a local authority in accordance with section 83.
- (2) The local authority must determine the application under section 84 within 12 months of receiving the application.
- (3) The period mentioned in subsection (2) may be extended by the First-tier Tribunal, on application by the local authority, by such period as the Tribunal thinks fit.
- (4) The First-tier Tribunal may not extend a period unless the local authority applies for the extension before the period expires.
- (5) The relevant person is entitled to be a party to any proceedings on such an application.
- (6) The decision of the First-tier Tribunal on such an application is final.
- (7) If the local authority does not determine the application within the period required by this section—

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- (a) the authority is to be treated as having entered, on the day by which the authority was required to determine the application, the relevant person in the register maintained by the authority under section 82(1), and
  - (b) unless otherwise removed from the register in accordance with this Part, that person is to be treated as being removed from the register on the expiry of the period of 12 months beginning with that day.
- (8) Where subsection (7) applies the authority must—
- (a) enter the name of the relevant person in the register maintained by the authority under section 82(1), and
  - (b) state in the register a registration number in relation to that person (which is to be treated as having been given under section 84(5A)).
- (9) Subject to the modifications in subsection (10), the relevant person is for all purposes to be treated as having been registered by virtue of section 84(2)(a).
- (10) The modifications are—
- (a) in the case of an application to which section 84(3)(a) and (b) applies, the relevant person is to be treated as having been registered by virtue of section 84(3), and
  - (b) in the case of an application to which section 84(4)(a) and (b) applies, the relevant person is to be treated as having been registered by virtue of section 84(4),
  - (c) section 84(6) does not apply, and
  - (d) section 89(2)(b), (3)(b) and (3A)(b) are to be read as if for the words “no longer applies” there were inserted “does not apply”.
- (2) In section 86(1)(a) of the 2004 Act (entry in the register), after “section 84(2)” insert “or section 85B(8)(a)”.

### *Repairing standard*

## **22 Carbon monoxide alarms**

In section 13 of the 2006 Act—

- (a) the word “and” after paragraph (e) of subsection (1) is repealed,
- (b) after paragraph (f) of subsection (1) insert “, and
- (g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”,
- (c) after subsection (5) insert—

“(6) In determining whether a house meets the standard of repair mentioned in subsection (1)(g), regard is to be had to any building regulations and any guidance issued by the Scottish Ministers on provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”.

## **23 Electrical safety inspections**

- (1) In section 13 of the 2006 Act (the repairing standard), after subsection (4) insert—

“(4A) In determining whether a house meets the standard of repair mentioned in subsection (1)(c) and (d) in relation to installations for the supply of electricity and electrical fixtures, fittings and appliances, regard is to be had to any guidance issued by the Scottish Ministers on electrical safety standards.”.

(2) After section 19 of the 2006 Act insert—

**“19A Duty to ensure regular electrical safety inspections**

- (1) The landlord must ensure that regular inspections are carried out for the purpose of identifying any work which—
  - (a) relates to installations for the supply of electricity and electrical fixtures, fittings and appliances, and
  - (b) is necessary to ensure that the house meets the repairing standard.
- (2) The duty in subsection (1) is complied with if—
  - (a) an inspection has been carried out before the tenancy starts (but not earlier than 5 years before the start of the tenancy), and
  - (b) inspections are carried out during the tenancy at such intervals to ensure that there is a period of no more than 5 years between each inspection.
- (3) The landlord must—
  - (a) before the start of the tenancy, provide the tenant with a copy of the record of the most recent inspection carried out, and
  - (b) provide the tenant with a copy of the record of any inspection carried out during the tenancy.
- (4) For the purposes of sections 16(4), 17, 22 and 24 and schedule 2, references to a duty under section 14(1) include the duties under this section.

**19B Electrical safety inspections**

- (1) An inspection carried out in pursuance of section 19A must be carried out by a competent person.
- (2) The person carrying out the inspection must prepare a record of the inspection including the following information—
  - (a) the date on which the inspection was carried out,
  - (b) the address of the house inspected,
  - (c) the name and address of the landlord or the landlord’s agent,
  - (d) the name, address and relevant qualifications of the person who carried out the inspection,
  - (e) a description, and the location, of each installation, fixture, fitting and appliance inspected,
  - (f) any defect identified,
  - (g) any action taken to remedy a defect.
- (3) A copy of the record must be—
  - (a) given to the landlord, and
  - (b) retained by the landlord for a period of 6 years.

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- (4) The Scottish Ministers must publish guidance on the carrying out of inspections.
- (5) In determining who is competent to carry out an inspection, the landlord must have regard to the guidance.”.

## **24 Power to modify repairing standard etc.**

- (1) After section 20 of the 2006 Act insert—

### **“20A Power to modify repairing standard etc.**

- (1) The Scottish Ministers may by regulations vary or extend the repairing standard and a landlord’s duty to ensure a house meets that standard.
  - (2) Regulations under subsection (1) may, in particular, make provision about—
    - (a) the tenancies to which this Chapter applies,
    - (b) determining whether a house meets the repairing standard,
    - (c) carrying out inspections in relation to the repairing standard.
  - (3) Regulations under subsection (1) may modify sections 12 to 14 and any other provision of this Chapter.”.
- (2) In section 191(5) of the 2006 Act, after “section” insert “20A,”.

### *Enforcement of repairing standard*

## **25 Third party application in respect of the repairing standard**

- (1) In section 22 of the 2006 Act (tenant application to private rented housing panel)—
  - (a) after subsection (1), insert—
    - “(1A) A person mentioned in subsection (1B) may apply to the private rented housing panel for determination of whether a landlord has failed to comply with the duty imposed by section 14(1)(b) (a person who makes such an application being referred to as a “third party applicant”).
    - (1B) The persons are—
      - (a) a local authority,
      - (b) a person specified by order made by the Scottish Ministers.”,
  - (b) in subsection (2), for “(1) must set out the tenant’s” substitute “(1) or (1A) must set out the tenant’s, or as the case may be, the third party applicant’s”,
  - (c) in subsection (3), for “such application may be made unless the tenant” substitute “application under this section may be made unless the person making the application”,
  - (d) in subsection (4), for “such application” substitute “application under this section”, and
  - (e) after subsection (4), insert—
    - “(4A) The tenant of the house concerned is entitled to be a party in the determination of any application made under subsection (1A).”.

- (2) The title of section 22 of the 2006 Act becomes “**Application in respect of the repairing standard**”.
- (3) In section 22A(1) of the 2006 Act (information to be given to a local authority), after “22(1)” insert “, or under section 22(1A) where the applicant is not a local authority”.
- (4) In section 23 of the 2006 Act (referral to private rented housing committee)—
- (a) in subsection (1), after “22(1)” insert “or 22(1A)”,
  - (b) in subsection (2)(b), after “tenant” insert “or third party applicant”,
  - (c) in subsection (4), after “application”, where it first occurs, insert “under section 22(1)”,
  - (d) after subsection (4) insert—
    - “(4A) The president must, as soon as practicable after rejecting an application under section 22(1A) give notice of the rejection to—
      - (a) the third party applicant, and
      - (b) the tenant.”, and    - (e) in subsection (5), for “Such a notice” substitute “A notice under subsection (4) or (4A)”.
- (5) In section 24(1) of the 2006 Act (determination by private rented housing committee) for “a tenant’s application under section 22(1)” substitute “an application under section 22(1) or (1A)”.
- (6) In section 181 of the 2006 Act (rights of entry: general)—
- (a) after subsection (1) insert—
    - “(1A) Any person authorised by a third party applicant is entitled to enter any house in respect of which an application under section 22 may be made for the purposes of enabling or assisting the third party applicant to decide whether to make an application under section 22(1A).”, and
  - (b) in subsection (2), for “a tenant’s application under section 22(1)” substitute “an application under section 22(1) or (1A)”.
- (7) In section 182 of the 2006 Act (warrants authorising entry)—
- (a) in subsection (1), after “subsection (1)” insert “, (1A)”, and
  - (b) after subsection (3) insert—
    - “(3A) In relation to an application for a warrant under section 181(1A), the reference to the occupier in subsection (3) is to be read as including the tenant, the landlord and any known agent of the landlord.”.
- (8) In section 184 of the 2006 Act (rights of entry: supplemental), after subsection (4) insert—
  - “(4A) In relation to the exercise of the right conferred by section 181(1A), the reference to occupants in subsection (4) is to be read as including the tenant, the landlord and any known agent of the landlord.”.
- (9) In section 187 of the 2006 Act (formal communications), in subsection (3)(b), for “the recorded delivery service” substitute “a service which provides for the delivery of the communication to be recorded”.

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(10) In section 194(1) of the 2006 Act (interpretation), after the definition of “tenant” insert—

““third party applicant” has the meaning given by section 22(1A).”.

(11) Section 35(3) of the Private Rented Housing (Scotland) Act 2011 (asp 14) is repealed.

## **26 Procedure for third party applications**

(1) In paragraph 1 of schedule 2 to the 2006 Act (notification)—

- (a) in sub-paragraph (1), for “a tenant’s application” substitute “an application”,
- (b) in sub-paragraph (2), for “either party” substitute “the landlord or the tenant”,
- (c) in sub-paragraph (3), for “both parties” substitute “the landlord and the tenant”, and
- (d) after sub-paragraph (3), insert—

“(4) In the case of an application under section 22(1A), the committee must, in addition to carrying out the matters mentioned in sub-paragraphs (1) to (3)—

- (a) serve on the third party applicant a notice containing the matters mentioned in sub-paragraph (1)(a) to (c),
- (b) if the committee thinks fit following a request of the third party applicant, change the day specified for the purposes of sub-paragraph (1)(c),
- (c) notify—
  - (i) the third party applicant of any change under sub-paragraph (2)(b),
  - (ii) the landlord and the tenant of any change under paragraph (b).”.

(2) In paragraph 2 of schedule 2 to the 2006 Act (inquiries)—

- (a) in sub-paragraph (3)(a), for “or tenant” substitute “, the tenant or, as the case may be, third party applicant”,
- (b) in sub-paragraph (3)(b), for “or tenant” substitute “, tenant or, as the case may be, third party applicant”,
- (c) in sub-paragraph (4)(a), for “in the notice served under” substitute “in accordance with”, and
- (d) in sub-paragraph (4)(b), for “in a notice served under paragraph 1(2)(b)” substitute “in accordance with paragraph 1(2)(b) or (4)(b)”.

(3) In paragraph 3(1) of schedule 2 to the 2006 Act (evidence), after “tenant” insert “, third party applicant”.

(4) In paragraph 5 of schedule 2 to the 2006 Act (expenses)—

- (a) after sub-paragraph (2)(b), insert—
  - “(ba) the third party applicant,”, and
- (b) in sub-paragraph (2)(c), for “or tenant” substitute “, tenant or third party applicant”.

(5) In paragraph 6 of schedule 2 to the 2006 Act (recording and notification of decisions)

- (a) in sub-paragraph (1)(a), for “a tenant’s” substitute “an”,

- (b) the word “and” at the end of sub-paragraph (3)(c) is repealed, and
- (c) for sub-paragraph (3)(d), substitute—
  - “(d) in the case of an application under section 22(1A), the third party applicant, and
  - (e) the local authority (unless the local authority is the third party applicant in relation to the decision).”.
- (6) After paragraph 7(1) of schedule 2 to the 2006 Act (withdrawal of application), insert—
  - “(1A) A third party applicant may withdraw an application under section 22(1A) at any time.”.
- (7) In paragraph 8(1) of schedule 2 to the 2006 Act (further provision on procedure), after “22(1)” insert “and 22(1A)”.

## **27 Appeals in relation to third party applications**

- (1) In section 64 of the 2006 Act (Part 1 appeals)—
  - (a) in subsection (4)(a), for “a tenant’s” substitute “an”,
  - (b) after subsection (4), insert—
    - “(4A) A third party applicant aggrieved by a decision by a private rented housing committee which—
      - (a) is mentioned in subsection (4)(a) to (f),
      - (b) was made following an application by the applicant under section 22(1A),may appeal to the sheriff within 21 days of being notified of that decision.”, and
  - (c) in subsection (5), after “tenant” insert “or a third party applicant”.
- (2) In section 65(2) of the 2006 Act (determination of appeals), after “64(4)” insert “, (4A)”.
- (3) After section 66(3) of the 2006 Act (appeals procedure), insert—
  - “(3A) In an appeal by a landlord under section 64(4) which relates to a decision following an application under section 22(1A)—
    - (a) the third party applicant is to be a party to the proceedings,
    - (b) the tenant is entitled to be a party to the proceedings.
  - (3B) In an appeal by a tenant under section 64(4) which relates to a decision following an application under section 22(1A), the landlord and the third party applicant are to be parties to the proceedings.
  - (3C) In an appeal by a third party applicant under section 64(4A)—
    - (a) the landlord is to be a party to the proceedings,
    - (b) the tenant is entitled to be a party to the proceedings.”.

*Private rented housing: Enhanced Enforcement Areas*

**28 Private rented housing: Enhanced Enforcement Areas**

- (1) The Scottish Ministers must by regulations provide a scheme whereby a local authority may apply to the Scottish Ministers for additional discretionary powers to enable it to target enforcement action at an area characterised by poor conditions in houses subject to tenancies and occupancy agreements of the type mentioned in section 16(1) (“private rented housing”).
- (2) The scheme under subsection (1) must provide—
  - (a) that a local authority may apply to the Scottish Ministers for an area to be designated as an Enhanced Enforcement Area where it considers that the area is characterised by—
    - (i) an overprovision or a concentration of private rented housing that appears to the local authority to be—
      - (A) of a poor environmental standard,
      - (B) overcrowded, and
    - (ii) a prevalence of antisocial behaviour, as defined by section 81(4) of the 2004 Act,
  - (b) where the Scottish Ministers agree to designate an area as an Enhanced Enforcement Area, that the local authority will acquire such additional discretionary powers as the Scottish Ministers consider necessary or expedient, to be exercised for prescribed purposes, including in relation to—
    - (i) the checks it may carry out before entering a relevant person on the register of landlords that it maintains under Part 8 of the 2004 Act,
    - (ii) authority to inspect dwellings let by a landlord who is entered on that register,
  - (c) where the Scottish Ministers agree to designate an area as an Enhanced Enforcement Area, that—
    - (i) the local authority must take steps to advertise the fact that the designation has been granted,
    - (ii) the designation will apply for a period of five years commencing from the date on which the Scottish Ministers notify a local authority of its decision,
    - (iii) the local authority may make a further application for the area to be designated as an Enhanced Enforcement Area before the expiry of its first designation.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
  - (a) local authorities,
  - (b) persons or bodies who appear to them to represent the interests of—
    - (i) landlords,
    - (ii) tenants,
  - (c) such other persons or bodies as they consider appropriate.
- (4) The Scottish Ministers must lay before the Scottish Parliament a draft Scottish statutory instrument containing regulations under subsection (1) by 1 April 2015.
- (5) Regulations under subsection (1) may modify, or disapply any provision of, any enactment (including this Act) for the purposes of this section.