

PRIVATE HOUSING (TENANCIES) (SCOTLAND) ACT 2016

EXPLANATORY NOTES

STRUCTURE AND SUMMARY OF THE ACT

Part 1 – Private Residential Tenancy

Meaning of private residential tenancy

7. **Section 1(1)** provides that a tenancy is a private residential tenancy where three conditions are met. These are that: the property is let to an individual as a separate dwelling; the tenant occupies all or part of it as the tenant's only or principal home; and the tenancy is not one which is excluded under schedule 1.
8. **Section 1(2)** provides that once a tenancy has become a private residential tenancy, it does not lose that status simply because the tenant is no longer occupying the property as his or her only or principal home. This provision ensures that all of the provisions of the Act remain available to the tenant and landlord to enable either one of them to terminate the tenancy, but the tenancy will continue as a private residential tenancy unless terminated.

Interpretation of section 1

9. **Section 2** makes provision about the interpretation of section 1. The result of it is that:
 - a property is to be regarded as having been let to an individual (therefore meeting that aspect of the test in section 1(1)(a)) even where it has been let jointly to an individual (or more than one individual) and a non-human, legal person (e.g. a company),
 - the lease of a property with other land will be regarded as the lease of a separate dwelling (therefore meeting that aspect of the test in section 1(1)(a)) provided that the main purpose of the lease is to provide the tenant with a home,
 - where a let property lacks the core facilities required for it to be regarded as a separate dwelling but those facilities form part of the associated shared accommodation (e.g. where an individual has a tenancy of only a bedroom in a flat, but has a right to use a shared bathroom and kitchen), the let property is to be treated as being a separate dwelling nonetheless, meaning that that aspect of the test in section 1(1)(a) is met,
 - if a property is let jointly to more than one person, only one of those persons needs to occupy the property as his or her only or principal home in order for the test in section 1(1)(b) to be met.

Writing not required to constitute private residential tenancy

10. Under the Requirements of Writing (Scotland) Act 1995, a written document is required to constitute certain tenancies. Section 3 displaces this rule, meaning that a private residential tenancy can arise from an oral agreement to create a tenancy.
11. Although writing is not required in order to bring a private residential tenancy into existence, once a tenancy becomes a private residential tenancy, section 10 of the Act will apply to the tenancy. Section 10 places landlords under a duty to provide written terms of the tenancy if all of the terms of the tenancy have not already been set out in writing.
12. Relatedly, paragraph 6 of schedule 4 amends the Requirements of Writing Act so that an agreement to transfer, vary or extinguish a private residential tenancy does not need to be in writing (although, by virtue of Part 5, certain notices to terminate must be in writing).

Extended meaning of tenancy in the Act

13. [Section 4](#) provides that private residential tenancies are tenancies, despite the lack of an “ish” (i.e. a termination date) — at common law, a tenancy must have an ish.
14. Section 4 also provides that once a tenancy has become a private residential tenancy, it continues to be one even if it is subsequently agreed that the tenant no longer has to pay rent. At common law, a tenancy agreement must include a requirement for rent of some form or other to be paid. And for there to be a private residential tenancy, there must be an underlying tenancy. Dropping the requirement for the payment of rent from a lease would, but for section 4, mean that there would no longer be a tenancy per se and therefore the Act’s provisions would cease to apply to the arrangement.

Extended meaning of tenancy and related expressions in other enactments

15. [Section 5](#) provides that references in other enactments to tenancies and to connected expressions will cover private residential tenancies, unless it appears from the context that a particular reference is not intended to cover private residential tenancies.
16. At common law it is a cardinal feature of a tenancy that it has an “ish” (i.e. a termination date). As a private residential tenancy will not have an ish, there may (but for section 5) have been doubt as to whether a reference to a “tenancy” in another Act or instrument included a private residential tenancy. Similarly, section 4 of the Act allows an arrangement to be treated as giving rise to a private residential tenancy even although no rent is payable. Such an arrangement would not be a tenancy as traditionally understood, and so references to tenancies in other enactments may not otherwise have covered private residential tenancies under which no rent is payable.

Power to modify [schedule 1](#)

17. [Section 6](#) enables the Scottish Ministers to make regulations to modify schedule 1 (which outlines the types of tenancies that cannot be private residential tenancies).