

*Status: Point in time view as at 01/03/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Private Housing (Tenancies) (Scotland) Act 2016, SCHEDULE 1. (See end of Document for details)*

## SCHEDULE 1

*(introduced by section 1)*

### TENANCIES WHICH CANNOT BE PRIVATE RESIDENTIAL TENANCIES

#### *Low rent*

- 1 (1) A tenancy cannot be a private residential tenancy if—
- (a) it is a tenancy under which rent of, or equivalent to, less than £6 a week is payable, and
  - (b) it has not previously acquired the status of a private residential tenancy or been an assured tenancy (including a statutory assured tenancy) within the meaning of the Housing (Scotland) Act 1988.
- (2) In determining the rent payable for the purpose of sub-paragraph (1), no account is to be taken of any amount paid by the tenant in respect of services, repairs, maintenance or insurance.

#### **Commencement Information**

**I1** Sch. 1 para. 1 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

#### *Shop*

- 2 A tenancy cannot be a private residential tenancy if it is one to which the Tenancy of Shops (Scotland) Act 1949 is capable of applying.

#### **Commencement Information**

**I2** Sch. 1 para. 2 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

#### *Licensed premises*

- 3 A tenancy cannot be a private residential tenancy if it is one under which the let property consists of or comprises premises licensed for the sale of alcohol for consumption on the premises.

#### **Commencement Information**

**I3** Sch. 1 para. 3 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

#### *Agricultural land*

- 4 (1) A tenancy cannot be a private residential tenancy if sub-paragraph (2) or (3) applies to it.
- (2) This sub-paragraph applies to a tenancy if the let property includes two acres or more of agricultural land.
- (3) This sub-paragraph applies to a tenancy if—
- (a) the tenancy is a relevant agricultural tenancy, and

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- (b) the let property is occupied by the person responsible for the control (whether as tenant or as the tenant's agent or employee) of the farming of the let property.
- (4) For the purposes of this paragraph—
- (a) “agricultural land” has the meaning given in section 115(1) of the Rent (Scotland) Act 1984,
  - (b) “relevant agricultural tenancy” means a tenancy which falls within the definition given in the Agricultural Holdings (Scotland) Act 2003 of—
    - (i) a 1991 Act tenancy,
    - (ii) a short limited duration tenancy,
    - (iii) a limited duration tenancy,
    - (iv) a modern limited duration tenancy, or
    - (v) a repairing tenancy.

**Commencement Information**

**I4** Sch. 1 para. 4 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, sch.

*Student let*

- 5 (1) A tenancy cannot be a private residential tenancy if—
- (a) the purpose of it is to confer on the tenant the right to occupy the let property while the tenant is a student, and
  - (b) sub-paragraph (2) or (3) applies to the tenancy.
- (2) This sub-paragraph applies to a tenancy if the landlord is—
- (a) a university or constituent college, school or hall of a university,
  - (b) a central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980 (“the 1980 Act”),
  - (c) a designated institution within the meaning of section 44(2) of the Further and Higher Education (Scotland) Act 1992,
  - (d) an institution for the provision of further education within the meaning of section 135(1) of the 1980 Act which is administered by an education authority,
  - (e) a college of further education which is managed by a board of management in terms of Part 1 of the Further and Higher Education (Scotland) Act 1992,
  - (f) an association approved under regulation 8 of the Further Education (Scotland) Regulations 1959 (S.I. 1959/477),
  - (g) the Royal College of Surgeons of Edinburgh.
- (3) This sub-paragraph applies to a tenancy if—
- (a) planning permission for the construction, conversion or change of use of the building (or part of the building) of which the let property forms part was given on the basis that the let property would be used predominantly for housing students, and
  - (b) the landlord is an institutional provider of student accommodation.
- (4) For the purposes of sub-paragraph (3), a landlord is an institutional provider of student accommodation if—

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- (a) the landlord lets, or is entitled to let, other properties in the same building or complex as the let property,
- (b) the let property and the other properties together include at least 30 bedrooms, and
- (c) the landlord uses, or intends to use, the other properties predominantly for the purpose of housing students.

(5) In this paragraph, “student” means a person who is pursuing a course of study provided by a body referred to in sub-paragraph (2).

#### Commencement Information

**I5** Sch. 1 para. 5 in force at 1.12.2017 by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

#### *Holiday let*

6 <sup>[F1(1)]</sup> A tenancy cannot be a private residential tenancy if the purpose of it is to confer on the tenant the right to occupy the let property for a holiday.

<sup>[F2(2)]</sup> A tenancy cannot be a private residential tenancy if it is a short-term let within the meaning of article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022.]

#### Textual Amendments

**F1** Sch. 1 para. 6 renumbered as sch. 1 para. 6(1) (1.3.2022) by [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022 \(S.S.I. 2022/32\)](#), [art. 1](#), [sch. 4 para. 3\(2\)](#)

**F2** Sch. 1 para. 6(2) inserted (1.3.2022) by [The Civic Government \(Scotland\) Act 1982 \(Licensing of Short-term Lets\) Order 2022 \(S.S.I. 2022/32\)](#), [art. 1](#), [sch. 4 para. 3\(3\)](#)

#### Commencement Information

**I6** Sch. 1 para. 6 in force at 1.12.2017 by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

#### *Resident landlord*

7 A tenancy cannot be a private residential tenancy if paragraph 8 or 9 applies to it.

#### Commencement Information

**I7** Sch. 1 para. 7 in force at 1.12.2017 by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

8 This paragraph applies to a tenancy if—

- (a) the let property would not be regarded as a separate dwelling were it not for the terms of the tenancy entitling the tenant to use property in common with another person (“shared accommodation”), and
- (b) from the time the tenancy was granted, the person (or one of the persons) in common with whom the tenant has a right to use the shared accommodation is a person who—
  - (i) has the interest of the landlord under the tenancy, and

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- (ii) has a right to use the shared accommodation in the course of occupying that person's home.

**Commencement Information**

**I8** Sch. 1 para. 8 in force at 1.12.2017 by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

- 9 (1) This paragraph applies to a tenancy if sub-paragraphs (2) and (3) apply to it.
- (2) This sub-paragraph applies to a tenancy if, from the time it was granted, a dwelling within the same building as the let property has been occupied as the only or principal home of a person who, at the time of occupying it, has the interest of the landlord under the tenancy.
- (3) This sub-paragraph applies to a tenancy if, at the time it was granted, there was an ordinary means of access—
- (a) through the let property to the dwelling occupied by the person who is, or is to be, the landlord, or
  - (b) through the dwelling occupied by the person who is, or is to be, the landlord to the let property (whether or not that access was available to the tenant as of right).
- (4) For the purpose of this paragraph, in determining whether a dwelling is occupied as the only or principal home of the person having the interest of the landlord, no account is to be taken of—
- (a) any period beginning with the date on which the interest of the landlord is transferred (other than on death) and ending—
    - (i) 28 days later, or
    - (ii) 6 months later if, within 28 days of the period beginning, the person to whom the interest is transferred notifies the tenant of the person's intention to occupy a dwelling within the same building as the let property,
  - (b) any period of up to 24 months beginning with the date of the person's death and ending with the person's interest in the tenancy being vested in another person (otherwise than as the person's executor).

**Commencement Information**

**I9** Sch. 1 para. 9 in force at 1.12.2017 by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

- 10 If, at any time, the landlord holds the landlord's interest as a trustee under a trust, a reference in paragraph 8 or 9 to a landlord or the person having the interest of the landlord includes a person who is a beneficiary under the trust.

**Commencement Information**

**I10** Sch. 1 para. 10 in force at 1.12.2017 by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

- 11 In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in paragraphs 8 to 10 are to any one of those persons.

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**Commencement Information**

**I11** Sch. 1 para. 11 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

*Police housing*

- 12 A tenancy cannot be a private residential tenancy if the landlord is the Scottish Police Authority.

**Commencement Information**

**I12** Sch. 1 para. 12 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

*Military housing*

- 13 A tenancy cannot be a private residential tenancy if the landlord is the Secretary of State for Defence.

**Commencement Information**

**I13** Sch. 1 para. 13 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

*Social housing*

- 14 A tenancy cannot be a private residential tenancy if the landlord is—
- (a) a local authority landlord within the definition given in section 11 of the Housing (Scotland) Act 2001,
  - (b) a registered social landlord within the definition given in section 165 of the Housing (Scotland) Act 2010,
  - (c) a co-operative housing association within the definition given in section 1 of the Housing Associations Act 1985, or
  - (d) Scottish Water.

**Commencement Information**

**I14** Sch. 1 para. 14 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

*Sublet, assigned, etc. social housing*

- 15 A tenancy cannot be a private residential tenancy if it arises as a result of a Scottish secure tenancy or a short Scottish secure tenancy (within the meaning of the Housing (Scotland) Act 2001) being assigned, sublet or otherwise given up (see section 32(7) of the 2001 Act).

**Commencement Information**

**I15** Sch. 1 para. 15 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

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### *Homeless persons*

- 16 A tenancy cannot be a private residential tenancy if it is granted on a temporary basis and the purpose of it is the fulfilment of a duty imposed on a local authority by Part II of the Housing (Scotland) Act 1987.

#### **Commencement Information**

**I16** Sch. 1 para. 16 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

### *Persons on probation or released from prison etc.*

- 17 A tenancy cannot be a private residential tenancy if it is granted for a term of less than 6 months to a tenant who—
- (a) is under the supervision provided by a local authority under paragraph (b) (i), (ii) or (vi) of section 27(1) of the Social Work (Scotland) Act 1968, or
  - (b) has requested advice, guidance or assistance from a local authority in fulfilment of its functions under paragraph (c) of that section.

#### **Commencement Information**

**I17** Sch. 1 para. 17 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

### *Asylum seekers*

- 18 A tenancy cannot be a private residential tenancy if the purpose of it is to provide accommodation for asylum-seekers or their dependants in accordance with section 4 or Part VI of the Immigration and Asylum Act 1999.

#### **Commencement Information**

**I18** Sch. 1 para. 18 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

### *Displaced persons*

- 19 A tenancy cannot be a private residential tenancy if the purpose of it is to provide accommodation under the Displaced Persons (Temporary Protection) Regulations 2005 (S.I. 2005/1379).

#### **Commencement Information**

**I19** Sch. 1 para. 19 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

### *Shared ownership*

- 20 A tenancy cannot be a private residential tenancy if it is a tenancy under a shared ownership agreement within the meaning of section 83(3) of the Housing (Scotland) Act 2001.

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#### Commencement Information

**I20** Sch. 1 para. 20 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

#### *Tenancies under previous legislation*

- 21 A tenancy cannot be a private residential tenancy if it is—
- (a) a protected tenancy within the meaning of the Rent (Scotland) Act 1984,
  - (b) a tenancy to which Part VI of that Act applies,
  - (c) a Part VII contract under that Act, or
  - (d) an assured tenancy (including a statutory assured tenancy) within the meaning of the Housing (Scotland) Act 1988.

#### Commencement Information

**I21** Sch. 1 para. 21 in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

#### *[<sup>F3</sup>Accommodation for veterans and care leavers*

#### Textual Amendments

**F3** Sch. 1 para. 22 inserted (1.7.2019) by [The Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(Modification of Schedule 1\) Regulations 2019 \(S.S.I. 2019/216\)](#), regs. 1, 2 (with reg. 3)

22. (1) A tenancy cannot be a private residential tenancy if the landlord is—
- (a) a charity providing accommodation to veterans, or
  - (b) a charity providing temporary accommodation to a care leaver.
- (2) For the purposes of this paragraph—
- “care leaver” is a person who—
- (a) is under the age of 26 years,
  - (b) was on that person’s sixteenth birthday or at any subsequent time looked after by a local authority, and
  - (c) is no longer looked after by a local authority; and “looked after” is to be construed in accordance with sections 17(6) (duty of local authority to child looked after by them) and 29(7) (after-care) of the Children (Scotland) Act 1995,
- “charity” has the meaning given in section 106 of the Charities and Trustee Investment (Scotland) Act 2005, and
- “veteran” means a person who has served—
- (a) for at least one day in Her Majesty’s Armed Forces (regular and reserve), or
  - (b) as a member of the Merchant Navy on a civilian vessel while supporting the Armed Forces.]

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