

## SCHEDULE 2

(introduced by section 2)

### PROTECTION AGAINST EVICTION

#### *Eviction from residential properties: restrictions on enforcement*

- 1 (1) Where a decree for removing is granted in proceedings raised after [this paragraph](#) comes into force, no person may—
  - (a) serve a charge for removing in respect of the decree,
  - (b) execute the decree.
- (2) Where a decree of removing is or was granted in proceedings raised before [this paragraph](#) comes into force in relation to an eviction notice served on or after 6 September 2022 or, in proceedings raised on or after that date (and before this paragraph comes into force) without the need for an eviction notice, no person may—
  - (a) if a charge for removing has not been served in respect of the decree, serve any such charge,
  - (b) if the decree has not been executed, execute the decree.
- (3) Sub-paragraphs (1) and (2) apply until the earlier of—
  - (a) the end of a period of 6 months beginning with the day on which the decree for removing is or was granted,
  - (b) the expiry or suspension of this paragraph in accordance with [Part 2](#).
- (4) In a case where the decree for removing relates to a student residential tenancy, sub-paragraphs (1) and (2) do not apply where the decree is or was granted in respect of circumstances which are the same as those described in either of the following paragraphs—
  - (a) [paragraph 2](#) (criminal behaviour),
  - (b) [paragraph 3](#) (anti-social behaviour).
- (5) In any other case, sub-paragraphs (1) and (2) do not apply where the decree for removing is or was granted on the basis of the application of—
  - (a) any of the following paragraphs of schedule 3 of the 2016 Act—
    - (i) paragraph 1A (intent to sell property to alleviate financial hardship),
    - (ii) paragraph 2 (property to be sold by lender),
    - (iii) paragraph 4A (intent to live in property to alleviate financial hardship),
    - (iv) paragraph 8 (not an employee),
    - (v) paragraph 10 (tenant not occupying let property),
    - (vi) paragraph 12A (substantial rent arrears),
    - (vii) paragraph 13 (criminal behaviour),
    - (viii) paragraph 14 (anti-social behaviour),
    - (ix) paragraph 15 (association with person who has relevant conviction or engaged in relevant anti-social behaviour),
  - (b) any of the following paragraphs of schedule 2 of the 2001 Act—
    - (i) paragraph 1 (rent arrears) but only so far as it relates to rent lawfully due from the tenant which has not been paid and the amount of such rent specified in the decree is equal to or greater than £2,250,
    - (ii) paragraph 2 (conviction for certain offences),

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- (iii) paragraph 5 (tenant absent or not occupying house),
  - (iv) paragraph 7 (anti-social behaviour or harassment),
  - (v) paragraph 8 (nuisance, annoyance or harassment),
  - (vi) paragraph 10 (demolition of, or substantial work on, the property),
  - (vii) paragraph 14 (islands council as education authority),
  - (c) any of the following Grounds in schedule 5 of the 1988 Act—
    - (i) Ground 1A (intent to live in house to alleviate financial hardship),
    - (ii) Ground 2 (house to be sold by lender),
    - (iii) Ground 8A (substantial rent arrears),
    - (iv) Ground 15 (conviction for certain offences, acting in an anti-social manner or pursuing a course of anti-social conduct),
    - (v) Ground 17 (employment with landlord ceases), or
  - (d) any of the following Cases in, or paragraphs of, schedule 2 of the 1984 Act—
    - (i) Case 1A (substantial rent arrears),
    - (ii) Case 2 (nuisance, annoyance or conviction for using or allowing dwelling-house to be used for immoral or illegal purposes),
    - (iii) Case 7 (employment with landlord ceases),
    - (iv) Case 8A (intent to live in house to alleviate financial hardship),
    - (v) paragraph (c)(vi) in Case 11 (owner-occupier’s house to be sold by lender),
    - (vi) paragraph (c)(iv) in Case 12 (owner’s house to be sold by lender).
- (6) In a case where [sub-paragraph \(1\)](#) or [\(2\)](#) has effect in relation to—
- (a) an eviction order issued under section 51 of the 2016 Act after this paragraph comes into force, that section has effect in relation to the order as if for subsection (4) there were substituted—
 

“(4) Despite any provision by the Tribunal in the order, the tenancy in question is terminated only if the landlord recovers possession of the let property in pursuance of the order.”,
  - (b) an order for recovery of possession made under section 16 of the 2001 Act after this paragraph comes into force, that section has effect in relation to the order as if—
    - (i) in subsection (5), paragraph (a) were repealed,
    - (ii) after that subsection there were inserted—
 

“(5ZA) Despite any provision by the court in the order, the tenancy in question is terminated only if the landlord recovers possession of the house in pursuance of the order.”,
    - (iii) in subsection (5A), paragraphs (a) and (b) were repealed,
    - (iv) in subsection (6), the words “and subsection (5)(a) does not apply in such a case” were repealed,
  - (c) an order for recovery of possession made under section 36 of the 2001 Act after this paragraph comes into force, that section has effect in relation to the order as if—
    - (i) in subsection (6), paragraph (a) were repealed, and
    - (ii) after that subsection there were inserted—

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“(6ZA) Despite any provision by the court in the order, the tenancy in question is terminated only if the landlord recovers possession of the house in pursuance of the order.”.

- (7) Any period during which [sub-paragraph \(1\)](#) or [\(2\)](#) has effect in relation to an order mentioned in [paragraph \(c\)](#) of [section 16\(5A\)](#) of the 2001 Act (powers of court in possession proceedings) is to be disregarded for the purposes of calculating the period mentioned in that paragraph.
- (8) The Scottish Ministers may by regulations modify this paragraph to add, amend or remove circumstances in which [sub-paragraph \(1\)](#) or [\(2\)](#) does not apply.
- (9) Regulations under [sub-paragraph \(8\)](#) are subject to the affirmative procedure.
- (10) In [this paragraph](#)—
- “the 1984 Act” means the Rent (Scotland) Act 1984,
  - “the 1988 Act” means the Housing (Scotland) Act 1988,
  - “the 2001 Act” means the Housing (Scotland) Act 2001,
  - “the 2007 Act” means the Bankruptcy and Diligence etc. (Scotland) Act 2007,
  - “the 2016 Act” means the Private Housing (Tenancies) (Scotland) Act 2016,
  - “charge for removing” means a charge to remove under [section 216\(1\)](#) (service of charge before removing) of the 2007 Act in respect of a decree for removing,
  - “decree for removing” means—
    - (a) a decree of removing and warrant of ejection obtained in an action of removing in respect of—
      - (i) a protected tenancy (including a short tenancy) or a statutory tenancy under the 1984 Act, or
      - (ii) a student residential tenancy,
    - (b) a decree obtained by virtue of a summary application for removing under [section 38](#) of the Sheriff Courts (Scotland) Act 1907 in respect of a student residential tenancy,
    - (c) a decree for recovery of possession of heritable property obtained by virtue of a summary cause under [section 35\(1\)\(c\)](#) of the Sheriff Courts (Scotland) Act 1971 in respect of—
      - (i) a Scottish secure tenancy or a short Scottish secure tenancy under the 2001 Act, or
      - (ii) a student residential tenancy,
    - (d) an order for possession (within the meaning of [section 55\(1\)](#) of the 1988 Act) in respect of an assured tenancy (including a short assured tenancy) under the 1988 Act, or
    - (e) an eviction order issued under [section 51](#) of the 2016 Act,
  - “eviction notice” means—
    - (a) in the case of a short tenancy under the 1984 Act, a notice under [section 14\(2\)](#) of that Act,
    - (b) in the case of an assured tenancy (including a short assured tenancy) under the 1988 Act, a notice under [section 19](#) of that Act,
    - (c) in the case of a short assured tenancy under the 1988 Act, a notice under [section 33\(1\)\(d\)](#) of that Act,
    - (d) in the case of a Scottish secure tenancy or a short Scottish secure tenancy under the 2001 Act, a notice under [section 14\(2\)](#) of that Act,

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- (e) in the case of a short Scottish secure tenancy under the 2001 Act, a notice under section 36(2) of that Act,
  - (f) in the case of a private residential tenancy under the 2016 Act, a notice under section 50 or 61 of that Act,
  - (g) in the case of a student residential tenancy a notice to quit (however expressed) which must, whether under the tenancy or otherwise, be served on the tenant before the tenancy can be terminated by the landlord,
- “student” has the same meaning as in paragraph 5 of schedule 1 of the 2016 Act, “student residential tenancy” means a tenancy—
- (a) the purpose of which is to confer on the tenant the right to occupy the let property while the tenant is a student, and
  - (b) to which paragraph 5(2) or (3) of [schedule 1](#) (tenancies which cannot be private residential tenancies) of the 2016 Act applies.

*Student residential tenancies: criminal behaviour*

- 2 (1) For the purpose of [paragraph 1\(4\)\(a\)](#), the circumstances are as follows.
- (2) During the tenancy, the tenant receives a relevant conviction.
- (3) In [sub-paragraph \(2\)](#), “a relevant conviction” means a conviction for an offence—
- (a) which was committed by using, or allowing the use of, the let property for an immoral or illegal purpose, or
  - (b) which—
    - (i) was committed within, or in the locality of, the let property, and
    - (ii) is punishable by imprisonment.

*Student residential tenancies: anti-social behaviour*

- 3 (1) For the purpose of [paragraph 1\(4\)\(b\)](#), the circumstances are as follows.
- (2) During the tenancy—
- (a) the tenant behaved in an anti-social manner in relation to another person, and
  - (b) the behaviour was within, or in the locality of, the let property.
- (3) For the purpose of [sub-paragraph \(2\)](#), a person is to be regarded as behaving in an anti-social manner in relation to another person by—
- (a) doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or
  - (b) pursuing in relation to the other person a course of conduct which—
    - (i) causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or
    - (ii) amounts to harassment of the other person.
- (4) In [sub-paragraph \(3\)](#)—
- “conduct” includes speech,
  - “course of conduct” means conduct on two or more occasions,
  - “harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997.

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*Safeguards for landlords: substantial rent arrears and financial hardship*

- 4 (1) The Private Housing (Tenancies) (Scotland) Act 2016 applies in accordance with the modifications in this paragraph.
- (2) Section 54(3)(b) has effect as if after sub-paragraph (iii) there were inserted—  
“(iia) that the tenant has substantial rent arrears,”.
- (3) Schedule 3 has effect as if—  
(a) after paragraph 1 there were inserted—

*“Landlord intends to sell property to alleviate financial hardship*

- 1A (1) It is an eviction ground that the landlord intends to sell the let property to alleviate financial hardship.
- (2) The First-tier Tribunal may find that the ground named by [sub-paragraph \(1\)](#) applies if—  
(a) the landlord—  
(i) is entitled to sell the let property,  
(ii) is suffering financial hardship, and  
(iii) intends to alleviate that hardship by selling the let property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and  
(b) the Tribunal is satisfied that it is reasonable to issue an eviction order.
- (3) Evidence tending to show that the landlord has the intention mentioned in [sub-paragraph \(2\)\(a\)\(iii\)](#) includes (for example)—  
(a) a letter of advice from an approved money advisor or a local authority debt advice service,  
(b) a letter of advice from an independent financial advisor,  
(c) a letter of advice from a chartered accountant,  
(d) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,  
(e) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market, and  
(f) an affidavit stating that the landlord has that intention.”.
- (b) after paragraph 4 there were inserted—

*“Landlord intends to live in property to alleviate financial hardship*

- 4A (1) It is an eviction ground that the landlord intends to live in the let property to alleviate financial hardship.
- (2) The First-tier Tribunal may find that the ground named by [sub-paragraph \(1\)](#) applies if—  
(a) the landlord—  
(i) is suffering financial hardship, and

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- (ii) intends to alleviate that hardship by occupying the let property as the landlord's only or principal home for at least 3 months, and
  - (b) the Tribunal is satisfied that it is reasonable to issue an eviction order.
- (3) References to the landlord in this paragraph—
  - (a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,
  - (b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.
- (4) Evidence tending to show that the landlord has the intention mentioned in [sub-paragraph \(2\)\(a\)\(ii\)](#) includes (for example)—
  - (a) a letter of advice from an approved money advisor or a local authority debt advice service,
  - (b) a letter of advice from an independent financial advisor,
  - (c) a letter of advice from a chartered accountant,
  - (d) an affidavit stating that the landlord has that intention.”,
- (c) after paragraph 12 there were inserted—

*“Substantial rent arrears*

- 12A (1) It is an eviction ground that the tenant has substantial rent arrears.
- (2) The First-tier Tribunal may find that the ground named by [sub-paragraph \(1\)](#) applies if—
- (a) the tenant has accrued rent arrears under the tenancy in respect of one or more periods,
  - (b) the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months' rent under the tenancy when notice to leave is given to the tenant on this ground in accordance with section 52(3), and
  - (c) the Tribunal is satisfied that it is reasonable to issue an eviction order.
- (3) In deciding under [sub-paragraph \(2\)](#) whether it is reasonable to issue an eviction order, the Tribunal is to consider—
- (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,
  - (b) the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers under paragraph 12(4)(b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).

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- (4) For the purpose of this paragraph—
- (a) references to a relevant benefit are to—
    - (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 ([S.I. 2006/213](#)),
    - (ii) a payment on account awarded under regulation 93 of those Regulations,
    - (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
    - (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,
  - (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”.
- 5 (1) The Housing (Scotland) Act 1988 applies in accordance with the modifications in this paragraph.
- (2) Section 18 has effect as if after subsection (4) there were inserted—
- “(4ZA) In deciding under subsection (4) whether Ground 1A in schedule 5 is established, evidence tending to show that the landlord has the intention mentioned in the Ground includes (for example)—
- (a) a letter of advice from an approved money advisor or a local authority debt advice service,
  - (b) a letter of advice from an independent financial advisor,
  - (c) a letter of advice from a chartered accountant,
  - (d) an affidavit stating that the landlord has that intention.
- (4ZB) In deciding under subsection (4) whether it is reasonable to make an order for possession on Ground 8A in schedule 5, the First-tier Tribunal is to consider—
- (a) whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit,
  - (b) the extent to which the landlord has complied with the pre-action protocol specified by the Scottish Ministers under subsection (4A) (b) (and continued in force by virtue of section 49 of the Coronavirus (Recovery and Reform) (Scotland) Act 2022).
- (4ZC) For the purpose of [subsection \(4ZB\)](#)—
- (a) references to a relevant benefit are to—
    - (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 ([S.I. 2006/213](#)),
    - (ii) a payment on account awarded under regulation 93 of those Regulations,
    - (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

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- (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,
  - (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.”.
- (3) Section 19(4)(a) has effect as if—
- (a) after “Grounds 1,” there were inserted “1A,” and
  - (b) after “7,” there were inserted “8A.”
- (4) Schedule 5 has effect as if—
- (a) after Ground 1 there were inserted—
    - “Ground 1A*
    - The landlord who is seeking possession of the let house—
    - (a) is suffering financial hardship, and
    - (b) intends to alleviate that hardship by occupying the let house as the landlord’s only or principal home for at least 3 months.
    - In this Ground, references to the landlord—
    - (a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,
    - (b) in a case where the landlord holds the landlord’s interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.”,
  - (b) after Ground 8 there were inserted—
    - “Ground 8A*
    - The tenant has accrued rent arrears under the tenancy in respect of one or more periods, and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when notice is served under section 19 on this ground or, if dispensed with, when proceedings are raised for an order of possession on this ground.”.
- 6 (1) The Rent (Scotland) Act 1984 applies in accordance with the modifications in this paragraph.
- (2) Section 11 has effect as if after subsection (1) there were inserted—
- “(1A) In deciding under subsection (1) whether it is reasonable to make an order for possession in the circumstances as are specified in Case 1A in schedule 2, the First-tier Tribunal is to consider whether the tenant being in arrears of rent over the period or periods in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.
  - (1B) For the purpose of [subsection \(1A\)](#)—
  - (a) references to a relevant benefit are to—
  - (i) a rent allowance or rent rebate under the Housing Benefit Regulations 2006 ([S.I. 2006/213](#)),
  - (ii) a payment on account awarded under regulation 93 of those Regulations,



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- (iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,
    - (iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,
  - (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.
- (1C) In deciding under subsection (1) whether the circumstances as are specified in Case 8A in schedule 2 are established, evidence tending to show that the landlord has the intention mentioned in the Case includes (for example)—
  - (a) a letter of advice from an approved money advisor or a local authority debt advice service,
  - (b) a letter of advice from an independent financial advisor,
  - (c) a letter of advice from a chartered accountant,
  - (d) an affidavit stating that the landlord has that intention.”.
- (3) Schedule 2 has effect as if—
  - (a) after Case 1 there were inserted—

*“Case 1A*

The tenant has accrued rent arrears under the tenancy in respect of one or more periods, and the cumulative amount of those rent arrears equates to, or exceeds, an amount that is the equivalent of 6 months’ rent under the tenancy when proceedings for an order for possession are raised on the basis of these circumstances.”,
  - (b) after Case 8 there were inserted—

*“Case 8A*

The landlord who is seeking possession of the let house—

    - (a) is suffering financial hardship, and
    - (b) intends to alleviate that hardship by occupying the let house as the landlord’s only or principal home for at least 3 months.

In this Case, references to the landlord—

    - (a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,
    - (b) in a case where the landlord holds the landlord’s interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.”.

*Unlawful eviction: notification and determination of damages, etc.*

- 7
- (1) The Housing (Scotland) Act 1988 applies in accordance with the modifications in sub-paragraphs (3) and (4).
  - (2) The modifications set out in this paragraph and paragraph 8 have no effect in relation to actions taken by (or on behalf of) a landlord before this paragraph comes into force which result in the landlord being liable for damages by virtue of section 36(3) of the Housing (Scotland) Act 1988 (damages for unlawful eviction).
  - (3) Section 36 (damages for unlawful eviction) has effect as if—

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- (a) in subsection (3), for “assessed on the basis set out in” there were substituted “determined in accordance with”,
- (b) subsection (6B) were repealed,
- (c) after subsection (7) there were inserted—

“(7A) Where the court makes an order awarding damages to a former residential occupier by virtue of subsection (3), the court must send a copy of the order to the Scottish Housing Regulator.

(7B) Where the First-tier Tribunal makes an order awarding damages to a former residential occupier by virtue of subsection (3), the First-tier Tribunal must send a copy of the order to—

- (a) the chief constable of the Police Service of Scotland, and
- (b) any local authority with which the landlord (or where there is more than one, each of them) is registered as a landlord.

(7C) For the purpose of subsection (7B), a person is registered as a landlord with a local authority if the person is entered in the register prepared and maintained by the local authority for the purpose of Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004.”.

- (4) For section 37 (the measure of damages) there were substituted—

**“37 Determination of damages**

- (1) For the purpose of section 36(3), the damages that the court or, as the case may be, the First-tier Tribunal may determine as payable are to be an amount which is—

- (a) not less than 3 months’ rent, and
- (b) not more than 36 months’ rent,

taking into account the manner of the unlawful eviction and the impact that it has had on the tenant.

- (2) But, the court or, as the case may be, the First-tier Tribunal may reduce the amount of damages that would otherwise be payable under subsection (1) to an amount lower than 3 months’ rent if it considers it appropriate to do so having regard to all the circumstances of the case.

- (3) Where two or more persons jointly were the landlord, the court or, as the case may be, the First-tier Tribunal may determine that—

- (a) damages are payable by all, some or only one of the former landlords,
- (b) each former landlord must pay a specified amount of damages, but the cumulative total of each of the amounts must not exceed 36 months’ rent, or
- (c) the former landlords are jointly and severally liable in respect of the whole amount of damages payable.

- (4) In this section, “rent” means—

- (a) the amount that was payable in rent under the tenancy immediately before it ended, or
- (b) in a case where two or more persons jointly were the tenant under the tenancy immediately before it ended, the amount mentioned in

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paragraph (a) divided by the number of persons who were at that time joint tenants under the tenancy.”.

- 8 (1) The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (S.S.I. 2017/328) apply in accordance with the modification in sub-paragraph (2).
- (2) In the schedule, paragraph 69(a) has effect as if for paragraph (iv) there were substituted—

“(iv) the amount of damages sought, and”.