

Status: Point in time view as at 01/02/1991.

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SCHEDULES

SCHEDULE 5

Section 18.

GROUND FOR POSSESSION OF HOUSES LET ON ASSURED TENANCIES

PART I

GROUND ON WHICH SHERIFF MUST ORDER POSSESSION

Ground 1

Not later than the beginning of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this Ground or the sheriff is of the opinion that it is reasonable to dispense with the requirement of notice and (in either case)—

- (a) at any time before the beginning of the tenancy, the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them occupied the house as his only or principal home; or
- (b) the landlord who is seeking possession or, in the case of joint landlords seeking possession, at least one of them requires the house as his or his spouse's only or principal home, and neither the landlord (or, in the case of joint landlords, any one of them) nor any other person who, as landlord, derived title from the landlord who gave the notice mentioned above acquired the landlord's interest in the tenancy for value.

Ground 2

The house is subject to a heritable security granted before the creation of the tenancy and—

- (a) as a result of a default by the debtor the creditor is entitled to sell the house and requires it for the purpose of disposing of it with vacant possession in exercise of that entitlement; and
- (b) either notice was given in writing to the tenant not later than the date of commencement of the tenancy that possession might be recovered on this Ground or the sheriff is satisfied that it is reasonable to dispense with the requirement of notice.

Ground 3

The house is let under a tenancy for a specified period not exceeding eight months and—

- (a) not later than the date of commencement of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered under this Ground; and
- (b) the house was, at some time within the period of 12 months ending on that date, occupied under a right to occupy it for a holiday;

and for the purposes of this Ground a tenancy shall be treated as being for a specified period—

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- (i) not exceeding eight months, if it is determinable at the option of the landlord (other than in the event of an irritancy being incurred) before the expiration of eight months from the commencement of the period of the tenancy; and
- (ii) exceeding eight months, if it confers on the tenant an option for renewal of the tenancy for a period which, together with the original period, exceeds eight months, and it is not determinable as mentioned in paragraph (i) above.

Ground 4

Where the house is let under a tenancy for a specified period not exceeding 12 months and—

- (a) not later than the date of commencement of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this Ground; and
- (b) at some time within the period of 12 months ending on that date the house was subject to such a tenancy as is referred to in paragraph 7(1) of Schedule 4 to this Act;

and for the purposes of this Ground a tenancy shall be treated as being for a specified period—

- (i) not exceeding 12 months, if it is determinable at the option of the landlord (other than in the event of an irritancy being incurred) before the expiration of 12 months from the commencement of the period of the tenancy; and
- (ii) exceeding 12 months, if it confers on the tenant an option for renewal of the tenancy for a period which, together with the original period, exceeds 12 months, and it is not determinable as mentioned in paragraph (i) above.

Ground 5

The house is held for the purpose of being available for occupation by a minister or a full-time lay missionary of any religious denomination as a residence from which to perform the duties of his office and—

- (a) not later than the beginning of the tenancy the landlord (or, where there are joint landlords, any of them) gave notice in writing to the tenant that possession might be recovered on this ground; and
- (b) the sheriff is satisfied that the house is required for occupation by such a minister or missionary as such a residence.

Ground 6

The landlord who is seeking possession or, where the immediate landlord is a registered housing association within the meaning of the ^{M1}Housing Associations Act 1985, a superior landlord intends to demolish or reconstruct the whole or a substantial part of the house or to carry out substantial works on the house or any part thereof or any building of which it forms part and the following conditions are fulfilled (and in those conditions the landlord who is intending to carry out the demolition, reconstruction or substantial works is referred to as “the relevant landlord”)—

- (a) either—
 - (i) the relevant landlord (or, in the case of joint relevant landlords, any one of them) acquired his interest in the house before the creation of the tenancy; or
 - (ii) none of the following persons acquired his interest in the house for value—
- (A) the relevant landlord (or, in the case of joint relevant landlords, any one of them);
- (B) the immediate landlord (or, in the case of joint immediate landlords, any one of them), where he acquired his interest after the creation of the tenancy;

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- (C) any person from whom the relevant landlord (or any one of joint relevant landlords) derives title and who acquired his interest in the house after the creation of the tenancy; and
- (b) the relevant landlord cannot reasonably carry out the intended work without the tenant giving up possession of the house because—
 - (i) the work can otherwise be carried out only if the tenant accepts a variation in the terms of the tenancy and the tenant refuses to do so;
 - (ii) the work can otherwise be carried out only if the tenant accepts an assured tenancy of part of the house and the tenant refuses to do so; or
 - (iii) the work can otherwise be carried out only if the tenant accepts either a variation in the terms of the tenancy or an assured tenancy of part of the house or both, and the tenant refuses to do so; or
 - (iv) the work cannot otherwise be carried out even if the tenant accepts a variation in the terms of the tenancy or an assured tenancy of only part of the house or both.

Marginal Citations

M1 1985 c. 69.

Marginal Citations

M1 1985 c. 69.

Ground 7

The tenancy has devolved under the will or intestacy of the former tenant and the proceedings for the recovery of possession are begun not later than twelve months after the death of the former tenant or, if the sheriff so directs, after the date on which, in his opinion, the landlord (or, where there are joint landlords, any of them) became aware of the former tenant's death.

For the purposes of this Ground, the acceptance by the landlord of rent from a new tenant after the death of the former tenant shall not be regarded as creating a new tenancy, unless the landlord agrees in writing to a change (as compared with the tenancy before the death) in the amount of the rent, the period of the tenancy, the premises which are let or any other term of the tenancy.

Ground 8

Both at the date of the service of the notice under section 19 of this Act relating to the proceedings for possession and at the date of the hearing, at least three months rent lawfully due from the tenant is in arrears.

PART II

GROUND ON WHICH SHERIFF MAY ORDER POSSESSION

Ground 9

Suitable alternative accommodation is available for the tenant or will be available for him when the order for possession takes effect.

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Ground 10

The following conditions are fulfilled—

- (a) the tenant has given a notice to quit which has expired; and
- (b) the tenant has remained in possession of the whole or any part of the house; and
- (c) proceedings for the recovery of possession have been begun not more than six months after the expiry of the notice to quit; and
- (d) the tenant is not entitled to possession of the house by virtue of a new tenancy.

Ground 11

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

Ground 12

Some rent lawfully due from the tenant—

- (a) is unpaid on the date on which the proceedings for possession are begun; and
- (b) except where subsection (1)(b) of section 19 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.

Ground 13

Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 14

The condition of the house or of any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any one of joint tenants or any person residing or lodging with him or any sub-tenant of his; and, in the case of acts of waste by, or the neglect or default of, a person lodging with a tenant or a sub-tenant of his, the tenant has not, before the making of the order in question, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

In this Ground, “the common parts” means any part of a building containing the house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other houses.

Ground 15

The tenant or any other person residing or lodging with him in the house has been guilty of conduct in or in the vicinity of the house which is a nuisance or annoyance, or has been convicted of using the house or allowing the house to be used for immoral or illegal purposes.

Ground 16

The condition of any furniture provided for use under the tenancy has deteriorated owing to ill-treatment by the tenant or any other person residing or lodging with him in the house and, in the case of ill-treatment by a person lodging with the tenant or by a sub-tenant of his, the

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tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 17

The house was let to the tenant in consequence of his employment by the landlord seeking possession or a previous landlord under the tenancy and the tenant has ceased to be in that employment.

[^{F1}For the purposes of this ground, at a time when the landlord is or was the Secretary of State, employment by a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990, shall be regarded as employment by the Secretary of State.]

Textual Amendments

F1 Sch. 5 Ground 17: paragraph added (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 60(2), [Sch. 8 Pt. II para. 11](#); S.I. 1990/1329, art. 2(8), [Sch. 3](#)

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PART III

SUITABLE ALTERNATIVE ACCOMMODATION

- 1 For the purposes of Ground 9 above, a certificate of the local authority for the area in which the house in question is situated, or, where the house in question is in a new town, of the development corporation established for its purposes under the ^{M2}New Towns (Scotland) Act 1968 or, in any case, of Scottish Homes, certifying that the authority, the Corporation or, as the case may be, Scottish Homes, will provide suitable alternative accommodation for the tenant by a date specified in the certificate, shall be conclusive evidence that suitable alternative accommodation will be available for him by that date.

Marginal Citations

M2 [1968 c.16.](#)

- 2 Where no such certificate as is mentioned in paragraph 1 above is produced to the sheriff, accommodation shall be deemed to be suitable for the purposes of Ground 9 above if it consists of either—
- (a) premises which are to be let as a separate dwelling such that they will then be let on an assured tenancy, other than—
 - (i) a tenancy in respect of which notice is served not later than the beginning of the tenancy that possession might be recovered on any of Grounds 1 to 5 above; or
 - (ii) a short assured tenancy, within the meaning of Part II of this Act; or

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- (b) premises to be let as a separate dwelling on terms which will, in the opinion of the sheriff, afford to the tenant security of tenure reasonably equivalent to the security afforded by Part II of this Act in the case of an assured tenancy of a kind mentioned in paragraph (a) above,
 and, in the opinion of the sheriff, the accommodation fulfils the relevant conditions as defined in paragraph 3 below.
- 3 (1) For the purposes of paragraph 2 above, the relevant conditions are that the accommodation is reasonably suitable to the needs of the tenant and his family as regards proximity to place of work, and either—
- (a) similar as regards rental and extent to the accommodation afforded by houses provided in the neighbourhood by any local authority or development corporation or by Scottish Homes for persons whose needs as regards extent are, in the opinion of the sheriff, similar to those of the tenant and of his family; or
- (b) reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent and character; and
- that, if any furniture was provided for use under the assured tenancy in question, furniture is provided for use in the accommodation which is either similar to that so provided or is reasonably suitable to the needs of the tenant and his family.
- (2) For the purposes of sub-paragraph (1)(a) above, a certificate of a local authority or development corporation or of Scottish Homes stating—
- (a) the extent of the accommodation afforded by houses provided by that body to meet the needs of tenants with families of such number as may be specified in the certificate; and
- (b) the amount of the rent charged by that body for houses affording accommodation of that extent,
- shall be conclusive evidence of the facts so stated.
- 4 Accommodation shall not be deemed to be suitable to the needs of the tenant and his family if the result of their occupation of the accommodation would be that it would be an overcrowded house for the purposes of Part VII of the ^{M3}Housing (Scotland) Act 1987.

Marginal Citations

M3 1987 c. 26.

- 5 Any document purporting to be a certificate of a local authority or development corporation named therein or of Scottish Homes issued for the purposes of this Part of this Schedule and to be signed by the proper officer of that body shall be received in evidence and, unless the contrary is shown, shall be deemed to be such a certificate without further proof.
- 6 Local authorities, development corporations and Scottish Homes may, for the purposes of this Part of this Schedule, furnish particulars as to the availability, extent and character of alternative accommodation.
- 7 In this Part of this Schedule “local authority” means an islands or district council.

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PART IV

NOTICES RELATING TO RECOVERY OF POSSESSION

- 8 (1) If, not later than the beginning of a tenancy (in this paragraph referred to as “the earlier tenancy”), the landlord gives such a notice in writing to the tenant as is mentioned in any of Grounds 1 to 5 in Part I of this Schedule, then, for the purposes of the Ground in question and any further application of this paragraph, that notice shall also have effect as if it had been given immediately before the beginning of any later tenancy falling within sub-paragraph (2) below.
- (2) Subject to sub-paragraph (3) below, sub-paragraph (1) above applies to a later tenancy—
- (a) which takes effect immediately on termination of the earlier tenancy; and
 - (b) which is granted (or deemed to be granted) to the person who was the tenant under the earlier tenancy immediately before it was terminated; and
 - (c) which is of substantially the same house as the earlier tenancy.
- (3) Sub-paragraph (1) above does not apply in relation to a later tenancy if, not later than the beginning of the tenancy, the landlord gave notice in writing to the tenant that the tenancy is not one in respect of which possession can be recovered on the ground in question.
- 9 Where paragraph 8(1) above has effect in relation to a notice given as mentioned in Ground 1 in Part I of this Schedule, the reference in paragraph (b) of that ground to the landlord’s interest in the tenancy is a reference to such an interest in the earlier tenancy and in any later tenancy falling within paragraph 8(2) above.
- 10 Where paragraph 8(1) above has effect in relation to a notice given as mentioned in Ground 3 or Ground 4 in Part I of this Schedule, any second or subsequent tenancy in relation to which the notice has effect shall be treated for the purpose of that Ground as beginning at the beginning of the tenancy in respect of which the notice was actually given.

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