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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 346 (C. 26)**

**HOUSING**

**The Private Housing (Tenancies) (Scotland) Act  
2016 (Commencement No. 3, Amendment, Saving  
Provision and Revocation) Regulations 2017**

<i>Made</i>	- - - -	<i>24th October 2017</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>26th October 2017</i>
<i>Coming into force</i>	- -	<i>1st December 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 79(2), (3) and (4) of the Private Housing (Tenancies) (Scotland) Act 2016<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 3, Amendment, Saving Provision and Revocation) Regulations 2017 and come into force on 1st December 2017.

(2) In these Regulations—

“the 1988 Act” means the Housing (Scotland) Act 1988<sup>(2)</sup>; and

“the 2016 Act” means the Private Housing (Tenancies) (Scotland) Act 2016.

**Appointed day**

**2.**—(1) Subject to paragraph (2), the day appointed for the coming into force of the provisions of the 2016 Act specified in column 1 of the table in the schedule (the subject matter of which is specified in column 2 of that table) is 1st December 2017.

(2) Where a purpose is specified in column 3 of the table in the schedule in relation to any provision, that provision comes into force in accordance with paragraph (1) for that purpose only.

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(1) 2016 asp 19.  
(2) 1988 c.43.

### **Amendment of the Rent (Scotland) Act 1984**

3.—(1) The Rent (Scotland) Act 1984(3) is amended in accordance with paragraph (2).

(2) In section 3B(1)(a)(4) for “the day that section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 comes into force” substitute “1 December 2017”.

### **Amendment of the Housing (Scotland) Act 1988**

4.—(1) The 1988 Act is amended in accordance with paragraphs (2) and (3).

(2) In section 12(1A)(5) for “the day that section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 comes into force” substitute “1 December 2017”.

(3) In section 31A(1)(a)(6) for “the day that section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 comes into force” substitute “1 December 2017”.

### **Amendment of the Private Housing (Tenancies) (Scotland) Act 2016**

5.—(1) The 2016 Act is amended in accordance with paragraph (2).

(2) Section 8(5) is repealed.

### **Saving provision**

6. Despite the amendments made by section 75 and paragraphs 1, 2 and 3 of schedule 5 of the 2016 Act, sections 12, 32(7) and 33(8) of the 1988 Act have effect on and after 1st December 2017 as they had effect immediately before that date but only in relation to—

- (a) a short assured tenancy (within the meaning given in section 32(1) of the 1988 Act) which was created before 1st December 2017 and continues in existence on that date;
- (b) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which came into being before 1st December 2017 and continues in existence on that date; and
- (c) a new contractual tenancy (within the meaning given in section 32(3)(b) of the 1988 Act) which comes into being on or after 1st December 2017 at the end of a short assured tenancy which is a short assured tenancy in a case mentioned in paragraph (a) or (b).

### **Revocation**

7. The Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 2 and Saving Provision) Regulations 2017(9) are revoked.

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(3) [1984 c.58](#).

(4) Section 3B is inserted by paragraph 4 of schedule 5 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). Paragraph 4 of schedule 5 of the 2016 Act comes into force on 1st December 2017 by virtue of these Regulations.

(5) Section 12(1A) is inserted by paragraph 1(3) of schedule 5 of the 2016 Act. Section 12 is further amended by paragraphs 1(2) and 3(2) of schedule 5 of the 2016 Act. Paragraphs 1(2) and (3) and 3 of schedule 5 of the 2016 Act come into force on 1st December 2017 by virtue of these Regulations.

(6) Section 31A is inserted by paragraph 5 of schedule 5 of the 2016 Act. Paragraph 5 of schedule 5 of the 2016 Act comes into force on 1st December 2017 by virtue of these Regulations.

(7) Section 32 is amended by paragraph 2(2) of schedule 5 of the 2016 Act. Paragraph 2(2) of schedule 5 of the 2016 Act comes into force on 1st December 2017 by virtue of these Regulations.

(8) Section 33 was previously amended by section 34 of the Private Rented Housing (Scotland) Act 2011 ([asp 14](#)) and paragraph 44 of schedule 1 of the Housing (Scotland) Act 2014 ([asp 14](#)). The amendment made by paragraph 44 of schedule 1 of that Act comes into force on 1st December 2017 by virtue of [S.S.I. 2017/330](#). Section 33 is further amended by paragraph 2(3) of schedule 5 of the 2016 Act. Paragraph 2(3) of schedule 5 of the 2016 Act comes into force on 1st December 2017 by virtue of these Regulations.

(9) [S.S.I. 2017/293](#).

St Andrew's House, Edinburgh  
24th October 2017

*KEVIN STEWART*  
Authorised to sign by the Scottish Ministers

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE

Regulation 2

## PROVISIONS OF THE 2016 ACT COMING INTO FORCE ON 1st DECEMBER 2017

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the 2016 Act</i>	<i>Subject matter</i>	<i>Purpose</i>
Section 1	Meaning of private residential tenancy	
Section 2	Interpretation of section 1 (of the 2016 Act)	
Section 3	Writing not required to constitute private residential tenancy	
Section 4	Extended meaning of tenancy in the 2016 Act	
Section 5	Extended meaning of tenancy and related expressions in other enactments	
Section 6	Power to modify schedule 1	
Section 7	Statutory terms of tenancy	Insofar as not already in force
Section 9	Protection of terms allowing use of shared living accommodation	
Section 10	Duty to provide written terms of tenancy	
Section 13	Prohibition on charging for information	
Section 14	Application to First-tier Tribunal to draw up terms	
Section 15	First-tier Tribunal's power to draw up terms	
Section 16	First-tier Tribunal's power to sanction failure to provide information	
Section 17	Meaning of notice period in sections 14 and 16 (of the 2016 Act)	Insofar as not already in force
Section 18	Method by which rent may be increased	
Section 19	Frequency with which rent may be increased	
Section 20	No premiums, advance payments, etc.	
Section 21	Restriction on diligence	
Section 22	Landlord's power to increase rent	Insofar as not already in force
Section 23	Modification of rent-increase notice by parties	
Section 24	Tenant's right to refer increase to rent officer	Insofar as not already in force

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the 2016 Act</i>	<i>Subject matter</i>	<i>Purpose</i>
Section 25	Rent officer's power to set rent	
Section 26	Rent officer's duty to issue provisional order	
Section 27	Rent officer's power to correct final order	
Section 28	Right of appeal to First-tier Tribunal	
Section 29	First-tier Tribunal's power to set rent	
Section 30	Finality of First-tier Tribunal's decision	
Section 31	Liability of over or under paid rent	
Section 32	Determination of open market rent	
Section 33	Withdrawal of referral or appeal	
Section 34(1)	Duty to make information available	
Section 35	Request by local authority that a zone be designated	
Section 36	Scottish Ministers' duty to react to request	
Section 37	Power to designate a zone	
Section 38	Restriction on rent increases within a zone	
Section 39	Limits on power to designate a zone	
Section 40	Procedure for designating a zone: consultation and information	
Section 41	Power to change inflation index	
Section 42	Rent officer's power to allow rent rise in consequence of improvement	
Section 43	Further provision about making and determining an application under section 42 (of the 2016 Act)	Insofar as not already in force
Section 44	No termination by parties except in accordance with Part 5 of the 2016 Act	
Section 45	Landlord's interest transfers with ownership of property	
Section 46	Protection for sub-tenants	
Section 47	Qualification of sub-tenant protection	
Section 48	Tenant's ability to bring tenancy to an end	
Section 49	Requirements for notice to be given by tenant	

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the 2016 Act</i>	<i>Subject matter</i>	<i>Purpose</i>
Section 50	Termination by notice to leave and tenant leaving	
Section 51	First-tier Tribunal's power to issue an eviction order	
Section 52	Applications for eviction orders and consideration of them	
Section 53	First-tier Tribunal's power to disapply protection for sub-tenants	
Section 54	Restriction on applying during the notice period	
Section 55	Restriction on applying 6 months after the notice period expires	
Section 56	Restriction on applying without notifying local authority	
Section 57	Wrongful termination by eviction order	
Section 58	Wrongful termination without eviction order	
Section 59	Wrongful-termination order	
Section 60	Notice to local authority of wrongful-termination order	
Section 61	(Requirements of) Sub-tenancy notice to leave	Insofar as not already in force
Section 62	Requirements of notice to leave and stated eviction ground	Insofar as not already in force
Section 63	Landlord includes lender in some cases	
Section 64	Six month periods	
Section 65	Termination of tenancy on tenant's death	
Section 66	Termination of joint tenant's interest on death	
Section 67	Partner's entitlement to inherit	
Section 68	Other family member's entitlement to inherit	
Section 69	Carer's entitlement to inherit	
Section 70	Interpretation of Part 6 of the 2016 Act	
Section 71	First-tier Tribunal's jurisdiction	

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the 2016 Act</i>	<i>Subject matter</i>	<i>Purpose</i>
Section 72	First-tier Tribunal's duty to report unregistered landlords	
Section 73	Minor errors in documents	
Section 74	Consequential modifications	For the purpose of commencing paragraphs 1 to 4 and 6 to 11 of schedule 4
Section 75	Transitional provision	
Schedule 1	Tenancies which cannot be private residential tenancies	
Schedule 3	Eviction grounds	
Schedule 4, paragraphs 1 to 4 and 6 to 11	Consequential modifications	
Schedule 5	Transition from regimes under earlier enactments	

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring into force certain provisions of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

Regulation 2(1) and the schedule bring into force, on 1st December 2017, sections 1 to 6, 9 and 10, 13 to 16, 18 to 21, 23, 25 to 33, 34(1), 35 to 42, 44 to 60 and 63 to 75. Sections 7, 17, 22, 24, 43, 61 and 62 are commenced insofar as not already in force. Schedules 1, 3 and 5 are commenced. Schedule 4 is commenced under exception of paragraph 5. Paragraph 5 is not being commenced as it is a consequential amendment to section 130B of the Social Security Contributions and Benefits Act 1992 (which ceased to have effect on 1st April 2013) which is not required.

Regulations 3 and 4 amend section 3B(1)(a) of the Rent (Scotland) Act 1984 and sections 12(1A) and 31A(1)(a) of the Housing (Scotland) Act 1988 respectively, so that instead of referring to the day on which section 1 of the 2016 Act comes into force, those provisions specify 1st December 2017 (which is the day on which that section comes into force by virtue of these Regulations). In addition, regulation 5 repeals section 8(5) of the 2016 Act. Section 8(5) is a transitional provision relating to consultation during the period prior to section 1 coming into force.

Regulation 6 is a saving provision in relation to short assured tenancies which have been entered into prior to 1st December 2017 and, in certain circumstances, entered into on or after 1st December 2017.

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Regulation 7 revokes the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 2 and Saving Provision) Regulations 2017, which would have commenced the provisions of the 2016 Act being commenced by these Regulations on the same basis as these Regulations but which did not include provision made by regulations 3, 4 and 5. The Bill for the 2016 Act received Royal Assent on 22nd April 2016. Section 79(1) of the 2016 Act brought into force sections 76 to 80 on the following day.

#### **NOTE AS TO EARLIER COMMENCEMENT REGULATIONS**

*(This note is not part of the Regulations)*

The following provisions of the Private Housing (Tenancies) (Scotland) Act 2016 have been brought into force by commencement regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument No.</i>
Section 7 (partially)	31st October 2016	<a href="#">S.S.I. 2016/298</a>
Section 8	31st October 2016	<a href="#">S.S.I. 2016/298</a>
Section 11	31st October 2016	<a href="#">S.S.I. 2016/298</a>
Section 12	31st October 2016	<a href="#">S.S.I. 2016/298</a>
Section 17 (partially)	31st October 2016	<a href="#">S.S.I. 2016/298</a>
Section 22 (partially)	31st October 2016	<a href="#">S.S.I. 2016/298</a>
Section 24 (partially)	31st October 2016	<a href="#">S.S.I. 2016/298</a>
Section 34(2)	31st October 2016	<a href="#">S.S.I. 2016/298</a>
Section 43 (partially)	31st October 2016	<a href="#">S.S.I. 2016/298</a>
Section 61 (partially)	31st October 2016	<a href="#">S.S.I. 2016/298</a>
Section 62 (partially)	31st October 2016	<a href="#">S.S.I. 2016/298</a>
Schedule 2	31st October 2016	<a href="#">S.S.I. 2016/298</a>