Housing (Scotland) Act 1988

1988 CHAPTER 43

An Act to establish a body having functions relating to housing; and, as respects Scotland, to make further provision with respect to houses let on tenancies; to confer on that body and on persons approved for the purpose the right to acquire from public sector landlords certain houses occupied by secure tenants; to make new provision as to the limit on discount on the price of houses purchased by secure tenants; to provide for the making of local authority grants to assist local authority tenants to obtain accommodation otherwise than as such tenants; to abolish, and make interim provision for the capitalisation of, certain subsidies and contributions relating to housing; to make further provision about rent officers and the administration of housing benefit and rent allowance subsidy; to make provision for the disposal of housing land by development corporations; and for connected purposes. [2nd November 1988]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

SCOTTISH HOMES

Establishment and functions

1 Scottish Homes.

[F1](1) . . . . . .

[F1](2) . . . . . .

(3) **[**[F2]the Scottish Ministers**]** shall have the general functions of—

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) providing, and assisting in the provision of, finance to persons or bodies intending to provide, improve, repair, maintain or manage housing;

[F3](b) . . . . . .

(c) promoting owner-occupation (especially by those seeking to purchase for the first time), the wider ownership of housing by its occupants and a greater choice of tenancy arrangements;

(d) promoting the provision and improvement of housing and the improvement of management of housing (whether by its occupants or otherwise);

(e) promoting and assisting the development of **[**[F4]social landlords**]**, maintaining a register of housing associations and exercising supervision and control over registered housing associations;

(f) undertaking, and assisting the undertaking of, the development, redevelopment and improvement of the physical, social, economic and recreational environment related to housing;

[F5](g) . . . . . .

Textual Amendments

F1 S. 1(1)(2) repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(2)(a)**; S.S.I. 2001/397, 2(2), Sch. Table (subject to transitional provisions in arts. 3-6)

F2 Words in s. 1(3) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(2)(b)(i)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

F3 S. 1(3)(b) repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(2)(b)(ii)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in art. 3-6)

F4 Words in s. 1(3)(e) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(2)(b)(iii)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

F5 S. 1(3)(g) repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(2)(b)(iv)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

2 General functions of Scottish Homes.

[F6](1) . . . . . .

(2) **[**[F7]For the purposes of the exercise of their general functions under section 1(3), the Scottish Ministers, so far as they do not otherwise have power to do so,**]** may—

(a) make grants;

(b) make loans;

(c) acquire, hold and dispose of securities;

(d) guarantee obligations (arising out of loans or otherwise) incurred by other persons, or grant indemnities;

(e) provide or assist in the provision of advisory or other services or facilities for any person;

(f) acquire land by agreement or gift;

(g) acquire land (including servitudes or other rights in or over land by the creation of new rights) compulsorily;

(h) hold and manage land and dispose of, or otherwise deal with, land held by **[**[F8]them**]**;

(j) acquire and dispose of plant, machinery, equipment and other property;

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(k) develop land or carry out works on land, and maintain or assist in the maintenance of any such works;

(l) make land, plant, machinery, equipment and other property available for use by other persons;

(m) appoint other persons to act as **[**[F9]their**]** agents;

(n) act as agents for other persons;

(o) form companies within the meaning of the [M1]Companies Act 1985;

(p) form partnerships with other persons;

(q) promote, provide or assist in the provision of, training in matters relating to housing;

(r) carry out, commission or assist in the provision of, research and development;

(s) promote, or assist in the promotion of, publicity relating to **[**[F10]their general functions under section 1(3)**]** and to matters relating to housing;

(t) make such charge as **[**[F11]they think**]** fit for any of **[**[F9]their**]** services;

(u) accept any gift or grant made to **[**[F12]them**]** for the purposes of any of **[**[F10]their general functions under section 1(3)**]** and, subject to the terms of the gift or grant and to the provisions of this Act, apply it for those purposes;

(v) turn **[**[F13]their**]** resources to account so far as they are not required for the exercise of any of **[**[F10]their general functions under section 1(3)**]**.

[F14](3) . . . . . .

[F14](3A) . . . . . .

[F14](4) . . . . . .

[F14](5) . . . . . .

(6) . . . . . [F15]

[F14](7) . . . . . .

(8) After section 239 of the [M2]Housing (Scotland) Act 1987 there shall be added the following section—

"239A Power of Secretary of State to give directions to prevent duplications of grant.

(1) The Secretary of State may, so as to prevent the duplication of the making of grants under this Part in respect of the same works, give directions to—

(a) a local authority;

(b) local authorities generally; and

(c) Scottish Homesas to the circumstances in which they, or any of them, may or may not exercise their powers under this Part.

(2) It shall be the duty of Scottish Homes and of any local authority to whom directions have been given to comply with such directions.".

(9) After section 256 of the [M3]Housing (Scotland) Act 1987 there shall be added the following section—

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"256A Application of this Part to Scottish Homes.

This Part (except sections 253 to 255) shall apply to Scottish Homes as it applies to a local authority.".

[F14](10) . . . . . .

[F16](11) . . . . . .

Textual Amendments

F6 S. 2(1) repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(3)(a)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

F7 Words in s. 2(2) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(3)(b)(i)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

F8 Word in s. 2(2)(h) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(3)(b)(ii)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

F9 Words in s. 2(2)(m)(t) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(3)(b)(iii)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

F10 Words in s. 2(2)(s)(u)(v) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(3)(b)(iv)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in art. 3-6)

F11 Words in s. 2(2)(t) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(3)(b)(v)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

F12 Word in s. 2(2)(u) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(3)(b)(vi)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

F13 Word in s. 2(2)(v) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(3)(b)(vii)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

F14 S. 2(3)-(5)(7)(10)(11) repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(3)(c)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

F15 S. 2(6) repealed by Local Government and Housing Act 1989 (c. 42, SIF 61), ss. 179(d), 194(4), **Sch. 12 Pt. II**

F16 S. 2(11) repealed (2.4.2001) by 2000 c. 34, s. 9(2), **Sch. 3** (with s. 10(5)); S.I. 2001/566, **art. 2(1)**; s. 2(11) expressed to be repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(3)(c)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in art. 3-6)

Marginal Citations

M1 1985 c. 6.

M2 1987 c. 26.

M3 1987 c. 26.

[F17]2A . . . . . .

Textual Amendments

F17 Ss. 2A-8, 10, 11 repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(4)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

[F18]3 . . . . . .

Status: *Point in time view as at 03/09/2007.*
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Textual Amendments

F18 Ss. 2A-8, 10, 11 repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(4)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

[F19]4 . . . . . .

Textual Amendments

F19 Ss. 2A-8, 10, 11 repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(4)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

Finance and administration

[F20]5 . . . . . .

Textual Amendments

F20 Ss. 2A-8, 10, 11 repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(4)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

[F21]6 . . . . . .

Textual Amendments

F21 Ss. 2A-8, 10, 11 repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(4)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

[F22]7 . . . . . .

Textual Amendments

F22 Ss. 2A-8, 10, 11 repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(4)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

[F23]8 . . . . . .

Textual Amendments

F23 Ss. 2A-8, 10, 11 repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(4)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

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[F24]9 . . . . . .

Textual Amendments

F24 S. 9 repealed (1.4.2000) by 2000 asp 1, s. 8, **Sch. 1 para. 3(3)**; S.S.I. 2000/10, **art. 2**

[F25]10 . . . . . .

Textual Amendments

F25 Ss. 2A-8, 10, 11 repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(4)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

[F26]11 . . . . . .

Textual Amendments

F26 Ss. 2A-8, 10, 11 repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(4)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

PART II

RENTED ACCOMMODATION

Modifications etc. (not altering text)

C1 Pt. II (ss. 12–55) excluded by Housing (Scotland) Act 1987 (c. 26, SIF 61), **ss. 103**, 128, 145, 335

C2 Pt. II excluded (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), **ss. 38(4)(10)**, 195(3) (with s. 193); S.S.I. 2007/270, art. 3

Assured tenancies

12 Assured tenancies.

(1) A tenancy under which a house is let as a separate dwelling is for the purposes of this Act an assured tenancy if and so long as—

(a) the tenant or, as the case may be, at least one of the joint tenants is an individual; and

(b) the tenant or, as the case may be, at least one of the joint tenants occupies the house as his only or principal home; and

(c) the tenancy is not one which, by virtue of subsection (2) below, cannot be an assured tenancy.

Status: *Point in time view as at 03/09/2007.*
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(2) If and so long as a tenancy falls within any paragraph of Schedule 4 to this Act, it cannot be an assured tenancy; and in that Schedule "tenancy" means a tenancy under which a house is let as a separate dwelling.

13 Letting of a house together with other land.

(1) If, under a tenancy, a house is let together with other land, then, for the purposes of this Act—

(a) if and so long as the main purpose of the letting is the provision of a home for the tenant or, as the case may be, at least one of the joint tenants, the other land shall be treated as part of the house; and

(b) if and so long as the main purpose of the letting is not as mentioned in paragraph (a) above, the tenancy shall be treated as not being one under which a house is let as a separate dwelling.

(2) Nothing in subsection (1) above affects any question whether a tenancy is precluded from being an assured tenancy by virtue of any provision of Schedule 4 to this Act.

14 Tenant sharing accommodation with persons other than landlord.

(1) Where a tenant has the exclusive occupation of any accommodation (in this section referred to as "the separate accommodation") and—

(a) the terms as between the tenant and his landlord on which he holds the separate accommodation include the use of other accommodation ("the shared accommodation") in common with another person or other persons, not being or including the landlord, and

(b) by reason only of the circumstances mentioned in paragraph (a) above, the separate accommodation would not, apart from this section, be a house let on an assured tenancy,

the separate accommodation shall be deemed to be a house let on an assured tenancy and the following provisions of this section shall have effect.

(2) While the tenant is in possession of the separate accommodation, any term of the tenancy terminating or modifying, or providing for the termination or modification of, his right to the use of any of the shared accommodation which is living accommodation shall be of no effect.

(3) Where the terms of the tenancy are such that, at any time during the tenancy, the persons in common with whom the tenant is entitled to the use of the shared accommodation could be varied or their number could be increased, nothing in subsection (2) above shall prevent those terms from having effect so far as they relate to any such variation or increase.

(4) In this section "living accommodation" means accommodation of such a nature that the fact that it constitutes or is included in the shared accommodation is sufficient, apart from this section, to prevent the tenancy from constituting an assured tenancy of a house.

Status: *Point in time view as at 03/09/2007.*
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15 Certain sublettings not to exclude any part of sub-lessor's premises from assured tenancy.

(1) Where the tenant of a house has sublet a part but not the whole of the house, then, as against his landlord or any superior landlord, no part of the house shall be treated as excluded from being a house let on an assured tenancy by reason only that the terms on which any person claiming under the tenant holds any part of the house include the use of accommodation in common with other persons.

(2) Nothing in this section affects the rights against, and liabilities to, each other of the tenant and any person claiming under him, or of any two such persons.

Assured tenancies—security of tenure

16 Security of tenure

(1) After the termination of a contractual tenancy which was an assured tenancy the person who, immediately before that termination, was the tenant, so long as he retains possession of the house without being entitled to do so under a contractual tenancy shall, subject to section 12 above and sections 18 and 32 to 35 below—

(a) continue to have the assured tenancy of the house; and

(b) observe and be entitled to the benefits of all the terms and conditions of the original contract of tenancy so far as they are consistent with this Act but excluding any—

(i) which makes provision for the termination of the tenancy by the landlord or the tenant; or

(ii) which makes provision for an increase in rent (including provision whereby the rent for a particular period will or may be greater than that for an earlier period) otherwise than by an amount specified in **[**[F27]or fixed by reference to factors specified in**]** that contract or by a percentage there specified **[**[F27]or fixed by reference to factors there specified,**]** of an amount of rent payable under the tenancy,

and references in this Part of this Act to a "statutory assured tenancy" are references to an assured tenancy which a person is continuing to have by virtue of this subsection, subsection (1) of section 31 below, or section 3A of the [M4]Rent (Scotland) Act 1984.

[[F28](1A) The factors referred to in subsection (1)(b)(ii) above must be—

(a) factors which, once specified, are not wholly within the control of the landlord; and

(b) such as will enable the tenant at all material times to ascertain without undue difficulty any amount or percentage falling to be fixed by reference to them.**]**

(2) A statutory assured tenancy cannot be brought to an end by the landlord except by obtaining an order of the sheriff in accordance with the following provisions of this Part of this Act.

(3) Notwithstanding anything in the terms and conditions of tenancy of a house being a statutory assured tenancy, a landlord who obtains an order for possession of the house as against the tenant shall not be required to give him any notice to quit.

Status: *Point in time view as at 03/09/2007.*
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Textual Amendments

F27 Words inserted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 194(1), **Sch. 11 para. 99(a)**

F28 S. 16(1A) inserted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 194(1), **Sch. 11 para. 99(b)**

Marginal Citations

M4 1984 c. 58.

17 Fixing of terms of statutory assured tenancy.

(1) In this section, in relation to a statutory assured tenancy "the former tenancy" means the tenancy on the termination of which the statutory assured tenancy arises.

(2) Not later than the first anniversary of the termination of the former tenancy, the landlord may serve on the tenant, or the tenant may serve on the landlord, a notice in the prescribed form—

(a) proposing terms of the statutory assured tenancy other than as to the amount of the rent different from those which have effect by virtue of section 16(1)(b) above; and

(b) proposing, if appropriate, an adjustment of the rent to take account of the proposed terms.

(3) Where a notice has been served under subsection (2) above—

(a) within the period of three months beginning on the date on which the notice was served on him, the landlord or the tenant, as the case may be, may refer the notice to a **[**[F29]private rented housing**]** committee under subsection (4) below in the prescibed form; and

(b) if the notice is not so referred, then, with effect from such date, not falling within the period of three months referred to in paragraph (a) above, as may be specified in the notice, the terms proposed in the notice shall become terms of the tenancy in substitution for any other terms dealing with the same subject matter and the amount of the rent shall be varied in accordance with any adjustment so proposed.

(4) Where a notice under subsection (2) above is referred to a **[**[F29]private rented housing**]** committee, the committee shall consider the terms proposed in the notice and shall determine whether those terms, or some other terms (dealing with the same subject matter as the proposed terms), are such as, in the committee's opinion, might reasonably be expected to be found in a contractual assured tenancy of the house concerned, being a tenancy—

(a) which begins at the termination of the former tenancy; and

(b) which is granted by a willing landlord on terms which, except in so far as they relate to the subject matter of the proposed terms, are those of the statutory assured tenancy at the time of the committee's consideration.

(5) Whether or not a notice under subsection (2) above proposes an adjustment of the amount of the rent under the statutory assured tenancy, where a **[**[F29]private rented housing**]** committee determine any terms under subsection (4) above, they shall, if they consider it appropriate, specify such an adjustment to take account of the terms so determined.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(6) In making a determination under subsection (4) above, or specifying an adjustment of an amount of rent under subsection (5) above, there shall be disregarded any effect on the terms or the amount of the rent attributable to the granting of a tenancy to a sitting tenant.

(7) Where a notice under subsection (2) above is referred to a **[**[F30]private rented housing **]** committee, then, unless the landlord and the tenant otherwise agree, with effect from such date as the committee may direct—

(a) the terms determined by the committee shall become terms of the statutory assured tenancy in substitution for any other terms dealing with the same subject matter; and

(b) the amount of the rent under the statutory assured tenancy shall be altered to accord with any adjustment specified by the committee,

but for the purposes of paragraph (b) above, the committee shall not direct a date earlier than the date on which the notice in question was referred to them.

(8) Nothing in this section requires a **[**[F30]private rented housing**]** committee to continue with a determination under subsection (4) above if the tenancy has been brought to an end by order of the sheriff under this Part of this Act or if the landlord and tenant give notice in writing that they no longer require such a determination.

Textual Amendments

F29 Words in s. 17(3)-(5) substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

F30 Words in s. 17(7)(8) substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

18 Orders for possession.

(1) The sheriff shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.

(2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.

(3) If the sheriff is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to **[**[F31]subsections (3A) and (6)**]** below, he shall make an order for possession.

[[F32](3A) If the sheriff is satisfied—

(a) that Ground 8 in Part I of Schedule 5 to this Act is established; and

(b) that rent is in arrears as mentioned in that Ground as a consequence of a delay or failure in the payment of relevant housing benefit,

he shall not make an order for possession unless he considers it reasonable to do so.**]**

(4) If the sheriff is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, he shall not make an order for possession unless he considers it reasonable to do so.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[[F33](4A) In considering for the purposes of subsection (4) above whether it is reasonable to make an order for possession on Ground 11 or 12 in Part II of Schedule 5 to this Act, the sheriff shall have regard, in particular, to the extent to which any delay or failure to pay rent taken into account by the sheriff in determining that the Ground is established is or was a consequence of a delay or failure in the payment of relevant housing benefit.**]**

(5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.

(6) The sheriff shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

(a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9 [F34]... Ground 10 **[**[F35], Ground 15**]** or Ground 17; and

(b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.

[[F36](6A) Nothing in subsection (6) above affects the sheriff's power to make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, where the ground for possession is Ground 15 in Part II of Schedule 5 to this Act.**]**

(7) Subject to the preceding provisions of this section, the sheriff may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

[[F37](8) In subsections (3A) and (4A) above—

(a) "relevant housing benefit" means—

(i) any rent allowance or rent rebate to which the tenant was entitled in respect of the rent under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); or

(ii) any payment on account of any such entitlement awarded under Regulation 91 of those Regulations;

(b) references to delay or failure in the payment of relevant housing benefit do not include such delay or failure so far as referable to any act or omission of the tenant.**]**

Textual Amendments

F31 Words in s. 18(3) substituted (2.7.2004) by Homelessness etc. (Scotland) Act 2003 (asp 10), **ss. 12(2)**, 14(1); S.S.I. 2004/288, art. 2

F32 S. 18(3A) inserted (2.7.2004) by Homelessness etc. (Scotland) Act 2003 (asp 10), **ss. 12(3)**, 14(1); S.S.I. 2004/288, art. 2

F33 S. 18(4A) inserted (2.7.2004) by Homelessness etc. (Scotland) Act 2003 (asp 10), **ss. 12(4)**, 14(1); S.S.I. 2004/288, art. 2

F34 Word in s. 18(6)(a) repealed (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 100(a)**, 145(2); S.S.I. 2004/420, art. 3, Sch. 1 (with art. 4(3)(4))

F35 Words in s. 18(6)(a) inserted (28.10.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), **ss. 100(b)**, 145(2); S.S.I. 2004/420, art. 3, Sch. 1 (with art. 4(3)(4))

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F36 S. 18(6A) inserted (17.5.2006) by Housing (Scotland) Act 2006 (asp 1), **ss. 180**, 195(3) (with s. 193); S.S.I. 2006/252, art. 2

F37 S. 18(8) inserted (2.7.2004) by Homelessness etc. (Scotland) Act 2003 (asp 10), **ss. 12(5)**, 14(1); S.S.I. 2004/288, art. 2

19 Notice of proceedings for possession.

(1) The sheriff shall not entertain proceedings for possession of a house let on an assured tenancy unless—

(a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or

(b) he considers it reasonable to dispense with the requirement of such a notice.

(2) The sheriff shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground **[**[F38]and particulars of it are**]** specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the sheriff.

(3) A notice under this section is one **[**[F39]in the prescribed form**]** informing the tenant that—

(a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and

(b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.

(4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—

(a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and

(b) in any other case, two weeks.

(5) The sheriff may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.

(6) Where a notice under this section relating to a contractual tenancy—

(a) is served during the tenancy; or

(b) is served after the tenancy has been terminated but relates(in whole or in part) to events occurring during the tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.

(7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

Textual Amendments

F38 Words substituted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 Pt. I para. 85(a)**

F39 Words inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 Pt. I para. 85(b)**

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20 Extended discretion of court in possession claims.

(1) Subject to subsection (6) below, the sheriff may adjourn for such period or periods as he thinks fit, proceedings for possession of a house let on an assured tenancy.

(2) On the making of an order for possession of a house let on an assured tenancy or at any time before the execution of such an order, the sheriff, subject to subsection (6) below, may—

(a) sist or suspend execution of the order; or

(b) postpone the date of possession,

for such period or periods as he thinks fit.

(3) On any such adjournment as is referred to in subsection (1) above or on any such sist, suspension or postponement as is referred to in subsection (2) above, the sheriff, unless he considers that to do so would cause exceptional hardship to the tenant or would otherwise be unreasonable, shall impose conditions with regard to payment by the tenant of arrears of rent (if any) and rent or payments in respect of occupation after the termination of the tenancy and may impose such other conditions as he thinks fit.

(4) If any such conditions as are referred to in subsection (3) above are complied with, the sheriff may, if he thinks fit, recall any such order as is referred to in subsection (2) above.

(5) In any case where—

(a) at a time when proceedings are brought for possession of a house let on an assured tenancy, any person having occupancy rights under section 1 or 18 of the [M5]Matrimonial Homes (Family Protection) (Scotland) Act 1981 is in occupation of the house; and

(b) the assured tenancy is terminated as a result of those proceedings,

that person, so long as he or she remains in occupation, shall have the same rights in relation to, or in connection with, any such adjournment as is referred to in subsection (1) above or any such sist, suspension or postponement as is referred to in subsection (2) above, as he or she would have if those occupancy rights were not affected by the termination of the tenancy.

(6) This section does not apply if the sheriff is satisfied that the landlord is entitled to possession of the house on the ground specified in section 33(1) of this Act or on any of the grounds in Part I of Schedule 5 to this Act **[**[F40]except Ground 8 in a case where the sheriff is satisfied as mentioned in section 18(3A) above**]**.

Textual Amendments

F40 Words in s. 20(6) inserted (2.7.2004) by Homelessness etc. (Scotland) Act 2003 (asp 10), **ss. 12(6)**, 14(1); S.S.I. 2004/288, art. 2

Marginal Citations

M5 1981 c. 59.

21 Special provisions applicable to shared accommodation.

(1) This section applies in a case falling within subsection (1) of section 14 above and expressions used in this section have the same meaning as in that section.

Status: *Point in time view as at 03/09/2007.*
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(2) Without prejudice to the enforcement of any order made under subsection (3) below, while the tenant is in possession of the separate accommodation, no order shall be made for possession of any of the shared accommodation, whether on the application of the immediate landlord of the tenant or on the application of any person from whom that landlord derives title, unless a like order has been made, or is made at the same time, in respect of the separate accommodation; and the provisions of section 17 above shall have effect accordingly.

(3) On the application of the landlord, the sheriff may make such order as he thinks just either—

(a) terminating the right of the tenant to use the whole or any part of the shared accommodation other than living accommodation; or

(b) modifying his right to use the whole or any part of the shared accommodation, whether by varying the persons or increasing the number of persons entitled to the use of that accommodation, or otherwise.

(4) No order shall be made under subsection (3) above so as to effect any termination or modification of the rights of the tenant which, apart from section 14(2) above, could not be effected by or under the terms of the tenancy.

22 Payment of removal expenses in certain cases.

(1) Where the sheriff makes an order for possession of a house let on an assured tenancy on Ground 6 or Ground 9 in Schedule 5 to this Act (but not on any other ground), the landlord shall pay to the tenant a sum equal to the reasonable expenses likely to be incurred by the tenant in removing from the house.

(2) Any question as to the amount payable by the landlord to a tenant by virtue of subsection (1) above shall be determined by agreement between the landlord and the tenant or, in default of agreement, by the sheriff.

Assured tenancies—rents and other terms

23 Limited prohibition on assignation etc. without consent.

(1) Subject to subsection (2) below, it shall be an implied term of every assured tenancy that, except with the consent of the landlord, the tenant shall not—

(a) assign the tenancy (in whole or in part); or

(b) sublet or part with possession of the whole or any part of the house let on the tenancy.

(2) Subsection (1) above does not apply if, under the terms of the tenancy, there is provision prohibiting or permitting (whether absolutely or conditionally) assignation, subletting or parting with possession by the tenant.

24 Increases of rent under assured tenancies.

(1) For the purpose of securing an increase in the rent under **[**[F41]a statutory**]** assured tenancy, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect—

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(a) if the tenancy was **[**[F42]at the time of service of the notice**]** a contractual tenancy (whether or not renewed by operation of tacit relocation), immediately after its termination; or

(b) if the tenancy was **[**[F42]at the time of service of the notice**]** not such a contractual tenancy, at any time during the tenancy,

but not earlier than the expiry of the minimum period after the date of service of the notice.

(2) The minimum period referred to in subsection (1) above is **[**[F43]except in a case where section 25A applies**]**—

(a) if the assured tenancy is for 6 months or more, 6 months;

(b) if the assured tenancy is for less than 6 months, the duration of the tenancy or one month (whichever is the longer) **[**[F44]and in any case to which section 25A applies, one month**]**.

(3) Where a notice is served under subsection (1) above, a new rent specified in the notice shall take effect as mentioned in the notice unless, before the beginning of the period to which the new rent relates—

(a) the tenant refers the notice to a **[**[F45]private rented housing**]** committee in the prescribed form; or

(b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.

(4) Where a notice is served under subsection (1) above but the rent under the tenancy has previously been increased (whether by agreement or by virtue of a notice under subsection (1) above or a determination under section 25 below) the new rent shall take effect not earlier than the first anniversary of the date on which that increase took effect.

(5) Nothing in this section

[[F46](a) extends to a statutory assured tenancy of which there is a term**]** which makes provision for an increase in rent (including provision whereby the rent for a particular period will or may be greater than that for an earlier period) by an amount specified in**[**[F47], or fixed by reference to factors specified in,**]** the tenancy contract or by a percentage there specified**[**[F47], or fixed by reference to factors there specified,**]** of an amount of rent payable under the tenancy **[**[F48]or

(b) affects the operation of any term of a contractual tenancy which makes provision for an increase in rent (including provision whereby the rent for a particular period will or may be greater than that for an earlier period)**]**.

[[F49](6) The factors referred to in subsection (5) above must be—

(a) factors which, once specified, are not wholly within the control of the landlord; and

(b) such as will enable the tenant at all material times to ascertain without undue difficulty any amount or percentage falling to be fixed by reference to them.**]**

Textual Amendments

F41 Words substituted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 194(1), **Sch. 11 para. 100(a)**

F42 Words inserted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 194(1), **Sch. 11 para. 100(a)**

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F43 Words in s. 24(2) inserted (1.4.1993) by S.I. 1993/658, art. 2, **Sch. 1 para. 9(a)**

F44 Words in s. 24(2)(b) inserted (1.4.1993) by S.I. 1993/658, art. 2, **Sch. 1 para. 9(b)**

F45 Words in s. 24(3) substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

F46 S. 24(5)(a) substituted for words by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 194(1), **Sch. 11 para. 100(b)(i)**

F47 Words inserted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 194(1), **Sch. 11 para. 100(b)(ii)(iii)**

F48 S. 24(5)(b) and preceding word inserted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 194(1), **Sch. 11 para. 100(b)(iv)**

F49 S. 24(6) inserted by Local Government and Housing Act 1989 (c. 42, SIF 61), s. 194(4), **Sch. 11 para. 100(c)**

Modifications etc. (not altering text)

C3 S. 24 continued (*temp.* from 30.9.2002) by S.S.I. 2002/318, **art. 5** (with art. 4(3))

25 Determination of rent by [F50private rented housing] committee

(1) Where, under subsection (3)(a) of section 24 above, a tenant refers to a [F51private rented housing] committee a notice under subsection (1) of that section, the committee shall determine the rent at which, subject to subsections (2) and (3) below, the committee consider that the house might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy—

(a) which begins at the beginning of the period to which the new rent specified in the notice relates;

(b) the terms of which (other than those relating to rent) are the same as those of the tenancy to which the notice relates; and

(c) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 5 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.

(2) In making a determination under this section, there shall be disregarded any effect on the rent attributable to—

(a) the granting of a tenancy to a sitting tenant;

(b) an improvement carried out by the tenant or a predecessor in title of his unless the improvement was carried out in pursuance of the terms of the tenancy; and

(c) a failure by the tenant to comply with any terms of the tenancy.

(3) In this section "rent" includes any sums payable by the tenant to the landlord on account of the use of furniture or for services [F52or in respect of council tax], whether or not those sums are separate from the sums payable for the occupation of the house concerned or are payable under separate agreements.

(4) Where any rates in respect of the house concerned are borne by the landlord or a superior landlord, the [F51private rented housing] committee shall make their determination under this section as if the rates were not so borne.

(5) In any case where—

(a) a [F51private rented housing] committee have before them at the same time the reference of a notice under section 17(2) above relating to a tenancy (in this subsection referred to as "the section 17 reference") and the reference

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of a notice under section 24(1) above relating to the same tenancy (in this subsection referred to as "the section 24 reference"); and

(b) the date specified in the notice under section 17(2) above is not later than the first day of the new period specified in the notice under section 24(1) above; and

(c) the committee propose to hear the two references together,

the committee shall make a determination in relation to the section 17 reference before making their determination in relation to the section 24 reference and, accordingly, in such a case the reference in subsection (1)(b) above to the terms of the tenancy to which the notice relates shall be construed as a reference to those terms as varied by virtue of the determination made in relation to the section 17 reference.

(6) Where a notice under section 24(1) above has been referred to a **[**[F51]private rented housing**]** committee, then, unless the landlord and the tenant otherwise agree, the rent determined by the committee (together with, in a case where subsection (4) above applies, the appropriate amount in respect of rates) shall be the rent under the tenancy with effect from the beginning of the period to which the new rent specified in the notice relates or, if it appears to the **[**[F51]private rented housing**]** committee that that would cause undue hardship to the tenant, with effect from such date as the committee may direct (being a date after the beginning of that period but not after the date when the committee determined the rent).

(7) Nothing in this section requires a **[**[F51]private rented housing**]** committee to continue with their determination of a rent for a house if the tenancy has been brought to an end by order of the sheriff under this Part of this Act or if the landlord and tenant give notice in writing that they no longer require such a determination.

(8) Nothing in this section or section 24 above affects the right of the landlord and the tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

Textual Amendments

F50 Words in s. 25 heading substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(b)** (with s. 193); S.S.I. 2007/270, art. 3

F51 Words in s. 25(1)(4)-(7) substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

F52 Words in s. 25(3) inserted (1.4.1993) by S.I. 1993/658, art. 2, **Sch. 1 para.9**

[[F53]**25A Assured tenancies: transitional provisions**

(1) This section applies in the case where an assured tenancy to which section 24 above applies, or an agreement relating to the tenancy, provides for the payment by the tenant to the landlord of sums in respect of council tax; and

(a) the first anniversary of the date on which the rent has previously been increased (whether by agreement or by virtue of a notice under section 24(1) above or a determination under section 25) has not occurred; or

(b) a notice is served before 1st April 1993 under section 24(1) above for the purpose of securing an increase in the rent but the new rent has not yet taken effect either by virtue of the notice or a determination under section 25 above.

(2) At any time before—

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(a) 1st April 1994; or

(b) the first anniversary of the date when the existing rent took effect,

whichever is the earlier, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take account of any sums payable by the tenant to the landlord in respect of council tax and specifying a date when the new rent shall take effect.

(3) The date specified in subsection (2) above shall, unless either of the conditions mentioned in subsection (4) below applies, be a date not earlier than one month after the date of service of the notice under this section.

(4) The conditions referred to in subsection (3) above are that before the date specified in the notice—

(a) the tenant by an application in the prescribed form refers the notice to a **[**[F54]private rented housing**]** committee; or

(b) the landlord and the tenant agree on a variation of the rent which is different from that proposed in the notice or agree that the rent should not be varied.

(5) Nothing in this section or section 25B affects the right of the landlord and tenant under an assured tenancy to vary by agreement any term of the tenancy (including a term relating to rent).

(6) No more than one notice in respect of any tenancy may be served under this section.**]**

Textual Amendments

F53 S. 25A inserted (1.4.1993) by S.I. 1993/658, art. 2, **Sch. 2 para.5**

F54 Words in s. 25A(4) substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

[[F55]**25B Determination of rent by [**[F56]**private rented housing] committee where section 25A applies**

(1) Where a tenant refers to a **[**[F57]private rented housing**]** committee a notice under section 25A, the committee shall determine the amount by which the existing rent might reasonably be increased to take into account the tenant's liability to make payments to the landlord in respect of council tax.

(2) A determination under subsection (1) above shall, unless the landlord and tenant otherwise agree, have effect—

(a) from the date specified in the notice under section 25A(2); or

(b) if it appears to the committee that such effect would cause undue hardship to the tenant, from such later date (being not later than the date of the determination) as the committee may direct.

(3) In any case where—

(a) a **[**[F57]private rented housing**]** committee have before them at the same time a section 24 reference and a section 25A reference relating to the same tenancy; and

(b) the date specified in the notice under section 24(1) is not later than the date specified in the notice under section 25A; and

(c) the committee propose to hear the two references together,

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the committee shall make a determination in relation to the section 24 reference before making their determination in relation to the section 25A reference.

(4) In any case where paragraphs (a) and (c), but not paragraph (b), of subsection (3) above are satisfied—

(a) the committee shall make a determination in relation to the section 24 reference before the section 25A reference; and

(b) the rent determined for the purposes of the section 25A reference shall take effect from the date specified in the notice given under that section.

(5) In this section—

(a) "section 24 reference" means the reference of a notice under section 24(1);

(b) "section 25A reference" means the reference of a notice under section 25A; and

(c) "rent" has the same meaning as in section 25.

(6) Section 25(2) applies to a determination under this section as it applies to a determination under that section.**]**

Textual Amendments

F55 S. 25B inserted (1.4.1993) by S.I. 1993/658, art. 2, **Sch. 2 para.5**

F56 Words in s. 25B heading substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(b)** (with s. 193); S.S.I. 2007/270, art. 3

F57 Words in s. 25B(1)(3) substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

26 Access for repairs.

It shall be an implied term of every assured tenancy that the tenant shall afford to the landlord reasonable access to the house let on the tenancy and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute.

Assured tenancies—miscellaneous

27 Prohibition of premiums etc. on assured tenancies.

Sections 82, 83 and 86 to 90 of the [M6]Rent (Scotland) Act 1984 (which make it an offence to require premiums and advance payment of rent in respect of protected tenancies and make related provision) shall apply in relation to assured tenancies as they apply in relation to protected tenancies (including protected tenancies which are regulated tenancies), but with the following modifications—

(a) section 83(5) shall not apply; and

(b) section 88(1) shall apply as if for the references to 12th August 1971 there were substituted references to the date of commencement of this section.

Marginal Citations

M6 1984 c. 58.

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28 Effect of termination of tenancy on sub-tenancies which are or are under assured tenancies.

(1) If the sheriff makes an order for possession of a house from a tenant nothing in the order shall affect the right of any sub-tenant to whom the house or any part of it has been lawfully sublet on an assured tenancy before the commencement of the proceedings to retain possession by virtue of this Part of this Act, nor shall the order operate to give a right to possession as against any such sub-let.

(2) Where an assured tenancy of a house is terminated, either as a result of an order for possession or for any other reason, any sub-tenant to whom the house or any part of it has been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenant's assured tenancy had continued.

(3) A tenancy which, but for paragraph 2 of Schedule 4 to this Act, would have been an assured tenancy shall be treated for the purposes of subsection (2) above as an assured tenancy.

29 Restriction on diligence.

No diligence shall be done in respect of the rent of any house let on an assured tenancy except with the leave of the sheriff; and the sheriff shall, with respect to any application for such leave, have the same powers with respect to adjournment, sist, suspension, postponement and otherwise as are conferred by section 20 above in relation to proceedings for possession of such a house.

30 Duty of landlord under assured tenancy to provide written tenancy document and weekly rent book.

(1) It shall be the duty of the landlord under an assured tenancy (of whatever duration)—
- (a) to draw up a document stating (whether expressly or by reference) the terms of the tenancy;
- (b) to ensure that it is so drawn up and executed that it is probative or holograph of the parties; and
- (c) to give a copy of it to the tenant.

(2) On summary application by a tenant under an assured tenancy, the sheriff shall by order—
- (a) where it appears to him that the landlord has failed to draw up a document which fairly reflects the existing terms of the tenancy, draw up such a document or, as the case may be, adjust accordingly the terms of such document as there is; and
- (b) in any case, declare that the document (as originally drawn up or, where he has drawn it up or adjusted it, as so drawn up or adjusted) fairly reflects the terms of the assured tenancy;

and, where the sheriff has made such a declaration in relation to a document which he has drawn up or adjusted, it shall be deemed to have been duly executed by the parties as so drawn up or adjusted.

(3) A tenant shall not be required to make payment in respect of anything done under subsection (1) above.

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(4) Where, under an assured tenancy, rent is payable weekly, it shall be the duty of the landlord to provide a rent book.

(5) A rent book shall contain such notices which shall be in such form and shall relate to such matters as may be prescribed and otherwise shall comply with such requirements as may be prescribed.

(6) If, at any time, the landlord fails to comply with any requirement imposed by or under subsection (4) or (5) above he and any person who on his behalf demands or receives rent in respect of the tenancy shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(7) Where an offence under subsection (6) above committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished accordingly.

Modifications etc. (not altering text)
C4 S. 30(4) continued (*temp.* from 30.9.2002) by S.S.I. 2002/318, **art. 5** (with art. 4(3))

31 Right of succession of spouse.

(1) In any case where—
- (a) the sole tenant under an assured tenancy dies; and
- (b) immediately before the death the tenant's spouse **[**[F58]or civil partner**]** was occupying the house as his or her only or principal home; and
- (c) the tenant was not himself a successor as explained in subsection (2) or (3) below,

the tenant's spouse **[**[F58]or civil partner**]** shall, as from the death and for so long as he or she retains possession of the house without being entitled to do so under a contractual tenancy, be entitled to a statutory assured tenancy of the house.

(2) For the purposes of this section, a tenant was a successor in relation to a tenancy—
- (a) if the tenancy had become vested in him either by virtue of this section or under the will or intestacy of a previous tenant; or
- (b) if he was a statutory assured tenant by virtue of section 3A of the [M7]Rent (Scotland) Act 1984; or
- (c) if at some time before the tenant's death the tenancy was a joint tenancy held by him and one or more other persons and, prior to his death, he had become the sole tenant by survivorship; or
- (d) in the case of a tenancy (hereinafter referred to as "the new tenancy") which was granted to him (alone or jointly with others) if—
  - (i) at some time before the grant of the new tenancy he was, by virtue of paragraph (a), (b) or (c) above, a successor to an earlier tenancy of the same or substantially the same house as is let under the new tenancy; and

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) at all times since he became such a successor he has been a tenant (alone or jointly with others) of the house which is let under the new tenancy or of a house which is substantially the same as that house.

(3) No order for possession under Ground 7 of Schedule 5 to this Act shall be made—

(a) in relation to a case to which this section relates by virtue of subsection (1) above; or

(b) where the tenant's spouse **[**[F59]or civil partner**]** succeeds to the tenancy under the will or intestacy of the tenant.

(4) For the purposes of this section a person who was living with the tenant at the time of the tenant's death .

[[F60](a)**]** as his or her wife or husband shall be treated as the tenant's spouse

[[F61](b) in a relationship which had the characteristics of the relationship between civil partners shall be treated as the tenant's civil partner**]**

Textual Amendments

F58 Words in s. 31(1) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 56(2)**; S.S.I. 2005/604, arts. 2(c), 4

F59 Words in s. 31(3)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 56(3)**; S.S.I. 2005/604, arts. 2(c), 4

F60 Words in s. 31(4) renumbered as s. 31(4)(a) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 56(4)(a)**; S.S.I. 2005/604, arts. 2(c), 4

F61 Words in s. 31(4)(b) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 56(4)(b)**; S.S.I. 2005/604, arts. 2(c), 4

Marginal Citations

M7 1984 c. 58.

Short assured tenancies

32 Short assured tenancies.

(1) A short assured tenancy is an assured tenancy—

(a) which is for a term of not less than six months; and

(b) in respect of which a notice is served as mentioned in subsection (2) below.

(2) The notice referred to in subsection (1)(b) above is one which—

(a) is in such form as may be prescribed;

(b) is served before the creation of the assured tenancy;

(c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and

(d) states that the assured tenancy to which it relates is to be a short assured tenancy.

(3) Subject to subsection (4) below, if, at the ish of a short assured tenancy—

(a) it continues by tacit relocation; or

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(b) a new contractual tenancy of the same or substantially the same premises comes into being under which the landlord and the tenant are the same as at that ish,

the continued tenancy or, as the case may be, the new contractual tenancy shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.

(4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy or, as the case may be, before the beginning of the new tenancy, the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued or new tenancy is not to be a short assured tenancy.

(5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

33 Recovery of possession on termination of a short assured tenancy.

(1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the sheriff shall make an order for possession of the house if he is satisfied—

(a) that the short assured tenancy has reached its ish;

(b) that tacit relocation is not operating;

(c) that no further contractual tenancy (whether a short assured tenancy or not) is for the time being in existence; and

(d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house.

(2) The period of notice to be given under subsection (1)(d) above shall be—

(i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;

(ii) in any other case, two months.

(3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.

(4) Where the sheriff makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that ish shall end (without further notice) on the day on which the order takes effect.

34 Reference of rents under short assured tenancies to [[F62]private rented housing] committee.

(1) Subject to subsection (2) and section 35 below, the tenant under a short assured tenancy may make an application in the prescribed form to a **[**[F63]private rented housing**]** committee for a determination of the rent which, in the committee's opinion, the landlord might reasonably be expected to obtain under the short assured tenancy.

(2) No application may be made under this section if the rent payable under the tenancy is a rent previously determined under this section or section 25 above.

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(3) Where an application is made to a **[**[F63]private rented housing**]** committee under subsection (1) above with respect to the rent under a short assured tenancy, the committee shall not make such a determination as is referred to in that subsection unless they consider—

(a) that there is a sufficient number of similar houses in the locality let on assured tenancies (whether short assured tenancies or not); and

(b) that the rent payable under the short assured tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.

(4) Where, on an application under this section, a **[**[F63]private rented housing**]** committee make a determination of a rent for a short assured tenancy—

(a) the determination shall have effect from such date as the committee may direct, not being earlier than the date of the application;

(b) if at or after the time when the determination takes effect, the rent which, apart from this paragraph, would be payable under the tenancy exceeds the rent so determined, the excess shall be irrecoverable from the tenant; and

(c) no further new rent for a tenancy of the house shall take effect under section 24(3) or 25 above until after the first anniversary of the date on which the determination takes effect.

(5) Subsections (3), (4) and (7) of section 25 above apply in relation to a determination of rent under this section as they apply in relation to a determination under that section.

Textual Amendments

F62 Words in s. 34 heading substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(b)** (with s. 193); S.S.I. 2007/270, art. 3

F63 Words in s. 34(1)(3) substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

35 Disapplication of [[F64]private rented housing] committee's functions under section 34.

(1) If the Secretary of State by order so provides, section 34 above shall not apply in such cases or to tenancies of houses in such areas or in such other circumstances as may be specified in the order.

(2) No order shall be made under this section unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

Textual Amendments

F64 Words in s. 35 substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(b)** (with s. 193); S.S.I. 2007/270, art. 3

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Protection from eviction

36 Damages for unlawful eviction.

(1) This section applies if, at any time after 3rd December 1987, a landlord or any person acting on his behalf unlawfully deprives the residential occupier of any premises of his occupation of the whole or part of the premises.

(2) This section also applies if, at any time after 6th July 1988, a landlord or any person acting on his behalf—

(a) attempts unlawfully to deprive the residential occupier of any premises of his occupation of the whole or part of the premises; or

(b) knowingly or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises—

(i) to give up his occupation of the premises or any part thereof; or

(ii) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof,

does acts **[**[F65]likely**]** to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence,

and, as a result, the residential occupier gives up his occupation of the premises as a residence.

(3) Subject to the following provisions of this section, where this section applies, the landlord shall, by virtue of this section, be liable to pay to the former residential occupier, in respect of his loss of the right to occupy the premises in question as his residence, damages assessed on the basis set out in section 37 below.

(4) Any liability arising by virtue of subsection (3) above—

(a) shall be in the nature of a liability in delict; and

(b) subject to subsection (5) below, shall be in addition to any liability arising apart from this section (whether in delict, contract or otherwise).

(5) Nothing in this section affects the right of a residential occupier to enforce any liability which arises apart from this section in respect of his loss of the right to occupy premises as his residence; but damages shall not be awarded both in respect of such a liability and in respect of a liability arising by virtue of this section on account of the same loss.

(6) No liability shall arise by virtue of subsection (3) above if—

(a) before **[**[F66]the date on which the proceedings to enforce the liability are finally decided**]**, the former residential occupier is reinstated in the premises in question in such circumstances that he becomes again the residential occupier of them; or

(b) at the request of the former residential occupier, the sheriff makes an order as a result of which he is reinstated as mentioned in paragraph (a) above.

[[F67](6A) For the purposes of subsection (6)(a) above, proceedings to enforce a liability are finally decided—

(a) if no appeal may be made against the decision in these proceedings;

(b) if an appeal may be made against the decision with leave and the time limit for applications for leave expires and either no application has been made or leave has been refused;

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(c) if leave to appeal against the decision is granted or is not required and no appeal is made within the time limit for appeals; or

(d) if an appeal is made but is abandoned before it is determined.

(6B) If, in proceedings to enforce a liability arising by virtue of subsection (3) above, it appears to the court—

(a) that, prior to the event which gave rise to the liability, the conduct of the former residential occupier or any person living with him in the premises concerned was such that it is reasonable to mitigate the damages for which the landlord would otherwise be liable, or

(b) that, before the proceedings were begun, the landlord offered to reinstate the former residential occupier in the premises in question and either it was unreasonable of the former residential occupier to refuse that offer or, if he had obtained alternative accommodation before the offer was made, it would have been unreasonable of him to refuse that offer if he had not obtained that accommodation,

the court may reduce the amount of damages which would otherwise be payable to such amount as it thinks appropriate.**]**

(7) In proceedings to enforce a liability arising by virtue of subsection (3) above, it shall be a defence for the defender to prove that he believed, and had reasonable cause to believe—

(a) that the residential occupier had ceased to reside in the premises in question at the time when he was deprived of occupation as mentioned in subsection (1) above or, as the case may be, when the attempt was made or the acts were done as a result of which he gave up his occupation of those premises; or

(b) that, where the liability would otherwise arise by virtue only of **[**[F68]the doing of acts or**]** the withdrawal or withholding of services, he had reasonable grounds for **[**[F69]doing the acts or**]** withdrawing or withholding the services in question.

(8) In this section—

(a) "residential occupier", in relation to any premises, means a person occupying the premises as a residence whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises;

(b) "the right to occupy", in relation to a residential occupier, includes any restriction on the right of another person to recover possession of the premises in question;

(c) "former residential occupier", in relation to any premises, means the person who was the residential occupier until he was deprived of or gave up his occupation as mentioned in subsection (1) or subsection (2) above (and, in relation to a former residential occupier, "the right to occupy" and "landlord" shall be construed accordingly).

Textual Amendments

F65 Word substituted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 para. 86(a)**

F66 Words substituted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 para. 88(a)**

F67 S. 36(6A)(6B) inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 para. 88(b)**

F68 Words inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 para. 86(b)(i)**

F69 Words inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 para. 86(b)(ii)**

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37 The measure of damages.

(1) The basis for the assessment of damages referred to in section 36(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between—

(a) the value of the landlord's interest determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and

(b) the value of the landlord's interest determined on the assumption that the residential occupier has ceased to have that right.

(2) For the purposes of the valuations referred to in subsection (1) above, it shall be assumed—

(a) that the landlord is selling his interest in the premises on the open market to a willing buyer;

(b) that neither the residential occupier nor any member of his family wishes to buy; and

(c) that it is unlawful to carry out any substantial development of any of the land in which the landlord's interest subsists or to demolish the whole or part of any building on that land.

(3) Subsection (8) of section 36 above applies in relation to this section as it applies in relation to that.

(4) Section 83 of the [M8]Housing (Scotland) Act 1987 (meaning of "members of a person's family") applies for the purposes of subsection (2)(b) above.

(5) The reference in subsection (2)(c) above to substantial development of any of the land in which the landlord's interest subsists is a reference to any development other than—

(a) development for which planning permission is granted by a general development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted; or

(b) a change of use resulting in a building on the land or any part of such a building being used as, or as part of, one or more dwelling-houses;

and in this subsection "general development order" has the same meaning as in section 40(3) of the [M9]Town and Country Planning (Scotland) Act 1972 and other expressions have the same meaning as in that Act.

Marginal Citations

M8 1987 c. 26.

M9 1972 c. 52.

38 Further offence of harassment.

[[F70](1) Subsection (2) of section 22 of the Rent (Scotland) Act 1984 (unlawful eviction and harassment of occupier) shall, as respects acts done after the commencement of this section, have effect with the substitution of the word "likely" for the word "calculated".

(2) After that subsection**]** there shall be inserted the following subsections—

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"(2A) **[**[F71]Subject to subsection (2B) below**]** the landlord of any premises or an agent of the landlord shall be guilty of an offence if—

(a) he does acts **[**[F72]likely**]** to interfere with the peace or comfort of the residential occupier or members of his household; or

(b) . . . . . [F73], he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(2B) A person shall not be guilty of an offence under subsection (2A) above . . . [F73] if he proves that he had reasonable grounds for **[**[F74]doing the acts or**]** withdrawing or withholding the services in question.".

Textual Amendments

F70 S. 38(1)(2) substituted for words by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 para. 87(a)**

F71 Words inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 para. 87(b)**

F72 Words substituted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 para. 87(c)**

F73 Words repealed by Housing Act 1988 (c. 50, SIF 61), s. 140(1)(2), Sch. 17 Pt. I para. 87(d), **Sch. 18**

F74 Words inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 Pt. I para. 87(e)**

39 Variation of scope of sections 23 and 24 of Rent (Scotland) Act 1984.

(1) In subsection (1) of section 23 of the Rent (Scotland) Act 1984 (prohibition of eviction without due process of law) before the word "it" there shall be inserted the words "subject to section 23A,".

(2) After subsection (2) of that section there shall be inserted the following subsection—

"(2A) Subsections (1) and (2) above apply in relation to any premises occupied (whether exclusively or not) as a dwelling other than under a tenancy as they apply in relation to premises let as a dwelling under a tenancy, and in those subsections the expressions "let" and "tenancy" shall be construed accordingly.".

(3) In section 24 of the Rent (Scotland) Act 1984 (special provisions for agricultural employees) after subsection (2) there shall be inserted the following subsection—

"(2A) In accordance with section 23(2A) above, any reference in subsections (1) and (2) above to the tenant under the former tenancy includes a reference to the person having a right to occupy premises as a dwelling otherwise than under a tenancy, being a right which has come to an end; and in the following provisions of this section the expressions "tenancy" and "rent" and any other expressions referable to a tenancy shall be construed accordingly.".

40 Cases excluded from sections 23 and 24 of Rent (Scotland) Act 1984.

After section 23 of the [M10]Rent (Scotland) Act 1984 there shall be inserted the following section—

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"23A Excluded tenancies and occupancy rights.

(1) Nothing in section 23 or 24 of this Act applies to a tenancy or right of occupancy if—

(a) under its terms the occupier has the use of any accommodation in common with the owner or a member of his family (whether or not in common with other persons); and

(b) immediately before the tenancy or right was granted and at all times since then the owner occupied as his only or principal home premises of which the whole or part of the accommodation referred to in paragraph (a) above formed part.

(2) In subsection (1) above—

(a) "accommodation" includes neither an area used for storage nor a staircase, passage, corridor or other means of access;

(b) "owner" means, in relation to a tenancy, the landlord and, in relation to a right to occupy, the person granting it, and in any case where there are joint landlords or grantors any one of them shall be regarded as the "owner"; and

(c) "occupier" means, in relation to a tenancy, the tenant and, in relation to a right to occupy, its grantee;

and section 83 of the Housing (Scotland) Act 1987 shall apply to determine whether a person is for the purposes of subsection (1) above a member of another's family as it applies for the purposes of that Act.

(3) Nothing in section 23 or 24 of this Act applies to a tenancy or right of occupancy if it was granted as a temporary expedient to a person who entered the premises in question or any other premises without right or title (whether or not before the beginning of that tenancy or grant of that right another tenancy or right to occupy the premises or any other premises had been granted to him).

(4) Nothing in section 23 or 24 of this Act applies to a tenancy or right of occupancy if it confers on the tenant or occupier the right to occupy the premises for a holiday only.

(5) Nothing in section 23 or 24 of this Act applies to a right of occupancy which confers rights of occupation in a hostel, within the meaning of the Housing (Scotland) Act 1987, which is provided by—

(a) a local authority within the meaning of the Local Government (Scotland) Act 1973 or a joint board or joint committee within the meaning of that Act;

(b) a development corporation within the meaning of the New Towns (Scotland) Act 1968;

(c) an urban development corporation within the meaning of Part XVI of the Local Government, Planning and Land Act 1980;

(d) the Scottish Special Housing Association;

(e) Scottish Homes;

(f) a registered housing association, within the meaning of the Housing Associations Act 1985; or

(g) any other person who is, or who belongs to a class of person which is, specified in an order made by the Secretary of State.

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(6) The power to make an order under subsection (5)(g) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.".

Marginal Citations
M10 1984 c. 58.

Power to repeal sections 33 and 58 of Rent (Scotland) Act 1984

41 Power of Secretary of State to repeal sections 33 and 58 of Rent (Scotland) Act 1984 and to reduce phasing progressively.

(1) The Secretary of State may by order repeal sections 33 (phasing of rent increases) and 58 (phasing of progression to registered rent) of the [M11]Rent (Scotland) Act 1984.

(2) An order under subsection (1) above may amend any enactment (including this Act).

(3) No order under subsection (1) above shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

(4) In the said section 33, in subsection (1) for the words "of 12 months" in both places where they occur there shall be substituted the words "specified in the order".

(5) In the said section 58—

(a) in subsections (3) and (4), at the end there shall be added the words "or for such other period as the Secretary of State may by order specify";

(b) after subsection (7) there shall be inserted the following subsection—

"(7A) An order under subsections (3) or (4) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may contain such supplementary or incidental material as the Secretary of State thinks fit.".

Marginal Citations
M11 1984 c. 58.

Phasing out of Rent (Scotland) Act 1984 and other transitional provisions

42 New protected tenancies restricted to special cases.

(1) A tenancy which begins on or after the commencement of this section cannot be a protected tenancy, unless—

(a) it is entered into in pursuance of a contract made before the commencement of this section; or

(b) it is granted to a person (alone or jointly with others) who, immediately before the tenancy was granted, was the protected tenant (or one of the protected tenants) or a statutory tenant of the same landlord; or

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(c) it is granted to a person (alone or jointly with others) in the following circumstances—

(i) prior to the grant of the tenancy, an order for possession of a dwelling-house was made against him (alone or jointly with others) on the court being satisfied as mentioned in section 11(1)(a) of the [M12]Rent (Scotland) Act 1984 (suitable alternative accommodation available) or on it appearing to the court, under section 48(2)(b) or (c) of the [M13]Housing (Scotland) Act 1987, that other suitable accommodation was available; and

(ii) the tenancy is of the premises which constitute the suitable alternative accommodation as to which the court was so satisfied or, as the case may be, the other suitable accommodation which appeared to the court to be available; and

(iii) in the proceedings for possession the court directed that the tenancy would be a protected tenancy; or

(d) it is granted in compliance with a direction under section 51(2)(ii) of the Housing (Scotland) Act 1987 (power of sheriff to direct that tenant of wrongfully repossessed house be given suitable alternative accommodation) or in pursuance of section 282(3)(b) of that Act (grant of tenancy upon acquisition by public sector authority of defective dwelling).

(2) In subsection (1)(b) above "protected tenant" and "statutory tenant" do not include—

(a) a tenant under a short tenancy;

(b) a protected or statutory tenant of a dwelling-house which was let under a short tenancy which has ended and in respect of which either there has been no grant of a further tenancy or any grant of a further tenancy has been to the person who, immediately before the grant, was in possession of the dwelling-house as a protected or statutory tenant,

and in this subsection "short tenancy" includes a tenancy which, in proceedings for possession under Case 15 in Schedule 2 to to the Rent (Scotland) Act 1984 is treated as a short tenancy.

(3) Expressions used in this section have the same meaning as in the [M14]Rent (Scotland) Act 1984.

Marginal Citations

M12 1984 c. 58.
M13 1987 c. 26.
M14 1984 c. 58.

43 Removal of special regimes for tenancies of housing associations etc.

(1) In this section—

(a) "housing association tenancy" means a tenancy to which Part VI of the Rent (Scotland) Act 1984 applies;

(b) "secure tenancy" has the same meaning as in Part III of the [M15]Housing (Scotland) Act 1987.

(2) A tenancy which is entered into on or after the commencement of this section cannot be a housing association tenancy unless—

(a) it is entered into in pursuance of a contract made before the commencement of this section; or

(b) it is granted to a person (alone or jointly with others) who, immediately before the tenancy was granted, was the tenant (or one of the tenants) under a housing association tenancy of the same landlord; or

(c) it is granted to a person (alone or jointly with others) in the following circumstances—

(i) prior to the grant of the tenancy, an order for possession of a dwelling-house was made against him (alone or jointly with others) on the court being satisfied as mentioned in paragraph (b) or paragraph (c) of subsection (2) of section 48 of the Housing (Scotland) Act 1987; and

(ii) the tenancy is of the premises which constitute the suitable accommodation as to which the court was so satisfied; and

(iii) in the proceedings for possession the court directed that it would be a housing association tenancy.

(3) A tenancy which is entered into on or after the commencement of this section cannot be a secure tenancy unless—

(a) the interest of the landlord belongs to—

[[F75](i) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, or a joint board or joint committee of two or more such councils, or the common good of such a council or any trust under the control of such a council; or

(ia) **[**[F76]Scottish Water**]**;**]**

(iii) a development corporation within the meaning of the [M16]New Towns (Scotland) Act 1968 (including an urban development corporation within the meaning of Part XVI of the [M17]Local Government, Planning and Land Act 1980); or

(iv) the Scottish Special Housing Association; or

(v) Scottish Homes; or

(vi) a police authority in Scotland; or

[[F77](vii) a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5);**]**

(b) it is entered into in pursuance of a contract made before the commencement of this section; or

(c) it is granted to a person (alone or jointly with others) who, immediately before it was entered into, was the secure tenant (or any one of the secure tenants) of the same landlord; or

(d) it is granted to a person (alone or jointly with others) in the following circumstances—

(i) prior to the grant of the tenancy, an order for possession of a house was made against him (alone or jointly with others) on the court being satisfied as mentioned in paragraph (b) or paragraph (c) of subsection (2) of section 48 of the [M18]Housing (Scotland) Act 1987; and

(ii) the tenancy is of premises which constitute the suitable accommodation as to which the court was so satisfied; and

(iii) in the proceedings for possession referred to in sub-paragraph (i) above the court directed that it would be a secure tenancy.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F75 S. 43(3)(a)(i)(ia) substituted (1.4.1996) for s. 43(3)(a)(i)(ii) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(2)** (with 128(8)); S.I. 1996/323, **art. 4**

F76 Words in s. 43(3)(a)(ia) substituted (25.6.2003) by The Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003 (S.S.I. 2003/331), art. 1, **Sch. para. 6(2)**

F77 S. 43(3)(a)(vii) substituted (2.8.2005) by Fire (Scotland) Act 2005 (asp 5), s. 90, **Sch. 3 para. 14(a)** (with s. 77); S.S.I. 2005/392, art. 2(k)

Marginal Citations

M15 1987 c. 26.

M16 1968 c. 16.

M17 1980 c. 65.

M18 1987 c. 26.

44 New "Part VII" contracts limited to transitional cases.

(1) No contract entered into after the commencement of this section shall be a Part VII contract for the purposes of the [M19]Rent (Scotland) Act 1984 unless it is entered into in pursuance of a contract made before the commencement of this section.

(2) If the terms of a Part VII contract are varied after the commencement of this section then, subject to subsection (3) below—

(a) if the variation affects the amount of the rent which, under the contract, is payable for the dwelling in question, the contract shall be treated as a new contract entered into at the time of the variation (and subsection (1) above shall have effect accordingly); and

(b) if the variation does not affect the amount of the rent which, under the contract, is so payable, nothing in this section shall affect the determination of the question whether the variation is such as to give rise to a new contract.

(3) Any reference in subsection (2) above to a variation affecting the amount of the rent which, under a contract, is payable for a dwelling does not include a reference to—

(a) a reduction or increase effected under section 66 of the Rent (Scotland) Act 1984 (power of **[**[F78]private rented housing**]** committees); or

(b) a variation which is made by the parties and has the effect of making the rent expressed to be payable under the contract the same as the rent for the dwelling which is entered in the register under section 67 of the Rent (Scotland) Act 1984.

(4) Section 70(2) of the Rent (Scotland) Act 1984 (no cancellation of registration of rent until after 3 years) shall cease to have effect.

(5) In this section "rent" has the same meaning as in Part VII of the Rent (Scotland) Act 1984.

Textual Amendments

F78 Words in s. 44(3) substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations

M19 1984 c. 58.

45 Transfer of existing tenancies.

(1) The provisions of subsection (3) below apply in relation to a tenancy which was entered into before, or pursuant to a contract made before, the commencement of this section if—

(a) at that commencement or, if it is later, at the time it is entered into, the interest of the landlord is held by a public body (within the meaning of subsection (4) below); and

(b) at some time after that commencement the interest of the landlord ceases to be so held.

(2) The provisions of subsection (3) below also apply in relation to a tenancy which was entered into before, or pursuant to a contract made before, the commencement of this section if—

(a) at that commencement or, if it is later, at the time it is entered into, it is a housing association tenancy; and

(b) at some time after that commencement, it ceases to be such a tenancy.

(3) On and after the time referred to in subsection (1)(b) or, as the case may be, subsection (2)(b) above—

(a) the tenancy shall not be capable of being a protected tenancy or a housing association tenancy;

(b) the tenancy shall not be capable of being a secure tenancy unless (and only at a time when) the interest of the landlord under the tenancy is (or is again) held by a public body; and

(c) paragraph 1 of Schedule 4 to this Act shall not apply in relation to it, and the question whether at any time thereafter it becomes (or remains) an assured tenancy shall be determined accordingly.

(4) For the purposes of this section, the interest of a landlord under a tenancy is held by a public body at a time when—

[[F79](a) it belongs to a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, or a joint board or joint committee of two or more such councils, or the common good of such a council or any trust under the control of such a council; or

(aa) it belongs to **[**[F80]Scottish Water**]**;**]**

(c) it belongs to a development corporation within the meaning of the [M20]New Towns (Scotland) Act 1968 (including an urban development corporation within the meaning of Part XVI of the [M21]Local Government, Planning and Land Act 1980); or

(d) it belongs to the Scottish Special Housing Association; or

(e) it belongs to Scottish Homes; or

(f) it belongs to a police authority in Scotland; or

[[F81](g) a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5);**]**

Status: *Point in time view as at 03/09/2007.*
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(h) it belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department.

(5) In this section—

(a) "housing association tenancy" means a tenancy to which Part VI of the [M22]Rent (Scotland) Act 1984 applies; and

(b) "protected tenancy" has the same meaning as in that Act.

Textual Amendments

F79 S. 45(4)(a)(aa) substituted (1.4.1996) for s. 45(4)(a)(b) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(3)** (with s. 128(8)); S.I. 1996/323, **art. 4**

F80 Words in s. 45(4)(aa) substituted (25.6.2003) by The Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003 (S.S.I. 2003/331), art. 1, **Sch. para. 6(2)**

F81 S. 45(4)(g) substituted (2.8.2005) by Fire (Scotland) Act 2005 (asp 5), s. 90, **sch. 3 para. 14(b)** (with s. 77); S.S.I. 2005/392, art. 2(k)

Marginal Citations

M20 1968 c. 16.

M21 1980 c. 65.

M22 1984 c. 58.

46 Statutory tenants: succession.

(1) In section 3 of the Rent (Scotland) Act 1984 (which makes provision as to statutory tenants and tenancies) in subsection (1) after the word "sections" there shall be inserted "3A,".

(2) After section 3 of that Act there shall be inserted the following section—

"3A Statutory tenants and tenancies: further provision as to succession.

(1) Where the person who is the original tenant, within the meaning of Schedule 1 to this Act, dies after the commencement of section 46 of the Housing (Scotland) Act 1988, the provisions of Schedule 1A to this Act shall have effect for determining what person (if any) is entitled to a statutory or statutory assured tenancy of the dwelling-house.

(2) Where subsection (1) above does not apply but the person who is the first successor, within the meaning of the said Schedule 1, dies after the commencement of the said section 46, the provisions of Schedule 1B to this Act shall have effect for determining what person (if any) is entitled to a statutory assured tenancy of the dwelling-house by succession.

(3) In any case where, by virtue of any provision of the said Schedules 1A or 1B to this Act, a person becomes entitled to an assured tenancy of a dwelling–house by succession, that tenancy shall be a statutory assured tenancy arising by virtue of the said section 46.".

(3) Part I of Schedule 6 to this Act shall have effect for the purpose of inserting new Schedules 1A and 1B into the [M23]Rent (Scotland) Act 1984.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) If and so long as a house is subject to an assured tenancy to which a person has become entitled by succession, section 18 of and Schedule 5 to this Act shall have effect subject to the modifications in Part II of Schedule 6 to this Act.

Marginal Citations
M23 1984 c. 58.

General provisions

47 Rent (Scotland) Act 1984 not to apply to tenancies subject to shared ownership agreements.

(1) In section 5 of the Rent (Scotland) Act 1984 (exclusion from being protected or statutory tenancy) after subsection (5) there shall be inserted the following subsection—

"(5A) A tenancy which is a lease under a shared ownership agreement within the meaning of section 106(2) of the Housing Associations Act 1985 shall not be a protected tenancy.".

(2) In section 55 of that Act (tenancies to which sections 55 to 59 of that Act apply) after the word "above" there shall be inserted the words "but do not apply, and shall be deemed never to have applied, to a tenancy which is a lease under a shared ownership agreement within the meaning of section 106(2) of the Housing Associations Act 1985.".

48 [[F82]Private rented housing] committees: procedure and information powers.

(1) In section 53 of the Rent (Scotland) Act 1984 (regulations of the Secretary of State) at the end of paragraph (b) of subsection (1) (procedure of rent officers and **[**[F83]private rented housing**]** committees) there shall be added the words "whether under this Act or the Housing (Scotland) Act 1988".

(2) The **[**[F83]private rented housing**]** committee to whom a matter is referred under this Part of this Act may by notice in the prescribed form served on the landlord or the tenant require him to give to the committee, within such period of not less than fourteen days from the service of the notice as may be specified in the notice, such information as they may reasonably require for the purposes of their functions.

(3) If any person fails without reasonable excuse to comply with a notice served on him under subsection (2) above, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Where an offence under subsection (3) above committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Textual Amendments

F82 Words in s. 48 heading substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(b)** (with s. 193); S.S.I. 2007/270, art. 3

F83 Words in s. 48(1)(2) substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

[F84][48A Amounts attributable to services.

In order to assist authorities to give effect to the housing benefit scheme under Part VII of the Social Security Contributions and Benefits Act 1992, where a rent is determined under section 25 or 34 above, the **[**[F85]private rented housing**]** committee shall note in their determination the amount (if any) of the rent which, in the opinion of the committee, is fairly attributable to the provision of services, except where that amount is in their opinion negligible; and the amounts so noted may be included in the information specified in an order under section 49 below.**]**

Textual Amendments

F84 S. 48A inserted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), **Sch. 2**, para. 102

F85 Words in s. 48A substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

49 Information as to determination of rents.

(1) The **[**[F86]private rented housing**]** panel shall keep and make publicly available, in such manner as is specified in an order made by the Secretary of State, such information as may be so specified with respect to rents under assured tenancies which have been the subject of, or taken into account on, references or applications to, or determinations by, **[**[F86]private rented housing**]** committees.

(2) A copy of any information kept under subsection (1) above, purporting to be certified under the hand of an authorised officer of the **[**[F86]private rented housing**]** panel shall, unless the contrary is shown, be deemed to have been signed by such officer and be sufficient evidence of that information.

(3) An order under subsection (1) above—

(a) may prescribe the fees to be charged for the supply of a copy, including a certified copy, of any of the information kept by virtue of that subsection; and

(b) may make different provision with respect to different cases or description of case, including different provision for different areas.

Textual Amendments

F86 Words in s. 49(1)(2) substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

Status: *Point in time view as at 03/09/2007.*
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50 Powers of local authorities for the purposes of giving information.

Any local authority shall have power to publish information, for the assistance of landlords and tenants, as to their rights and duties under the provisions of this Part of this Act and as to the procedure for enforcing those rights or securing the performance of those duties.

51 Application to Crown.

(1) Subject to subsection (2) below and paragraph 10 of Schedule 4 to this Act, this Part of this Act applies in relation to premises in which there subsists, or at any material time subsisted, a Crown interest as it applies in relation to premises in relation to which no such interest subsists or ever subsisted.

(2) Sections 36 and 37 of this Act do not bind the Crown but sections 38 to 40 of this Act bind the Crown to the extent provided for in section 26 of the [M24]Rent (Scotland) Act 1984.

(3) In this section "Crown interest" means an interest which belongs to Her Majesty in right of the Crown or to a government department, or which is held in trust for Her Majesty for the purposes of a government department.

Marginal Citations

M24 1984 c. 58.

52 Saving for common law as to effect of notice of termination upon tacit relocation.

Nothing in this Part of this Act prejudices any rule of law relating to the effect of the giving of notice of termination of a lease upon the operation of tacit relocation.

53 Orders and regulations.

(1) Any power of the Secretary of State to make orders or regulations under this Part of this Act shall be exercised by statutory instrument.

(2) A statutory instrument containing any order or regulation under this Part, other than an order under section 35 or 41 above, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Orders or regulations under this Part may make different provision for different cases or circumstances or different areas and may contain such incidental, supplemental or transitional provisions as the Secretary of State thinks fit.

54 Notice under Part II.

A notice served under this Part of this Act on a person or notice so given to him may be served or given —

(a) by delivering it to him;
(b) by leaving it at his last known address; or
(c) by sending it by recorded delivery letter to him at that address.

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55 Interpretation of Part II.

(1) In this Part of this Act, except where the context otherwise requires—

[[F87]"council tax" means the tax payable under the Local Government Finance Act 1992;**]**

"house" includes a part of a house;

"landlord" includes any person from time to time deriving title from the original landlord and also includes, in relation to a house, any person other than a tenant who is, or but for the existence of an assured tenancy would be, entitled to possession of the house;

"let" includes "sub-let";

"order for possession" means decree of removing or warrant of ejection or other like order; and "proceedings for possession" shall be construed accordingly;

"prescribed" means prescribed by regulations made by the Secretary of State;

[F88] . . . . . .

"statutory assured tenancy" shall be construed in accordance with section 16(1) of this Act;

"tenancy" includes "sub-tenancy" and an agreement for a tenancy or sub-tenancy; [F89]...

"tenant" includes a sub-tenant and any person deriving title from the original tenant or sub-tenant**[**[F90]; and

[F88] . . . . . .**]**

(2) Any reference in this Part of this Act to the beginning of a tenancy is a reference to the day when the lease of the house let on the tenancy commences.

(3) Where two or more persons jointly constitute either the landlord or the tenant in relation to a tenancy, then, except where otherwise provided, any reference in this Part of this Act to the landlord or to the tenant is a reference to all the persons who jointly constitute the landlord or the tenant, as the case may require.

Textual Amendments

F87 Definition inserted (1.4.1993) by S.I. 1993/658, art. 2, **Sch. 2 para. 11**

F88 Words in s. 55(1) repealed (25.6.2003) by The Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003 (S.S.I. 2003/331), art. 1, **Sch. para. 6(3)**

F89 S. 55(1): Word repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 157(4)(b), **Sch. 14** (with s. 128(8)); S.I. 1996/323, **art. 4**

F90 S. 55(1): Word and definition of "water authority" inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(4)(c)** (with s. 128(8)); S.I. 1996/323, **art. 4**

PART III

CHANGE OF LANDLORD: SECURE TENANTS

Modifications etc. (not altering text)

C5 Pt. III extended (8.9.2000) by 2000 asp 10, s. 9(2), **Sch. 3** (with s. 32); S.S.I. 2000/312, **art. 2**

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56 Right conferred by Part III.

(1) This Part of this Act has effect for the purpose of conferring on any person who has been approved under section 57 below [F91]. . . the right to acquire from a public sector landlord any house—

(a) which, on the relevant date, is occupied by a qualifying tenant; and(b) of which, on that date, the landlord is heritable proprietor,

and any other heritable property of which, on that date, the landlord is heritable proprietor and which will reasonably serve a beneficial purpose in connection with the occupation of the house; and, in this Part of this Act, "house" includes any such property.

(2) In subsection (1) above, "heritable proprietor" includes any person entitled under section 3 of the Conveyancing (Scotland) Act 1924 (disposition by uninfeft person) to grant a disposition.

(3) The following are public sector landlords for the purposes of this Part of this Act, namely—

[[F92](a) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, or a joint board or joint committee of two or more such councils, or the common good of such a council or any trust under the control of such a council**]**

(b) a development corporation within the meaning of the [M25]New Towns (Scotland) Act 1968 (including an urban development corporation within the meaning of Part XVI of the [M26]Local Government Planning and Land Act 1980);

(c) the Scottish Special Housing Association;

(d) the Housing Corporation;

(e) Scottish Homes.

(4) A **[**[F93]tenant under a Scottish secure tenancy within the meaning of the Housing (Scotland) Act 2001 (asp 10)**]** is a qualifying tenant for the purposes of this Part unless he is obliged to give up possession of the house in pursuance of an order of the court or will be so obliged at a date specified in such an order.

(5) The right conferred by this Part of this Act does not extend to a house—

(a) which is one of a group which has been provided with facilities (including a call system and the services of a warden) specially designed or adapted for the needs of persons of pensionable age or disabled persons;

(b) which has facilities which are substantially different from those of an ordinary house and has been designed or adapted for occupation by—

(i) a person of pensionable age; or

(ii) a disabled person,

whose special needs require accommodation of the kind provided by the house; or

(c) which is in an area which is, by order made by the Secretary of State on the application of the **[**[F94]council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**in whose area it is situated, designated a rural area.

(6) The right conferred by this Part of this Act does not arise in relation to a house if—

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(a) it is held by **[**[F95]the council for Orkney Islands, Shetland Islands or Western Isles**]** for the purposes of its functions as an education authority and is required for the accommodation of a person who is or will be employed by the council for those purposes; and

(b) the council is not likely to be able reasonably to provide other suitable accommodation for that person.

(7) An order under subsection (5)(c) above may be made only if within the designated rural area more than one-third of all relevant houses have been acquired under this Part of this Act or purchased, whether under Part III of the [M27]Housing (Scotland) Act 1987 (which confers the right to buy upon certain public sector tenants) or otherwise, and the Secretary of State is satisfied that an unreasonable proportion of the houses so acquired or purchased consists of houses which have been resold and are not—

(a) being used as the only or principal homes of the owners; or

(b) subject to regulated tenancies within the meaning of section 8 of the [M28]Rent (Scotland) Act 1984, or assured tenancies for the purpose of Part II of this Act.

(8) An order under subsection (5)(c) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) For the purposes of subsection (7) above a "relevant house" is one of which—

(a) at 3rd October 1980, the **[**[F96]council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]** in whose area it was situated;

(b) at 7th January 1987, a registered housing association (within the meaning of the [M29]Housing Associations Act 1985)

was landlord.

(10) In this Part of this Act "the relevant date", in relation to an acquisition or proposed acquisition under this Part, means the date on which is made the application under section 58 below seeking to exercise the right conferred by this Part.

(11) In section 14(2) of the Housing (Scotland) Act 1987 (houses which may be sold by local authorities without consent of Secretary of State) in paragraph (a) there shall be added at the end the words "or, in pursuance of Part III of the Housing (Scotland) Act 1988 (change of landlord)".

Textual Amendments

F91 Words in s. 56(1) repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(5)(a)**; S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F92 S. 56(3)(a) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(5)(a)** (with s. 128(8)); S.I. 1996/323, **art. 4**

F93 Words in s. 56(4) substituted (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(5)(c)**; S.S.I 2002/321, art. 2, Sch. Table (subject to transitional provisions in arts. 3-5)

F94 Words in s. 56(5)(c) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(b)** (with s. 128(8)); S.I. 1996/323, **art. 4**

F95 Words in s. 56(6)(a) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(c)** (with s. 128(8)); S.I. 1996/323, **art. 4**

F96 Words in s. 56(9)(a) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(d)** (with s. 128(8)); S.I. 1996/323, **art. 4**

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Marginal Citations

M25 1968 c. 16.
M26 1980 c. 65.
M27 1987 c. 26.
M28 1984 c. 58.
M29 1985 c. 69.

57 Persons by whom right may be exercised.

(1) The right conferred by this Part shall not be exercisable except by a person who has been approved by **[**[F97]the Scottish Ministers**]** under this section (in this Part of this Act referred to as an "approved person") [F98]. . .; and [F99]. . . a public sector landlord [F98]. . ., [F100]. . . may **[**[F101]not**]**be so approved.

(2) An approval under this section—

(a) may be given to a particular person or to persons of a particular description;

(b) may apply either generally or in relation to particular acquisitions or acquisitions made in a particular area or within a particular period;

(c) may, in relation to a particular person, specify the maximum number to which the approval extends of houses to be acquired by him under this Part of this Act;

(d) may be given subject to conditions.

(3) An approval under this section may be revoked by **[**[F102]the Scottish Ministers**]**, but without prejudice to any transaction previously completed.

Textual Amendments

F97 Words in s. 57(1) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(6)(a)(i)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F98 Words in s. 57(1) repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(6)(a)(ii)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F99 Word in s. 57(1) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 157(6)(a), **Sch. 14** (with s. 128(8)); S.I. 1996/323, art. 4, **Sch. 2**

F100 Words in s. 57(1) from "nor" to "council" where it thirdly occurs expressed to be repealed (1.4.1996) by 1994 c. 39, s. 180(1), Sch. 13 para. 157(6)(b), **Sch. 14** (with s. 128(8)); S.I. 1996/323, art. 4, **Sch. 2**

F101 Word in s. 57(1) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(6)(c)** (with s. 128(8)); S.I. 1996/323, **art. 4**

F102 Words in s. 57(3) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(6)(b)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

58 Application to exercise rights conferred by this Part and offer to sell.

(1) For the purposes of exercising the right conferred by this Part of this Act, the applicant (that is to say, the approved person [F103]. . .) shall serve on the landlord a notice in such form as may be prescribed (in this Part of this Act referred to as an "application")—

(a) containing a statement that the applicant seeks to exercise the right conferred by this Part of this Act; and

(b) accompanied by the consent in writing of the qualifying tenant to an approach being made to their existing landlord.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

In this subsection, "prescribed" means prescribed by regulations made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(2) In subsection (1) above the reference to the qualifying tenant includes any spouse of his or hers who occupies the house as his or her only or principal home and, where there is a joint tenancy, each joint tenant's spouse who so occupies the house, and in this subsection the reference to a tenant's or joint tenant's spouse includes a person of the opposite sex who is living with the tenant or joint tenant as if he or she were the tenant's or joint tenant's husband or wife **[**[F104]and a person living with the tenant or joint tenant in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex**]**.

(3) The applicant shall, at the same time as he serves an application, serve a copy of it on the qualifying tenant and **[**[F105]the Scottish Ministers**]**.

(4) An application shall cease to have effect—
   (a) if the applicant withdraws it; or
   (b) if the qualifying tenant withdraws his consent,

   by notice thereof served upon the landlord.

(5) Where an application is served under this section and the landlord does not serve notice of refusal under section 61 below, it shall within 2 months after service of the application serve on the applicant a notice (in this Part referred to as an "offer to sell notice") stating—
   (a) the market value of the house on the date of service of the application;
   (b) any conditions which the landlord intends to impose under subsection (9) below

   and containing an offer to sell the house to the applicant at a price equal to that value and under those conditions.

(6) For the purposes of subsection (5) above, the market value of a house shall be determined by either—
   (a) a qualified valuer nominated by the landlord and accepted by the applicant; or
   (b) the district valuer,

   as the landlord thinks fit.

(7) In determining the market value of a house for the purposes of subsection (5) above, regard shall be had to the price which, on the relevant date, it would realise if sold on the open market by a willing seller on the following assumptions, namely—
   (a) that it was sold subject to the tenancy held by the qualifying tenant but otherwise with vacant possession;
   (b) that it was to be conveyed with the same rights and subject to the same burdens as it would be in pursuance of the right of acquisition under this Part of this Act;
   (c) that the only prospective purchasers were [F106]. . . the persons who, on that date, were approved under section 57 above; and
   (d) that the applicant would, within a reasonable period carry out such works as are reasonably necessary to put the house into the state of repair required by the landlord's repairing obligations.

(8) Where the circumstances are such that, on the relevant date, a house, if offered for sale in accordance with subsection (7) above, would not realise any price then—

(a) for the purposes of that subsection, the price shall be taken to be—

(i) such amount as would require to be paid to [F107]. . . a person who, on the relevant date, was approved under section 57 above in order that it or he would willingly so acquire the house, expressed as a negative; or

(ii) where [F107]. . . that person would willingly so acquire it for no consideration, nil;

(b) the market value of the house may be determined under that subsection to be a negative value or nil;

(c) where the market value is so determined, the reference in subsection (5) above to a price equal to the market value shall be construed accordingly and references in this section to selling a house and the purchaser of it shall be construed respectively as references to disposing of it and the acquirer of it; and

(d) where, by virtue of paragraph (c) above, the price of the house is in the negative, the obligation to pay shall be upon the landlord.

(9) The landlord shall, at the same time as it serves an offer to sell notice serve a copy of the notice upon the qualifying tenant.

(10) An offer to sell under this section may be under such conditions as are reasonable, provided that—

(a) they shall not reduce the tenant's enjoyment and use of the house as tenant of the applicant from that which he had as tenant of the landlord; and

(b) they shall include such terms as are necessary to entitle the applicant to receive a good and marketable title to the house.

(11) A condition which imposes a new charge or an increase of an existing charge for the provision of a service in relation to the house shall provide for the charge to be in reasonable proportion to the cost to the landlord of providing the service.

(12) No condition shall be imposed under this section which has the effect of requiring the applicant or the tenant to pay any expenses of the landlord.

Textual Amendments

F103 Words in s. 58(1) repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(7)(a)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F104 Words in s. 58(2) inserted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(7)(b)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F105 Words in s. 58(3) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(7)(c)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F106 Words in s. 58(7)(c) repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(7)(d)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F107 Words in s. 58(8)(a) repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(7)(e)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

59 Variation of conditions.

(1) Where an offer to sell notice is served on an applicant and he wishes to exercise the right conferred by this Part of this Act, but—

(a) he considers that a condition contained in the offer to sell is unreasonable; or

(b) he wishes to have a new condition included in it,

he may request the landlord to strike out or vary the condition, or to include the new condition as the case may be, by serving on the landlord within one month after service of the offer to sell notice a notice in writing setting out his request; and if the landlord agrees, it shall accordingly serve an amended offer to sell on the applicant within one month of service of the notice setting out the request.

(2) An applicant who is aggrieved by the refusal of the landlord to agree to strike out or vary a condition, or to include a new condition, or by his failure timeously to serve an amended offer to sell, may, within one month or, with the consent of the landlord given in writing before the expiry of the said period of one month, within 2 months of the refusal or failure, refer the matter to the Lands Tribunal for Scotland (hereinafter in this Part of this Act referred to as the Lands Tribunal) for determination.

(3) In proceedings under subsection (2), the Lands Tribunal may, as it thinks fit, uphold the condition or strike it out or vary it, or insert the new condition, and where its determination results in a variation of the terms of the offer to sell, it shall order the landlord to serve on the applicant an amended offer to sell accordingly within 2 months thereafter.

60 Notice of acceptance.

(1) Where an offer to sell notice is served upon an applicant and he wishes to exercise the right conferred by this Part of this Act and—

(a) he does not dispute the offer to sell by timeously serving a notice setting out a request under section 59(1) above or by referring the matter to the Lands Tribunal under section 62(1) below; or

(b) any such dispute has been resolved,

the applicant shall serve a notice of acceptance on the landlord within 2 months of whichever is the latest of—

(i) the service upon the applicant of the offer to sell;

(ii) the service on him of an amended offer to sell (or if there are more than one, of the latest amended offer to sell);

(iii) a determination by the Lands Tribunal under section 59(3) above which does not require service of an amended offer to sell;

(iv) a finding or determination of the Lands Tribunal in a matter referred to it under subsection (1) of section 62 below,

or within such longer period as may be agreed between the applicant and the landlord.

(2) A notice of acceptance under subsection (1) above is of no effect unless the qualifying tenant and the applicant have concluded a lease of the house for a period immediately subsequent to the sale of the house in pursuance of this Part of this Act, being a lease which is conditional upon that sale proceeding.

(3) If a notice of acceptance under subsection (1) above is not served within the period specified in or, as the case may be, agreed under that subsection, the application to which the notice relates shall lapse.

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(4) Where an offer to sell (or an amended offer to sell) has been served on the applicant and a relative notice of acceptance has been duly served on the landlord, a contract of sale of the house shall be constituted between the landlord and the applicant on the terms contained in the offer (or amended offer) to sell.

61 Refusal of applications.

(1) Where a landlord on which an application has been served—

(a) disputes the applicant's right under this Part of this Act it shall, by notice (in this Part of this Act referred to as a "notice of refusal") served within one month after service of the application, refuse the application;

(b) after reasonable inquiry (which shall include reasonable opportunity for the applicant to amend the application), considers that any of the information contained in the application is incorrect in a material particular, it shall, by notice of refusal served within 2 months after the application, refuse the application.

(2) A notice of refusal shall specify the grounds on which the landlord disputes the applicant's right under this Part of this Act or, as the case may be, the correctness of the information.

(3) Where a landlord serves a notice of refusal on an applicant, the applicant may, within one month thereafter apply to the Lands Tribunal for a finding that the applicant is entitled to exercise the right conferred by this Part on such terms as it may determine.

62 Reference to Lands Tribunal.

(1) Where—

(a) a landlord which has been duly served with an application fails to issue timeously either an offer to sell or a notice of refusal;

(b) the Lands Tribunal has made a determination under section 59(3) above and the landlord has failed to issue an amended offer to sell within 2 months thereafter;

(c) the Lands Tribunal has made a finding under section 61(3) above and the landlord has not, within 2 months, duly progressed the application in accordance with that finding;

(d) a landlord has served an offer to sell which does not comply with a requirement of this Part of this Act,

the applicant may refer the matter to the Lands Tribunal by serving on its clerk a copy of any notice served and of any finding or determination made under this Part of this Act together with a statement of his grievance.

(2) On a reference to the Lands Tribunal under subsection (1) above, it shall consider whether any of paragraphs (a) to (d) thereof apply and, if it so finds, it may serve an offer to sell notice and do otherwise as the landlord might do in pursuance of such notice; and anything done by it under this subsection shall have effect as if done by the landlord.

(3) Nothing in this section shall affect the provisions of any other enactment relating to the enforcement of a statutory duty whether under that enactment or otherwise.

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63 Consent for subsequent disposals.

(1) A person [F108]. . . who acquires any property under this Part of this Act shall not dispose of it except with the consent in writing of **[**[F109]the Scottish Ministers**]**.

(2) Any consent for the purposes of subsection (1) above may be given either in respect of a particular disposal or in respect of disposals of any class or description (including disposals in particular areas) and either unconditionally or subject to conditions.

[[F110](2A) Before giving any consent for the purposes of subsection (1) above, **[**[F111]the Scottish Ministers**]**—

(a) shall satisfy **[**[F112]themselves**]** that the person who is seeking the consent has taken appropriate steps to consult the tenant of the house (or, as the case may be, each house) of which the property proposed to be disposed of consists; and

(b) shall have regard to the response of such tenant to that consultation.**]**

(3) The consent of **[**[F113]the Scottish Ministers under section 66 of the Housing (Scotland) Act 2001 (asp 10) (consent for disposal by registered social landlord)**]** is not required for any disposal, or disposals of any class or description, in respect of which consent is given under subsection (1) above.

(4) In this section references to disposing of property include references to—

(a) granting or disposing of any interest in property;

(b) entering into a contract to dispose of property or to grant or dispose of any such interest; and

(c) granting an option to acquire property or any such interest.

Textual Amendments

F108 Words in s. 63(1) repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(8)(a)(i)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F109 Words in s. 63(1) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(8)(a)(ii)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F110 S. 63(2A) inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 Pt. I para. 89**

F111 Words in s. 63(2A) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(8)(b)(i)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F112 Word in s. 63(2A)(a) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(8)(b)(ii)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F113 Words in s. 63(3) substituted (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(8)(c)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

64 Extension etc. of relevant periods.

(1) In this section "relevant period" means any period within which anything is required by this Part to be done by either of the parties, that is to say, the applicant and the landlord.

(2) At any time before the end of any relevant period, or any such period as previously extended under this subsection, the other party may, by a written notice served on the party to whom the requirement relates, extend or further extend that period.

(3) Where—

(a) the applicant is the party to whom the requirement relates; and

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(b) the relevant period, or that period as extended under subsection (2) above, expires without his doing what he is required by this Part to do within that period,

his application claiming to exercise the right conferred by this Part shall be deemed to be withdrawn, but without prejudice to his making a further such application.

PART IV

MISCELLANEOUS AND GENERAL

65 "Cost floor" limit on discount on price of house purchased by secure tenant.

(1) In subsection (1) of section 62 of the [M30]Housing (Scotland) Act 1987 (purchase price of house being purchased in pursuance of tenant's right) for the words "subsections (7) and (8)" there shall be substituted the words "subsection (6A)".

(2) For subsections (7) to (9) of that section there shall be substituted the following subsections—

"(6A) Except where the Secretary of State so determines, the discount for the purpose of subsection (1) shall not reduce the price below the amount which, in accordance with a determination made by him, is to be taken as representing so much of the costs incurred in respect of the house as, in accordance with the determination, is to be treated as—

(a) incurred in the period commencing with the beginning of the financial year of the landlord which was current 5 years prior to the date of service of the application to purchase the house or such other period as the Secretary of State may by order provide; and

(b) relevant for the purposes of this subsection,

and, if the price before discount is below that amount, there shall be no discount.

(6B) An order under subsection (6A) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may make different provision in relation to different cases or circumstances or different areas.".

(3) In subsection (10) of that section, for "(9)" there shall be substituted "(6A)".

(4) Subsections (11) to (13) of that section shall cease to have effect.

[F114](5) . . . . . .

(6) The said sections 62 and 76 shall, however, continue to apply as originally enacted in relation to the price of a house in respect of which the offer to sell (within the meaning of section 63 of the Housing (Scotland) Act 1987) was served on the tenant prior to the commencement of this section; but nothing in this subsection restricts the power of the tenant to withdraw his application to purchase or prejudices the effect of such withdrawal.

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Textual Amendments

F114 S. 65(5) repealed (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(9)**; S.S.I. 2002/321, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-5)

Marginal Citations

M30 1987 c. 26.

66 Schemes for payments to assist local authority tenants to obtain other accommodation.

(1) In accordance with a scheme made by a local authority and approved by the Secretary of State under this section, the authority may make grants to or for the benefit of qualifying tenants of the authority with a view to assisting each person to whom or for whose benefit a grant is made to obtain accommodation otherwise than as a tenant of the authority either—

(a) by acquiring an interest in a house; or

(b) by carrying out works to a house to provide additional accommodation; or

(c) by both of those means.

(2) A scheme under this section shall contain such provisions as the local authority considers appropriate together with any which the Secretary of State may require as a condition of his approval and, without prejudice to the generality, a scheme may include provisions specifying, or providing for the determination of—

(a) the persons who are qualifying tenants for the purposes of the scheme;

(b) the interests which qualifying tenants may be assisted to acquire;

(c) the works for the carrying out of which grants may be made;

(d) the circumstances in which a grant may be made for the benefit of a qualifying tenant;

(e) the amount of the grant which may be made in any particular case and the terms on which it may be made;

(f) the limits on the total number and amount of grants which may be made; and

(g) the period within which the scheme is to apply.

(3) The Secretary of State may approve a scheme made by a local authority under this section with or without conditions and, where a scheme has been approved, the authority shall take such steps as it considers appropriate to bring the scheme to the attention of persons likely to be able to benefit from it and shall take such other steps (if any) as the Secretary of State may direct in any particular case to secure publicity for the scheme.

(4) The Secretary of State may revoke an approval of a scheme under this section by a notice given to the local authority concerned; and where such a notice is given, the revocation shall not affect the operation of the scheme in relation to any grants made or agreed before the date of the notice.

(5) Where a scheme made by a local authority under this section has been approved, a person dealing with the authority shall not be concerned to see or enquire whether the terms of the scheme have been or are being complied with; and any failure to comply with the terms of a scheme shall not invalidate any grant purporting to be made in

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accordance with the scheme unless the person to whom the grant is made has actual notice of the failure.

(6) In this section, "local authority" and "house" have respectively the meanings assigned to those expressions by section 338(1) of the [M31]Housing (Scotland) Act 1987.

Marginal Citations

M31 1987 c. 26.

67 Abolition and capitalisation of certain subsidies and contributions.

(1) No subsidy or contribution shall be made under the following provisions of the [M32]Housing (Scotland) Act 1987 (the "superseded provisions")—

(a) section 200 (slum clearance subsidy);

(b) section 254 (contributions towards improvement grants, repairs grants and grants for fire escapes);

(c) section 255 (contributions for improvement of amenities);

(d) section 296 (contributions towards certain other expenses)

in respect of any expense or expenditure incurred by a local authority on or after 1st April 1989.

(2) No claim for subsidy or contribution under any superseded provision in respect of or towards any expense or expenditure incurred by a local authority before 1st April 1989 shall be entertained by the Secretary of State unless—

(a) it is received by him before 1st October 1989; and

(b) any information reasonably required by him in relation to any such claim is received by him within two months after the receipt by him of the claim.

(3) Where two or more periodic payments of a subsidy or contribution under a superseded provision would, apart from this subsection, fall to be made on or after 1st April 1989, these payments shall be capitalised and made as follows—

(a) if one or more earlier such payments have been made before that date, the Secretary of State shall, instead of making the remaining payments, pay an amount equal to the appropriate percentage of the relevant capital amount;

(b) if no earlier such payment has been made before that date, the Secretary of State shall, instead of making any such payments, pay such amount as appears to him to be equal to the appropriate percentage of the relevant expenditure.

(4) In subsection (3) above—

"the appropriate percentage", in relation to a relevant capital amount, means the percentage specified in or under the superseded provision in relation to the subsidy or contribution to which the capital amount relates and, in relation to a subsidy or contribution, means the percentage specified in or under the superseded provision in relation to that subsidy or contribution;

"the relevant capital amount", in relation to a subsidy or contribution, means the sum of—

(a) such amount as the Secretary of State considers would, on the date of his payment under subsection (3)(a) above, be payable by the local authority were they then to repay a loan, repayable over twenty years, taken out by them from the Public Works Loan Commissioners to meet their expense or, as the case

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may be, expenditure in respect of or towards which the subsidy or contribution was made; and

(b) any other amount which he considers would be then payable on such repayment of that loan;

"relevant expenditure", in relation to a subsidy or contribution, means the expense or expenditure in respect of which the subsidy or contribution was made.

(5) Payment made under subsection (3) above shall be—

(a) applied in reduction or extinguishment of such debt (whether then payable or not) of the local authority as the Secretary of State thinks fit; or

(b) made to the local authority; or

(c) partly so applied and partly so made.

(6) Payments made to a local authority under subsection (5) above shall be applied by them in the repayment of such debt and in such manner as the Secretary of State directs.

(7) Notwithstanding the repeal by this Act of section 254 of the [M33]Housing (Scotland) Act 1987, subsection (4) of that section (obligation upon local authority to pay to Secretary of State sums recovered by them in consequence of breach of conditions of improvement grant or by way of voluntary repayment of such grant) shall continue to have effect in relation to expense incurred under that section by a local authority prior to 1st April 1989, being expense in respect of which contributions were made under that section.

(8) Paragraph 1(b) of Schedule 16 to the Housing (Scotland) Act 1987 (duty of local authority to credit slum clearance subsidy to slum clearance revenue account) shall cease to have effect on 1st April 1989.

Marginal Citations

M32 1987 c. 26.

M33 1987 c. 26.

68 Abolition of local authority's power to refer Part VII contracts to rent assessment committees.

In section 65(1) of the [M34]Rent (Scotland) Act 1984 (which empowers the lessor, the lessee and the local authority to refer a Part VII contract to the **[**[F115]private rented housing**]** committee), the words "or the local authority" and in sections 66(1), 68 and 71 (1) of that Act the words "or the local authority" in each place where they occur shall cease to have effect.

Textual Amendments

F115 Words in s. 68 substituted (3.9.2007) by Housing (Scotland) Act 2006 (asp 1), s. 195(3), **Sch. 6 para. 16(a)** (with s. 193); S.S.I. 2007/270, art. 3

Marginal Citations

M34 1984 c. 58.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

69 Exclusion of SSHA, development corporations and co-operative housing associations from rent limitation under Part VI of Rent (Scotland) Act 1984.

In section 61(1) of the Rent (Scotland) Act 1984, the definition of "housing association" shall have effect, and shall be deemed always to have had effect, with the addition at the end of the words "except that it does not include—

(a) the Scottish Special Housing Association;

(b) a development corporation (within the meaning of the New Towns (Scotland) Act 1968); or

(c) a co-operative housing association within the meaning of the Housing Associations Act 1985.".

[F116]70 . . . . . .

Textual Amendments

F116 S. 70 repealed (1.4.1997) by 1996 c. 52, s. 227, **Sch. 19 Pt. VI**; S.I. 1997/618, **art. 2** (with transitional saving in Sch. para. 4)

71 Power of development corporations to dispose of housing land.

After section 18 of the [M35]New Towns (Scotland) Act 1968 there shall be inserted the following section—

"**18AA Power of development corporation to dispose of housing land.**

(1) Notwithstanding the provisions of sections 3 and 18 of this Act, a development corporation may sell their whole interest in any land (within or outside the area of the new town) held for housing purposes.

(2) A development corporation shall not sell their interest in any land under this section without the consent of the Secretary of State, which may be given—

(a) subject to conditions;

(b) either generally to all development corporations or to a particular development corporation;

(c) in relation either to particular land or to land of a particular description.

(3) A development corporation shall not, except with the consent of the Secretary of State, sell their interest in any land under this section otherwise than on the best terms that can be reasonably obtained.".

Marginal Citations

M35 1968 c. 16.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

72 Amendments to the Housing (Scotland) Act 1987 and other enactments and repeals.

(1) The [M36]Housing (Scotland) Act 1987 shall have effect subject to the amendments to that Act specified in Schedules 7 and 8 to this Act (being, respectively, amendments connected with the consolidation of enactments effected by that Act and minor amendments) and shall be deemed always to have had effect subject to the amendments specified in the said Schedule 7.

(2) The enactments specified in Schedule 9 to this Act shall have effect subject to the amendments there specified (being amendments consequential upon the provisions of this Act and other minor amendments).

(3) The enactments specified in Schedule 10 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Marginal Citations
M36 1987 c. 26.

73 Finance.

There shall be defrayed out of money provided by Parliament—

(a) any expenses of the Secretary of State incurred under this Act;

(b) any increase attributable to this Act in the sums so payable under any other enactment.

74 Short title, commencement and extent.

(1) This Act may be cited as the Housing (Scotland) Act 1988.

(2) This Act shall come into force as follows–

(a) section 69 and section 72 (so far as relating to Schedule 7) and this section and that Schedule, shall come into force on the day this Act is passed;

(b) sections 36 to 40, 65, 67 and 71; and

section 72 (so far as relating to Schedule 8 and to the entries in Schedule 10 in respect of sections 62(11) to (13) and 151 of the Housing (Scotland) Act 1987); and

Schedule 8; and

in Schedule 10, those entries;

shall come into force at the end of the period of two months beginning with the day on which this Act is passed;

(c) section 72 (so far as relating to the entry in Schedule 10 relating to paragraph (1)(b) of Schedule 16 to the Housing (Scotland) Act 1987) and that entry shall come into force on 1st April 1989;

(d) the remaining provisions shall come into force on such days as the Secretary of State may, by order made by statutory instrument, appoint and different days may be so appointed for different provisions or for different purposes.

(3) An order under subsection (2) above may make such transitional provision as appears to the Secretary of State necessary or expedient in connection with the provisions brought into force by the order.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) Subject to subsection (5) below, this Act extends to Scotland only.

(5) So much of sections 3 and 72 and Schedules 2, 9 and 10 as relates to enactments extending to England and Wales, section 4 and Schedule 3 extend also to England and Wales.

Modifications etc. (not altering text)

C6 Power of appointment conferred by s. 74(2)(d) fully exercised: S.I. 1988/2038, arts. 3, 4, 5, Schs. 1, **2**

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULES

[F117]SCHEDULE 1

Textual Amendments

F117 Sch. 1 repealed (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(10)**; S.S.I. 2001/397, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-6)

Incorporation

1 Scottish Homes shall be a body corporate and shall have a common seal.

Status

2 Scottish Homes shall be a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916.

3 It shall not—

(a) be regarded as a servant or agent of the Crown;

(b) have any status, immunity or privilege of the Crown;

(c) be exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local,

and its property shall not be regarded as property of, or held on behalf of, the Crown.

Membership

4 (1) The members of Scottish Homes shall be—

(a) not more than 9 persons appointed by the Secretary of State; and

(b) its chief executive (whose membership shall be ex officio).

(2) The Secretary of State shall—

(a) satisfy himself, before he appoints a person to be a member, that that person will have no such financial or other interest as is likely to affect prejudicially the performance of his functions as a member; and

(b) satisfy himself from time to time with respect to each member that he has no such interest,

and a person who is a member or whom the Secretary of State proposes to appoint as a member shall, whenever requested by the Secretary of State to do so, furnish the Secretary of State with such information as he may consider necessary for the purpose of carrying out his duty under this paragraph.

5 (1) The members of Scottish Homes (other than the chief executive) shall, subject to the following provisions, hold and vacate office in accordance with the terms of their appointment.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) A member may resign his membership by written notice to the Secretary of State.

(3) The Secretary of State may remove a member from office if he is satisfied that that member—

(a) has been adjudged bankrupt, or made an arrangement with his creditors, or had his estate sequestrated, or granted a trust deed for his creditors or a composition contract;

(b) is incapacitated by physical or mental illness;

(c) has been absent from meetings of Scottish Homes for a period longer than 3 consecutive months without the permission of Scottish Homes;

(d) is otherwise unable or unfit to discharge the functions of a member, or is unsuitable to continue as a member.

Chairman and Deputy Chairmen

6 (1) The Secretary of State shall appoint one of the members of Scottish Homes to be chairman and may appoint one or more to be deputy chairman or deputy chairmen; and the chairman and deputy chairmen shall, subject to the following provisions, hold and vacate those offices in accordance with the terms of their appointment.

(2) The chairman or a deputy chairman may resign his office by written notice to the Secretary of State.

(3) If the chairman or a deputy chairman ceases to be a member of Scottish Homes, he also ceases to be chairman or a deputy chairman.

Remuneration, Allowances and Pensions

7 (1) The Secretary of State may pay the chairman, a deputy chairman and members (other than the chief executive) of Scottish Homes such remuneration as he may [F118]. . . determine.

(2) Scottish Homes may pay them such reasonable allowances as may be so determined in respect of expenses properly incurred by them in the performance of their duties.

(3) Where a person (other than the chief executive) ceases to be a member of Scottish Homes otherwise than on the expiry of his term of office, and it appears to the Secretary of State that there are special circumstances which might make it right for that person to receive compensation, the Secretary of State may [F118]. . . direct Scottish Homes to make that person a payment of such amount as the Secretary of State may [F118]. . .determine.

Textual Amendments

F118 Words in Sch. 1 para. 7(1)(3) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 92(9)(a)**, Pt. IV (with art. 5)

8 The Secretary of State may [F119]. . . determine to pay in respect of a person's office as chairman, deputy chairman or member (other than the chief executive) of Scottish Homes—

(a) such pension, allowance or gratuity to, or in respect of, that person on his retirement or death as may be so determined; or

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) such contribution or other payments towards provision for such pension, allowance or gratuity as may be so determined.

Textual Amendments

F119 Words in Sch. 1 para. 8 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 92(9)(b)**, Pt. IV (with art. 5)

Staff

9 The Secretary of State shall, after consultation with the chairman or person designated to be chairman, make the first appointment of the chief executive of Scottish Homes on such terms and conditions as he may [F120]. . .determine; and thereafter Scottish Homes may, with the approval of the Secretary of State, make subsequent appointments to that office on such terms and conditions as it may, with the approval of the Secretary of State [F121]. . .determine.

Textual Amendments

F120 Words in Sch. 1 para. 9 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 92(9)(b)**, Pt. IV (with art. 5)

F121 Words in Sch. 1 para. 9 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 92(9)(c)**, Pt. IV (with art. 5)

10 (1) Subject to paragraph 11 below, Scottish Homes may appoint on such terms and conditions as it may, with the approval of the Secretary of State [F122]. . . determine, such other employees as it thinks fit.

(2) Scottish Homes shall, in respect of such of its employees as it may determine, with the approval of the Secretary of State [F122]. . .make such arrangements for providing pensions, allowances or gratuities as it may determine; and such arrangements may include the establishment and administration, by Scottish Homes or otherwise, of one or more pension schemes.

(3) The reference in sub-paragraph (2) above to pensions, allowances or gratuities in respect of employees of Scottish Homes includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any such employee who suffers loss of office or employment or loss or diminution of emoluments.

(4) The Secretary of State [F123]. . . may, by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, make regulations providing for—

(a) the transfer to, and administration by, Scottish Homes of any superannuation fund maintained by the Scottish Special Housing Association in terms of the provisions of any scheme made under section 7 of the [M37]Superannuation Act 1972;

(b) the modification, for the purposes of the regulations, of the said section 7 or any scheme thereunder.

(5) If an employee of Scottish Homes becomes a member of Scottish Homes and was by reference to his employment by Scottish Homes a participant in a pension scheme administered by it for the benefit of its employees—

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) Scottish Homes may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of Scottish Homes whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 8 above; but

(b) if Scottish Homes determines as aforesaid, any discretion as to the benefits payable to or in respect of him which the scheme confers on Scottish Homes shall be exercised only with the consent of the Secretary of State [F124]. . ..

Textual Amendments

F122 Words in Sch. 1 para. 10(1)(2) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 92(9)(c)**, Pt. IV (with art. 5)

F123 Words in Sch. 1 para. 10(4) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 92(9)(b)**, Pt. IV (art. 5)

F124 Words in Sch. 1 para. 10(5)(b) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 92(9)(d)**, Pt. IV (with art. 5)

Marginal Citations

M37 1972 c. 11.

11 (1) Scottish Homes shall, not later than such date as the Secretary of State may determine, make an offer of employment by it to each person employed immediately before that date by—

(a) the Scottish Special Housing Association;

(b) the Housing Corporation, in connection with its functions in Scotland,

and any question as to the persons to whom an offer of employment is to be made under this paragraph shall be determined by the Secretary of State.

(2) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.

(3) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months commencing with the date on which it is made.

12 (1) Where a person becomes an employee of Scottish Homes in consequence of an offer made under paragraph 11 above, then, for the purposes of **[**[F125]the Employment Rights Act 1996**]**, his period of employment with the Scottish Special Housing Association or, as the case may be the Housing Corporation, shall count as a period of employment by Scottish Homes, and the change of employment shall not break the continuity of the period of employment.

(2) Where an offer is made in pursuance of paragraph 11(1) above to any person employed as is mentioned in that paragraph, none of the agreed redundancy procedures applicable to such a person shall apply to him and where that person ceases to be so employed—

(a) on becoming a member of the staff of Scottish Homes in consequence of that paragraph; or

(b) having unreasonably refused the offer,

[F126]. . . he shall not be treated for the purposes of any scheme under section 24 of the [M38]Superannuation Act 1972 or any other scheme as having been retired on redundancy.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) Without prejudice to sub-paragraph (2) above, where a person has unreasonably refused an offer made to him in pursuance of paragraph 11(1)(b) above the Housing Corporation shall not terminate that person's employment unless it has first had regard to the feasibility of employing him in a suitable alternative position with it.

(4) Where a person continues in employment in the Scottish Special Housing Association or, as the case may be, the Housing Corporation either—

(a) not having unreasonably refused an offer made to him in pursuance of this paragraph; or

(b) not having been placed in a suitable alternative position as mentioned in sub-paragraph (3) above,

he shall be treated for all purposes as if the offer mentioned in paragraph 11(1) above had not been made.

Textual Amendments

F125 Words in Sch. 1 para. 12(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 39** (with ss. 191-195, 202)

F126 Words in Sch. 1 para. 12(2) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

Marginal Citations

M38 1972 c. 11.

13 (1) Any dispute as to whether an offer under sub-paragraph (1) of paragraph 11 above complies with sub-paragraph (2) of that paragraph shall be referred to and be determined by an **[**[F127]employment tribunal**]**.

(2) An **[**[F127]employment tribunal**]** shall not consider a complaint referred to it under sub-paragraph (1) above unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.

(3) Subject to sub-paragraph (4) below there shall be no appeal from the decision of an **[**[F127]employment tribunal**]** under this paragraph.

(4) An appeal to the Employment Appeal Tribunal may be made only on a question of law arising from the decision of, or in proceedings before, an **[**[F127]employment tribunal**]** under this paragraph.

Textual Amendments

F127 Words in Sch. 1 para. 13 substituted (1.8.1998) by 1998 c. 8, **s. 1(2)**(with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

Proceedings

14 The quorum of Scottish Homes and the arrangements for its meetings shall be such as it may determine, subject to any directions given by the Secretary of State.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

15 (1) A member who is directly or indirectly interested in a contract made or proposed to be made by Scottish Homes, or in any other matter whatsoever which falls to be considered by Scottish Homes, shall disclose the nature of his interest at a meeting of Scottish Homes, and the disclosure shall be recorded in the minutes of the meeting.

(2) Such a member shall not—

(a) in the case of any such contract, take part in any deliberation or decision of Scottish Homes with respect to the contract; and

(b) in the case of any other matter, take part in any deliberation or decision of Scottish Homes with respect to it if Scottish Homes decides that the interest in question might prejudicially affect the member's consideration of the matter.

(3) For the purposes of this paragraph, a notice given by a member at a meeting of Scottish Homes to the effect that he is a member of a specified body corporate or firm and is to be regarded as interested in any contract which is made with the body corporate or firm after the date of the notice, and in any other matter whatsoever concerning the body corporate or firm which falls to be considered by Scottish Homes after that date, shall be a sufficient disclosure of his interest.

(4) A member need not attend in person a meeting of Scottish Homes in order to make a disclosure which he is required to make under this paragraph, if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration at such a meeting.

16 The validity of any proceedings of Scottish Homes shall not be affected by any vacancy among its members or by any defect in the appointment of a member or by any failure to comply with any requirement of paragraph 15 above.

Committees

17 (1) For and in connection with the discharge of its general functions or powers Scottish Homes may establish such committees (whose members need not be members of Scottish Homes) as appear to it to be appropriate, and the composition and remit of such committees and the terms on which their members hold office shall be determined by Scottish Homes.

(2) Scottish Homes shall pay to members of any committee established under sub-paragraph (1) above who are not members of Scottish Homes travelling and other allowances, including compensation for loss of remunerative time, in accordance with arrangements to be determined by the Secretary of State [F128]. . ..

Textual Amendments

F128 Words in Sch. 1 para. 17(2) repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 92(9)(a)**, Pt. IV (with art. 5)

Execution of Documents

[F129]18 . . . . . .

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F129 Sch. 1 para. 18 repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3))

F130 19 . . . . . .

Textual Amendments

F130 Sch. 1 para. 19 repealed (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3))

SCHEDULE 2

Sections 1 and 3.

AMENDMENTS CONSEQUENTIAL ON ESTABLISHING OF SCOTTISH HOMES AND ABOLITION OF SSHA

General

1 Subject to the following provisions of this Schedule, for any reference in any enactment, or in any instrument made under any enactment, to the Scottish Special Housing Association there shall be substituted a reference to Scottish Homes.

Parliamentary Commissioner Act 1967 c. 13.

2 In Schedule 2 (departments and authorities subject to investigation)—

(a) at the appropriate place there shall be inserted "Scottish Homes"; and

(b) after Note 8 there shall be inserted—

"8A In the case of Scottish Homes no investigation shall be conducted under this Act in respect of any of its actions as a landlord.".

House of Commons Disqualification Act 1975 c. 24.

3 In Schedule 1 (offices disqualifying for membership)—

(a) in Part II after the entry relating to the Scottish Development Agency there shall be inserted "Scottish Homes";

(b) in Part III the entry relating to the Chairman, Deputy Chairman or member of the Council of Management of the Scottish Special Housing Association appointed at a salary shall cease to have effect.

Local Government (Scotland) Act 1975 c. 30.

F131 4 . . . . . .

Textual Amendments

F131 Sch. 2 para. 4 repealed (23.10.2002) by 2002 asp 11, s. 25, **Sch. 6 para. 11**; S.I. 2002/467, **art. 2**

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Rent (Scotland) Act 1984 c. 58.

5 In section 61(1) (interpretation), in the definition of "housing association", paragraph (a) shall cease to have effect.

Housing Associations Act 1985 c. 69.

[F132 6 In section 1(1) (meaning of "housing association" etc.) at the end there shall be added—

";

but does not include Scottish Homes. ".]

Textual Amendments

F132 Sch. 2 para. 6 repealed (S.) (1.11.2001) by 2001 asp 10, s. 112, **Sch. 10 para. 14(11)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

Housing (Scotland) Act 1987 c. 26.

7 In section 21(3) (publication of rules relating to the housing list etc.) after the words "Housing Corporation" there shall be inserted the words "(in a case where the housing association is registered in the register maintained by it);

(ia) Scottish Homes (in a case where the housing association is registered in the register maintained by it);".

8 For section 23 (compulsory purchase of land by SSHA) there shall be substituted—

"**23 Improvement of amenities of residential area by development corporations.**

A development corporation may for the purpose of securing the improvement of the amenities of a predominantly residential area within its designated area—

(a) carry out any works on land owned by it;

(b) with the agreement of the owner of any land, carry out or arrange for the carrying out of works on that land at his or its expense or in part at the expense of both;

(c) assist (whether by grants or loans or otherwise) in the carrying out of works on land not owned by it;

(d) acquire any land by agreement.".

9 In section 61 (secure tenant's right to purchase)—

(a) in subsection (4)(e)(i) after the words "Housing Corporation" there shall be inserted the words "or by Scottish Homes";

(b) in subsection (8) for the words "and the Housing Corporation" in both places where they occur there shall be substituted the words ", the Housing Corporation and Scottish Homes";

(c) in subsection (9)—

(i) after the words "Housing Corporation" there shall be inserted the words "or by Scottish Homes";

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) after the words "the Corporation" there shall be inserted the words "or, as the case may be, Scottish Homes";

(iii) after the words "3(1)" there shall be inserted the words "or, as the case may be, 3(1A)";

(d) in subsection (11) for paragraph (d) there shall be substituted the following paragraph—

"(d) Scottish Homes and the Scottish Special Housing Association;"

10 In section 194 (grants payable to SSHA and development corporations)—

(a) in subsection (1) the words "the Scottish Special Housing Association ("the Association") and to" shall cease to have effect;

(b) in subsection (2) the words "the Association and to" and "the Association, acting otherwise than as agents, or by" shall cease to have effect.

11 Section 196 (advances to SSHA for provision or improvement of housing accommodation) shall cease to have effect.

12 In section 202(7) (power of Secretary of State to reduce etc. particular Exchequer contributions) in the definition of "recipient authority" for the words from ", a housing" to "Association" there shall be substituted the words "or a housing association".

13 In section 216(1) (house loans to tenants exercising right to purchase) for paragraph (b) there shall be substituted—

"(b) in a case where the landlord is the Housing Corporation or a housing association registered in the register maintained by the Housing Corporation, to the Housing Corporation;

(bi) in a case where the landlord is a housing association registered in the register maintained by Scottish Homes, to Scottish Homes;".

14 In section 276 (repurchase by authority other than local authority) in the Table for the words "2. The Scottish Special Housing Association" there shall be substituted the words "2. Scottish Homes or the Scottish Special Housing Association".

15 In Schedule 12 (termination of exchequer payments) in paragraph 2, Part III shall cease to have effect.

Local Government Act 1988 c. 9.

16 In section 1(1)—

(a) after paragraph (j) there shall be inserted the word "and";

(b) paragraph (1) and the word "and" immediately preceding it shall cease to have effect.

17 In Schedule 2, the words "The Scottish Special Housing Association" shall be omitted.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F133][F133]SCHEDULE 3

Textual Amendments

F133 Sch. 3 repealed by Housing Act 1988 (c. 50, SIF 61), s. 140(2), **Sch. 18**

. . . . . [F133]

SCHEDULE 4

Section 12.

TENANCIES WHICH CANNOT BE ASSURED TENANCIES

Tenancies entered into before commencement

1 A tenancy which is entered into before, or pursuant to a contract made before, this Schedule comes into force.

Tenancies at a low rent

2 (1) A tenancy under which, at any time after this Schedule comes into force, either no rent is payable or the rent payable is less than that specified by order made by the Secretary of State, but no tenancy which is or, at any time, was an assured tenancy shall cease to be an assured tenancy by virtue only of this paragraph of this Schedule.

(2) In determining whether the rent under a tenancy falls within sub-paragraph (1) above, there shall be disregarded such part (if any) of the sums payable by the tenant as is or was expressed (in whatever terms) to be payable in respect of services, repairs, maintenance or insurance, unless it could not have been regarded by the parties to the tenancy as a part so payable.

(3) An order under sub-paragraph (1) above may specify different rents in relation to—

(a) different kinds of houses;

(b) different areas.

(4) An order under sub-paragraph (1) above may specify rent by reference to such periods or times or such other factors or such combinations thereof as may be specified in the order.

Tenancies of shops

3 A tenancy to which the [M39]Tenancy of Shops (Scotland) Act 1949 applies.

Marginal Citations

M39 1949 c. 25.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Licensed premises

4 A tenancy under which the house consists of or comprises premises licensed for the sale of alcoholic liquor for consumption on the premises.

Tenancies of agricultural land

5 (1) A tenancy under which agricultural land, exceeding two acres, is let together with the house.

(2) In this paragraph "agricultural land" has the same meaning as in section 115(1) of the [M40]Rent (Scotland) Act 1984.

Marginal Citations

M40 1984 c. 58.

Tenancies of agricultural holdings

6 A tenancy under which the house—

[[F134](a) is on or comprised in a lease constituting a 1991 Act tenancy within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11) or in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act); and**]**

(b) is occupied by the person responsible for the control (whether as tenant or as servant or agent of the tenant) of the farming of the **[**[F135]and comprised in the lease**]**.

Textual Amendments

F134 Sch. 4 para. 6(a) substituted (27.11.2003) by The Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 11(a)**

F135 Words in Sch. 4 para. 6(b) substituted (27.11.2003) by The Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 11(b)**

Lettings to students

7 (1) A tenancy which is granted to a person who is pursuing, or intends to pursue, a course of study provided by a specified educational institution and is so granted either by that institution or by another specified institution or body of persons.

(2) In sub-paragraph (1) above "specified" means specified, or of a class specified, for the purposes of this paragraph by regulations made by the Secretary of State.

Holiday lettings

8 A tenancy the purpose of which is to confer on the tenant the right to occupy the house for a holiday.

Resident landlords

9 (1) A tenancy in respect of which the following conditions are fulfilled—

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) that the house forms part only of a building;

(b) subject to sub-paragraph (2) below, that the tenancy was granted by a person who, at the time when he granted it, occupied as his only or principal home another house which also forms part of the building;

(c) that, at the time when the tenancy was granted, there was an ordinary means of access—

(i) to or from the house by way of that other house; or

(ii) to or from that other house by way of the house

(whether or not that access was available to the tenant as of right); and

(d) subject to sub-paragraph (3) below, at all times since the tenancy was granted the interest of the landlord under the tenancy has belonged to a person who, at the time he owned that interest, occupied as his only or principal home another house which also formed part of the building.

(2) The condition in sub-paragraph (1)(b) above shall be deemed to be fulfilled if the tenancy was granted by trustees and, at the time when the tenancy was granted, the interest of the landlord under the tenancy thereby created was held on trust for a person who was entitled to the liferent or to the fee or a share of the fee of that interest and who occupied as his only or principal home a house which forms part of the building referred to in sub-paragraph (1)(a) above.

(3) In determining whether the condition in sub-paragraph (1)(d) above is at any time fulfilled with respect to a tenancy, there shall be disregarded—

(a) any period of not more than 28 days beginning with the date of the conveyance of the interest of the landlord under the tenancy to an individual who, during that period, does not occupy as his only or principal home another house which forms part of the building concerned;

(b) if, within a period falling within paragraph (a) above, the individual concerned notifies the tenant in writing of his intention to occupy as his only or principal home another such house as is referred to in that paragraph, the period beginning with the date of the conveyance mentioned in that paragraph and ending—

(i) at the expiry of the period of 6 months beginning on that date; or

(ii) on the date on which the interest of the landlord under the tenancy ceases to be held by that individual; or

(iii) on the date on which the condition in sub-paragraph (1)(c) above again applies,

whichever is the earliest; and

(c) any period of not more than 24 months beginning with the date of death of the landlord under the tenancy during which the interest of the landlord under the tenancy is vested in his executor.

(4) Throughout any period which, by virtue of sub-paragraph (3)(a) or (b) above, falls to be disregarded for the purpose of determining whether the condition in sub-paragraph (1)(d) above is fulfilled with respect to a tenancy, no order for possession of the house subject to that tenancy shall be made, other than an order which might be made if that tenancy were or, as the case may be, had been an assured tenancy.

(5) During any period—

(a) when—

Status: *Point in time view as at 03/09/2007.*
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(i) the interest of the landlord under the tenancy referred to in sub-paragraph (1) above is vested in trustees; and

(ii) that interest is held on trust for a person who is entitled to the liferent or to the fee or a share of the fee of that interest and who occupies as his residence a house which forms part of the building referred to in sub-paragraph (1)(a) above;

(b) of not more than 24 months beginning with the date of death of the occupier referred to in sub-paragraph (a)(ii) above and ending with the date of occupation of the house by any other person who is entitled to the liferent or to the fee or to a share of the fee of that interest,

the condition in sub-paragraph (1)(d) above shall be deemed to be fulfilled and, accordingly, no part of that period shall be disregarded by virtue of sub-paragraph (3) above.

(6) This paragraph does not apply to a tenancy of a house which forms part of a building if the tenancy is granted to a person who, immediately before it was granted, was an assured tenant of that house or of any other house in that building.

(7) For the purposes of this paragraph—

(a) "conveyance" includes the grant of a tenancy and any other conveyance or transfer other than upon death;

(b) "the date of the conveyance" means the date on which the conveyance was granted, delivered or otherwise made effective.

Crown tenancies

10 A tenancy under which the interest of the landlord belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department but not including such a tenancy if it is under the management of the Crown Estate Commissioners.

Modifications etc. (not altering text)

C7 Sch. 4 para. 10 modified (1.4.1991) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 60(2)(c), **Sch. 8 Pt. III para. 20(2)(a)**; S.I. 1990/1329, art. 2(8), **Sch. 3**

Local authority and other tenancies

11 A tenancy under which the interest of the landlord belongs to—

[F136(a) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, or a joint board or joint committee of two or more such councils, or the common good of such a council or any trust under the control of such a council;]

[F137(aa) Scottish Water;]

(b) . . . . . .

F138(c) . . . . . .

F138(d) . . . . . .

(e) a co-operative housing association within the meaning of section 1 of the Housing Associations Act 1985; [F139or]

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[[F140](ea) a registered social landlord within the meaning of the Housing (Scotland) Act 2001 (asp 10);**]**

[F141](f) . . . . . .

Textual Amendments

F136 Sch. 4 para. 11(a)(aa) substituted (1.4.1996) for Sch. 4 para. 11(a) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(7)(a)** (with s. 128(8)); S.I. 1996/323, **art. 4**

F137 Sch. 4 para. 11(aa) substituted (25.6.2003) by The Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003 (S.S.I. 2003/331), art. 1, **Sch. para. 6(4)**

F138 Sch. 4 para. 11(b)-(d) repealed (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(12)(a)(i)**; S.S.I. 2002/321, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-5)

F139 Word in Sch. 4 para. 11(e) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(7)(b)** (with s. 128(8)); S.I. 1996/323, **art. 4**

F140 Sch. 4 para. 11(ea) inserted (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(12)(a)(ii)**; S.S.I. 2002/321, arts. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-5)

F141 Sch. 4 para. 11(f) repealed (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(12)(a)(iii)**; S.S.I. 2002/321, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

C8 Sch. 4 para. 11 excluded by Housing (Scotland) Act 1987 (c. 26, SIF 61), **ss. 180(4)**, 335

Accommodation for offenders

[[F142]11A A tenancy granted, for a term of less than 6 months, to a person—

(a) who is under supervision in pursuance of the functions of a local authority under paragraph (b)(i), (ii) or (vi) of subsection (1) of section 27 (supervision and care of persons on probation, released from prison etc.) of the Social Work (Scotland) Act 1968 (c.49), or

(b) who has requested, in accordance with paragraph (c) of that subsection, the provision of advice, guidance or assistance by a local authority in pursuance of the authority's functions under that paragraph.**]**

Textual Amendments

F142 Sch. 4 para. 11A inserted (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(12)(b)**; S.S.I. 2002/321, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-5)

[**[F143] *Accommodation for homeless persons]**

Textual Amendments

F143 Sch. 4 para. 11A inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 Pt. I para. 90**

[[F144]11A A tenancy granted expressly on a temporary basis in the fulfilment of a duty imposed on a local authority by Part II of the Housing (Scotland) Act 1987.**]**

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F144 Sch. 4 para. 11A inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 Pt. I para. 90**

[F145][Accommodation for asylum-seekers]

Textual Amendments

F145 Sch. 4 para. 11B and crossheading inserted (11.11.1999) by 1999 c. 33, ss. 169(1), 170(3)(s), **Sch. 14 para. 87**

[[F146]11B A tenancy granted under arrangements for the provision of support for asylum-seekers or dependants of asylum-seekers made **[**[F147]under section 4 or Part VI of the Immigration and Asylum Act 1999**].]**

Textual Amendments

F146 Sch. 4 para. 11B inserted (11.11.1999) by 1999 c. 33, ss. 169(1), 170(3)(s), **Sch. 14 para. 87**

F147 Words in Sch. 4 para. 11B substituted (16.6.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), **ss. 43(4)(e)**, 62(1)(2); S.I. 2006/1497, art. 3, Sch.

[[F148]Accommodation for persons with Temporary Protection

Textual Amendments

F148 Sch. 4 para. 11C and cross-heading inserted (15.6.2005) by The Displaced Persons (Temporary Protection) Regulations 2005 (S.I. 2005/1379), reg. 1, **Sch. para. 5**

11C A tenancy granted under arrangements for the provision of accommodation for persons with temporary protection made under the Displaced Persons (Temporary Protection) Regulations 2005.**]**

Shared ownership agreements

12 A tenancy under a shared ownership agreement within the meaning of **[**[F149]section 83(3) of the Housing (Scotland) Act 2001 (asp 10)**]**.

Textual Amendments

F149 Words in Sch. 4 para. 12 substituted (1.11.2001) by 2001 asp 10, ss. 112, 113(1), **Sch. 10 para. 14(12)(c)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

Transitional cases

13 (1) A protected tenancy within the meaning of the [M41]Rent (Scotland) Act 1984.

(2) A housing association tenancy, being a tenancy to which Part VI of that Act applies.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3) A secure tenancy within the meaning of Part III of the [M42]Housing (Scotland) Act 1987.

Marginal Citations

M41 1984 c. 58.

M42 1987 c. 26.

SCHEDULE 5

Section 18.

GROUNDS FOR POSSESSION OF HOUSES LET ON ASSURED TENANCIES

PART I

GROUNDS 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 **[**[F150]or civil partner'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.

Textual Amendments

F150 Words in Sch. 5 Pt. 1 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 57**; S.S.I. 2005/604, arts. 2(c), 4

Textual Amendments

F150 Words in Sch. 5 Pt. 1 inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(c), **Sch. 28 para. 57**; S.S.I. 2005/604, arts. 2(c), 4

Ground 2

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

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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—

(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.

Status: *Point in time view as at 03/09/2007.*
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Ground 6

The landlord who is seeking possession or, where the immediate landlord is a registered housing association within the meaning of the [M43]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;

(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
M43 1985 c. 69.

Marginal Citations
M43 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.

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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

GROUNDS 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.

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.

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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.

[F151 Ground 15]

Textual Amendments
F151 Sch. 5 Ground 15 substituted (1.12.1998) by 1998 c. 37, **s. 23(4)**; S.I. 1998/2327, **art. 4**

Modifications etc. (not altering text)
C9 Sch. 5 Ground 15 restricted (1.12.1998) by 1998 c. 37, **s. 23(5)**; S.I. 1998/2327, **art. 4**

[F152 The tenant, a person residing or lodging in the house with the tenant or a person visiting the house has—

(a) been convicted of—
  (i) using or allowing the house to be used for immoral or illegal purposes; or
  (ii) an offence punishable by imprisonment committed in, or in the locality of, the house; or

(b) acted in an anti-social manner in relation to a person residing, visiting or otherwise engaging in lawful activity in the locality; or

(c) pursued a course of anti-social conduct in relation to such a person as is mentioned in head (b) above.

Textual Amendments
F152 Sch. 5 Ground 15 substituted (1.12.1998) by 1998 c. 37, **s. 23(4)**; S.I. 1998/2327, **art. 4**

Modifications etc. (not altering text)
C10 Sch. 5 Ground 15 restricted (1.12.1998) by 1998 c. 37, **s. 23(5)**; S.I. 1998/2327, **art. 4**

In this Ground "anti-social", in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance, "conduct" includes speech and a course of conduct must involve conduct on at least two occasions and "tenant" includes any one of joint tenants.**]**

Textual Amendments
F152 Sch. 5 Ground 15 substituted (1.12.1998) by 1998 c. 37, **s. 23(4)**; S.I. 1998/2327, **art. 4**

Modifications etc. (not altering text)
C10 Sch. 5 Ground 15 restricted (1.12.1998) by 1998 c. 37, **s. 23(5)**; S.I. 1998/2327, **art. 4**

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.

[[F153]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

F153 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**

Textual Amendments

F153 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**

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 [M44]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

M44 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 [M45]Housing (Scotland) Act 1987.

Marginal Citations

M45 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.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 1 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.

SCHEDULE 6

Section 46.

STATUTORY OR STATUTORY ASSURED TENANTS BY SUCCESSION

PART I

NEW SCHEDULES 1A AND 1B TO [M46]RENT (SCOTLAND) ACT 1984

Marginal Citations

M46 1984 c. 58.

1 After Schedule 1 to the Rent (Scotland) Act 1984 there shall be inserted the following Schedules—

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Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"SCHEDULE 1A

STATUTORY OR STATUTORY ASSURED TENANTS BY SUCCESSION IN A CASE TO WHICH SECTION 3A(1) APPLIES

1 The provisions of paragraph 2 of this Schedule shall have effect for the purpose of determining who is the statutory tenant of a dwelling-house by succession after the death of the person (in this Schedule referred to as "the original tenant") who, immediately before his death, was a protected tenant of the dwelling-house or the statutory tenant of it by virtue of his previous protected tenancy.

2 (1) The original tenant's spouse where the dwelling-house was that spouse's only or principal home at the time of the tenant's death shall be the statutory tenant so long as the said spouse retains possession of the dwelling-house without being entitled to do so under a contractual tenancy.

(2) For the purposes of this paragraph, a person who was living with the original tenant as his or her wife or husband shall be treated as the spouse of the original tenant.

(3) If, immediately after the death of the original tenant, there is, by virtue of sub-paragraph (2) above, more than one person who fulfils the conditions in sub-paragraph (1) above, such one of them as then has occupancy rights under section 18 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (rights of cohabiting couples) or, if neither or none of them has such rights, such one of them as may be decided by the sheriff, shall be treated as the surviving spouse for the purposes of this paragraph.

3 Where paragraph 2 above does not apply but a person who was a member of the original tenant's family was residing with him in the dwelling-house—

(a) continuously for the period commencing six months before the date of coming into force of section 46 of the Housing (Scotland) Act 1988 and ending on the tenant's death (where the person was so residing on the said date); or

(b) at the time of and for the period of two years immediately before the tenant's death,

then, after the tenant's death, that person or if there is more than one such person such one of them as may be decided by agreement, or in default of agreement by the sheriff, shall be entitled to a statutory assured tenancy of the dwelling-house by succession.

4 A person who becomes the statutory tenant of a dwelling-house by virtue of paragraph 2 above is in this Schedule referred to as "the first successor".

5 If, immediately before his death, the first successor was still a statutory tenant, the provisions of paragraph 6 below shall have effect for the purpose of determining who is entitled to a statutory assured tenancy of the dwelling-house by succession after the death of the first successor.

6 Where a person who—

(a) was a member of the original tenant's family immediately before that tenant's death; and

(b) was a member of the first successor's family immediately before the first successor's death,

Status: *Point in time view as at 03/09/2007.*
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was residing with the first successor in the dwelling-house at the time of, and for the period of two years immediately before, the first successor's death, that person, or if there is more than one such person, such one of them as may be decided by agreement or, in default of agreement, by the sheriff, shall be entitled to a statutory assured tenancy of the dwelling-house by succession.

7 (1) Where after a succession the successor becomes the tenant of the dwelling-house by the grant to him of another tenancy, "the original tenant" and "the first successor" in this Schedule shall, in relation to that other tenancy, mean the persons who were respectively the original tenant and the first successor at the time of the succession, and accordingly—

(a) if the successor was the first successor, and immediately before his death he was still the tenant (whether protected or statutory), paragraph 6 above shall apply on his death;

(b) if the successor was not the first successor, no person shall become a statutory tenant on his death by virtue of this Schedule.

(2) Sub-paragraph (1) above applies even if—

(a) a successor enters into more than one other tenancy of the dwelling-house; and

(b) both the first successor, and the successor on his death, enter into other tenancies of the dwelling-house.

(3) In this paragraph "succession" means the occasion on which a person becomes the statutory or statutory assured tenant of a dwelling-house by virtue of this Schedule and "successor" shall be construed accordingly.

8 Paragraphs 5 and 6 above do not apply where the statutory tenancy of the original tenant arose by virtue of section 20 of the Rent Act 1965.

SCHEDULE 1B

STATUTORY ASSURED TENANTS BY SUCCESSION IN A CASE TO WHICH SECTION 3A(2) APPLIES

1 The provisions of this Schedule shall have effect for the purpose of determining who is the statutory assured tenant of a dwelling-house by succession after the death of the person (in this Schedule referred to as "the first successor") who, immediately before his death, was the statutory tenant of the dwelling-house by virtue of paragraph 2 or paragraph 3 of Schedule 1 above.

2 If, immediately before his death, the first successor was still a statutory tenant, the provisions of paragraph 3 below shall have effect for the purpose of determining who is entitled to a statutory assured tenancy of the dwelling-house by succession after the death of the first successor.

3 Where a person who—

(a) was a member of the original tenant's family immediately before that tenant's death; and

(b) was a member of the first successor's family immediately before the first successor's death,

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Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

was residing with the first successor in the dwelling-house—

(i) continuously for the period commencing six months before the date of coming into force of section 46 of the Housing (Scotland) Act 1988 and ending on the tenant's death (where the person was so residing on the said date); or

(ii) at the time of and for the period of two years immediately before the tenant's death,

that person, or if there is more than one such person, such one of them as may be decided by agreement or, in default of agreement, by the sheriff, shall be entitled to a statutory assured tenancy of the dwelling-house by succession.

4 (1) Where after a succession the successor becomes the tenant of the dwelling-house by the grant to him of another tenancy, "the original tenant" and "the first successor" in this Schedule shall, in relation to that other tenancy, mean the persons who were respectively the original tenant and the first successor at the time of the succession, and accordingly—

(a) if the successor was the first successor, and immediately before his death he was still the tenant (whether protected or statutory), paragraph 3 above shall apply on his death;

(b) if the successor was not the first successor, no person shall become a statutory tenant on his death by virtue of this Schedule.

(2) Sub-paragraph (1) above applies even if—

(a) a successor enters into more than one other tenancy of the dwelling-house; and

(b) both the first successor, and the successor on his death, enter into other tenancies of the dwelling-house.

(3) In this paragraph "succession" means the occasion on which a person becomes the statutory assured tenant of a dwelling-house by virtue of this Schedule and "successor" shall be construed accordingly.

5 Paragraphs 2 and 3 above do not apply where the statutory tenancy of the original tenant arose by virtue of section 20 of the Rent Act 1965.".

PART II

STATUTORY ASSURED TENANTS BY SUCCESSION—MODIFICATION OF ENACTMENTS

2 In relation to the assured tenancy to which the person becomes entitled by succession, section 18 of this Act shall have effect as if in subsection (3) after the word "established" there were inserted the words "or that the circumstances are as specified in any of Cases 11, 12, 17, 18, 19, and 21 in Schedule 2 to the [M47]Rent (Scotland) Act 1984".

Marginal Citations

M47 1984 c. 58.

3 (1) In relation to the assured tenancy to which the person becomes entitled by succession, any notice given for the purpose of Case 13, Case 14 or Case 16 of Schedule 2 to the Rent (Scotland) Act 1984 to the original tenant (within the meaning of Schedule I to

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the Rent (Scotland) Act 1984) shall be treated as having been given for the purposes of whichever of Grounds 4 to 6 in Schedule 5 to this Act corresponds to the Case in question.

(2) Where sub-paragraph (1) above applies, the regulated tenancy of the said original tenant shall be treated, in relation to the assured tenancy of the person so entitled, as "the earlier tenancy" for the purposes of Part IV of Schedule 5 to this Act.

SCHEDULE 7

Section 72.

HOUSING (SCOTLAND) ACT 1987—AMENDMENTS CONNECTED WITH CONSOLIDATION

F154 1 . . . . . .

Textual Amendments

F154 Sch. 7 para. 1 repealed (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(14)**; S.S.I. 2002/321, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-5)

F155 2 . . . . . .

Textual Amendments

F155 Sch. 7 para. 2 repealed (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(14)**; S.S.I. 2002/321, arts. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-5)

3 In section 114 (closing order) in subsection (5) after the word "shall" there shall be inserted the word " have ".

4 In section 129 (appeals) in subsection (1) for ", (3) and (4)" there shall be substituted the words " to (7) ".

5 In section 139 (penalty for causing or permitting overcrowding) in subsection (2)(a) for the words "age of 10" there shall be substituted the words " age of one or 10 ".

6 In section 151 (interpretation of Part VII) in subsection (2) for the words "139(3), 140(1) and (2) and 144(1) and (2)" there shall be substituted the words " 139, 140 and 144 ".

7 In section 173 (warrant to authorise entry) in subsection (5)(a) for the word "entry" there shall be substituted the word " enter ".

8 In section 179 (general effect of control order) in subsection (3) for the word "on" there shall be substituted the word " or ".

9 In section 200 (slum clearance subsidy) in subsection (2) for "(2)" there shall be substituted " (1) ".

10 In section 240 (conditions for approval of applications for improvement grant) in subsection (1)(a) for "9(4)" there shall be substituted " 12(4) ".

11 In section 242 (amount of improvement grant) in subsection (6) for "236" there shall be substituted " 246 ".

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12 In section 243 (payment of improvement grant) in subsection (1)(b) for "244(6)" there shall be substituted " 244(7) ".

13 In section 244 (duty of local authorities to make improvement grants for standard amenities or disabled occupants) in subsection (10)(b) for "(6)" there shall be substituted " (7) ".

14 In section 248 (repairs grants)—
(a) in subsection (5)—
(i) for "240, 242(1), (4) and (7)" there shall be substituted " 242(1), (3), (5) and (7) to (10) and 244 "; and
(ii) for "244(6)" there shall be substituted " 244(7) "; and
(b) in subsection (6)(c) at the end there shall be added " and 247. ".

15 In section 249 (grants for fire escapes) in subsection (6)—
(a) for "(1A), (3), (4), (6) and (7)" there shall be substituted " , (3) and (5) to (10) "; and
(b) for "244(6)" there shall be substituted " 244(7) ".

16 In section 250 (repairs grants in housing action areas), in subsection (7), in paragraph (b) for "249(5)" there shall be substituted " 250(5) ".

17 In section 254 (exchequer contributions towards certain grants) in each of subsections (1) and (2) for "250" there shall be substituted " 249 ".

18 In section 255 (exchequer contributions in respect of amenities) in each of subsections (1), (4)(b) and (10) for "248" there shall be substituted " 251 ".

19 In section 268 (notice of determination) in subsection (4) for the words "1 to 3" and "281, 283 and 284(1)" respectively there shall be substituted the words " 2, 3 and 7 " and " 282, 284 and 285 ".

20 In section 276 (repurchase by authority other than local authority), in subsection (3), in paragraph (a), for "21" there shall be substituted " 20 ".

21 In section 281 (effect of repurchase on certain existing tenancies) in subsection (2)(b) for the words "34(1)(d) of the Tenants' Rights, Etc (Scotland) Act 1980" there shall be substituted the words " 9(1)(d) of the [M48]Rent (Scotland) Act 1984 ".

Marginal Citations
M48 1984 c. 58.

22 In section 282 (grant of tenancy to former owner-occupier) in subsection (2) for "44(1)" there shall be substituted " 44(2) ".

23 In section 283 (grant of tenancy to former statutory tenant) in subsection (1)—
(a) after "44" there shall be inserted " (2) "; and
(b) in paragraph (d) for the words "34(1)(d) of the Tenants' Rights, Etc. (Scotland) Act 1980 (notice that tenancy is to be a protected shorthold tenancy)" there shall be substituted the words " 9(1)(d) of the Rent (Scotland) Act 1984 (notice that the tenancy is to be a short tenancy) ".

24 In section 285 (request for tenancy under sections 282 or 283) in subsection (1)(a) for the words "paragraph 4" there shall be substituted the words " paragraph 3 ".

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25 In section 296 (contributions by Secretary of State) in subsection (4)(b) for "8 of Schedule 21" and "8(1)(a)" there shall be substituted respectively " 10 of Schedule 20 " and " 10(1)(a) ".

26 In section 299 (jurisdiction of sheriff) in subsection (2)(b) for the words "paragraph (9) of Schedule 21" there shall be substituted the words " paragraph 11(1) of Schedule 20 ".

27 In section 338 (interpretation) in the definition of "standard amenities" for "244(5)" there shall be substituted " 244(6) ".

28 In Schedule 7 (application of enactments) in paragraph 13—

(a) in sub-paragraph (2) for the words "those Parts respectively" there shall be substituted the words " Part I of this Act "; and

(b) in sub-paragraph (3)(a) for the words "Part I of this Act or Part II of Schedule 8 (as the case may be)" there shall be substituted the words " Part III of Schedule 8 ".

29 In Schedule 20 (assistance by way of repurchase) in paragraph 3 for the words "a notice" there shall be substituted the words " an offer to purchase ".

30 In Schedule 24 (repeals) in the entry relating to the [M49]Rent (Scotland) Act 1984, in column 3, for "5(2)(b)" there shall be substituted " 5(2)(d) ".

Marginal Citations

M49 1984 c. 58.

SCHEDULE 8

Section 72.

HOUSING (SCOTLAND) ACT 1987— MINOR AMENDMENTS

1 In section 61 (secure tenant's right to purchase) after subsection (2) there shall be inserted the following subsection—

"(2A) For the purposes of subsection (2)(c), where the house was provided by a housing association which, at any time while the house was so provided, was not a registered housing association, the association shall, if it became a registered housing association at any later time, be deemed to have been a registered housing association at all times since it first provided the house.".

2 In section 62 (price of house being purchased by secure tenant)—

(a) in subsection (2)—

(i) after the word "by", where first occurring, there shall be inserted the word " either "; and

(ii) before the word "as" there shall be inserted the words " as the landlord thinks fit ";

(b) in subsection (4)—

(i) after "(3)" there shall be inserted " (a) "; and

(ii) at the end there shall be added "; and

(b) where the house was provided by a housing association which, at any time while the house

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was so provided was not a registered housing association, the association shall, if it became a registered housing association at any later time, be deemed to have been a registered housing association at all times since it first provided the house.”.

3 In section 151 (interpretation of Part VII) in the definition of “house” the words from “, not being” to the end of the definition shall cease to have effect.

4 In section 191 (housing support grants: fixing of aggregate amount) in subsection (10) for the words “rate fund contribution” there shall be substituted the words “ contribution out of the general fund maintained under section 93 of the Local Government (Scotland) Act 1973 ”.

5 In section 192 (apportionment of housing support grants) in subsection (6) for the words “rate fund contribution” there shall be substituted the words “ contributions out of the general fund maintained under section 93 of the Local Government (Scotland) Act 1973 ”.

6 In section 248 (repairs grants)—

(a) in subsection (5) for the words “to an application for”—

(i) where they first occur there shall be substituted the words “ in relation to an application for a repairs grant or to ”; and

(ii) where they second occur there shall be substituted the words “ in relation to an application for an improvement grant or to ”;

(b) at the end there shall be added—

“(11) An order under this section may make different provision with respect to different cases or descriptions of case.”.

7 In section 249 (grants for fire escapes)—

(a) in subsection (6) for the words “to an application for”—

(i) where they first occur there shall be substituted the words “ in relation to an application for a grant under subsection (1) or to ”; and

(ii) where they second occur there shall be substituted the words “ in relation to an application for an improvement grant or to ”; and

(b) at the end there shall be added—

“(11) An order under this section may make different provision with respect to different cases or descriptions of case.”.

8 In section 255 (exchequer contributions in respect of amenities) in subsection (7) after “(6)” there shall be inserted the words “ or for such other amount as may be substituted under this subsection ”.

9 In Schedule 10 (landlord’s repairing obligations)—

(a) for paragraph 1(1) there shall be substituted—

“(1) This paragraph applies to any contract (whether entered into before or after the coming into force of Schedule 8 to the Housing (Scotland) Act 1988) for letting a house for human habitation under which no rent is payable or the rent payable is less than that specified by order made by the Secretary of State.

Status: *Point in time view as at 03/09/2007.*
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(1A) In determining whether this paragraph applies to any contract, there shall be disregarded such part (if any) of the sums payable by the tenant as is expressed (in whatever terms) to be payable in respect of services, repairs, maintenance or insurance unless it could not have been regarded by the parties to the tenancy as a part so payable.

(1B) An order under sub-paragraph (1) above may specify different rents in relation to—

(a) different kinds of houses;

(b) different areas.

(1C) An order under sub-paragraph (1) above may specify rent by reference to such periods or such different periods or such other factors or such combinations thereof as may be specified in the order.

(1D) An order under sub-paragraph (1) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(1E) This paragraph does not apply to a contract for the letting by a local authority of any house purchased or retained by the authority under section 121 or paragraph 5 of Schedule 8 for use for housing purposes.”;

(b) after paragraph 3(1) there shall be inserted—

“(1A) If a lease to which this paragraph applies is a lease of a house which forms part only of a building, then, subject to sub-paragraph (1B) of this paragraph, the provision implied by this paragraph (hereinafter referred to as “the implied repairs provision”) shall have effect as if—

(a) the reference in paragraph (a) of sub-paragraph (1) of this paragraph to the house included a reference to any part of the building in which the lessor has an interest; and

(b) any reference in paragraph (b) of sub-paragraph (1) of this paragraph to installations in the house included a reference to installations which, directly or indirectly, serve the house and in which the lessor has an interest.

(1B) Nothing in sub-paragraph (1A) of this paragraph shall be construed as requiring the lessor to carry out any works or repairs unless the disrepair (or failure to maintain in working order) is such as to affect the lessee’s enjoyment of the house or of any common parts.

(1C) In sub-paragraph (1B) of this paragraph “common parts” in relation to any building or part of a building includes the structure and exterior of that building or part and any common facilities within it.”;

(c) in paragraph 3(2) for the words from “The provision” to “provision”)” there shall be substituted the words “ The implied repairs provision ”;

(d) after sub-paragraph (3) there shall be inserted—

“(3A) In any case where—

Status: *Point in time view as at 03/09/2007.*
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(a) the implied repairs provision has effect as mentioned in sub-paragraph (1A) of this paragraph; and

(b) in order to comply with the provision the lessor needs to carry out works or repairs otherwise than in, or to an installation in, the house; and

(c) the lessor does not have sufficient right in the part of the building or the installation concerned to enable him to carry out the required works or repairs,

then, in any proceedings relating to a failure to comply with the implied repairs provision, so far as it requires the lessor to carry out the works or repairs in question, it shall be a defence for the lessor to prove that he used all reasonable efforts to obtain, but was unable to obtain, such rights as would be adequate to enable him to carry out the works or repairs.”.

The amendments made by sub-paragraphs (b) to (d) of this paragraph do not have effect with respect to—

(i) a lease entered into before this Act comes into force; or

(ii) a lease entered into pursuant to a contract made before this Act comes into force.

10 In Schedule 15 (housing revenue account) in paragraph 9(2) for the words “rate fund contribution” there shall be substituted the words “ contribution out of the said general fund ”.

SCHEDULE 9

Section 72.

CONSEQUENTIAL AMENDMENTS

Land Compensation (Scotland) Act 1973 c. 56.

1 In section 27(4) (right to home loss payment) after paragraph (b) there shall be inserted the following paragraph—

“(bb) a right to occupy the dwelling as a statutory assured tenant within the meaning of the Housing (Scotland) Act 1988;”.

Local Government, Planning and Land Act 1980 c. 65.

2 In Schedule 28, in paragraph 10 (urban development corporations, displacement of persons), after the [M50]words “Rent (Scotland) Act 1984” there shall be inserted the words “ or the Housing (Scotland) Act 1988 ”.

Marginal Citations

M50 1984 c. 58.

Matrimonial Homes (Family Protection) (Scotland) Act 1981 c. 59.

3 In section 22 (interpretation) in the definition of “tenant” for the words “Rent (Scotland) Act 1971” there shall be substituted the words “ Rent (Scotland) Act

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1984 and a statutory assured tenant as defined in section 16(1) of the Housing (Scotland) Act 1988 ".

Rent (Scotland) Act 1984 c. 58.

4 In section 103 (application to sheriff)—

(a) in subsection (1) for the words from "a summary application" to the end there shall be substituted the words " by way of summary application ";

(b) in subsection (2) for the word "paragraph" there shall be substituted the words " paragraphs 2 and ".

5 In Schedule 1 (statutory tenants by succession) in paragraph 2 for the word "his" there shall be substituted the words " that spouse's ".

Housing Associations Act 1985 c. 69.

[[F156]6 In section 10(2)—

(a) in paragraph (b) for the words "2 to 7 of Schedule 1 to the Tenants' Rights, Etc. (Scotland) Act 1980" there shall be substituted the words " 1 to 8 of Schedule 2 to the [M51]Housing (Scotland) Act 1987 ";

(b) . . . . . [F157]]

Textual Amendments

F156 Sch. 9 para. 6 repealed (S.) (1.11.2001) by 2001 asp 10, ss. 112, 113(1), **Sch. 10 para. 14(15)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

F157 Sch. 9 paras. 6(b) and 7 repealed by Housing Act 1988 (c. 50, SIF 61), s. 140(2), **Sch. 18**

Marginal Citations

M51 1987 c. 26.

7 . . . . . [F158]

Textual Amendments

F158 Sch. 9 paras. 6(b) and 7 repealed by Housing Act 1988 (c. 50, SIF 61), s. 140(2), **Sch. 18**

[[F159]8 In section 39, in the definition of "secure tenancy" for the words "section 10 of the Tenants' Rights, Etc. (Scotland) Act 1980" there shall be substituted the words " 44 of the Housing (Scotland) Act 1987 ".]

Textual Amendments

F159 Sch. 9 para. 8 repealed (S.) (1.11.2001) by 2001 asp 10, ss. 112, 113(1), **Sch. 10 para. 14(15)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

[[F160]9 In section 106(2) for the definition of "shared ownership agreement" there shall be substituted the following definition–

""shared ownership agreement" means an agreement whereby–

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(a) a pro indiviso right in a dwelling is sold to a person and the remaining pro indiviso rights therein are leased to him subject to his being entitled, from time to time, to purchase those remaining rights until he has purchased the entire dwelling; or

(b) pro indiviso rights in dwellings are conveyed to trustees to hold on behalf of persons each of whom, by purchasing a share in those dwellings, becomes entitled to exclusive occupancy of one of the dwellings but with any such person who wishes to sell or otherwise dispose of his share being required to do so through the agency of the trustees,

or such other agreement as may be approved whereby a person acquires a pro indiviso right in a dwelling or dwellings and thereby becomes entitled to exclusive occupancy of the dwelling or, as the case may be, one of the dwellings; ”.**]**

Textual Amendments

F160 Sch. 9 para. 9 repealed (S.) (1.11.2001) by 2001 asp 10, ss. 112, 113(1), **Sch. 10 para. 14(15)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

Housing (Scotland) Act 1987 c. 26.

F161 10 . . . . . .

Textual Amendments

F161 Sch. 9 para. 10 repealed (S.) (30.9.2002) by 2001 asp 10, ss. 112, 113(1), **Sch. 10 para. 14(15)**; S.S.I. 2002/321, art. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-5)

11 In section 64(7) (circumstances where prohibition of landlord’s option to repurchase does not apply)—

(a) in paragraph (a), after the word “sold” there shall be inserted the words “ whether under this Part or otherwise ”;

(b) for paragraph (b) there shall be substituted the following paragraph–

“(b) the Secretary of State is satisfied that an unreasonable proportion of the houses sold consists of houses which have been resold and are not–

(i) being used as the only or principal homes of the owners; or

(ii) subject to regulated tenancies within the meaning of section 8 of the Rent (Scotland) Act 1984 or assured tenancies for the purposes of Part II of the Housing (Scotland) Act 1988.”.

12 In section 103 (certain provisions of Rent (Scotland) Act 1984 not to apply) after “1984” there shall be inserted the words “ or in Part II of the Housing (Scotland) Act 1988 ”.

13 In section 128 (recovery of possession of house to which Rent (Scotland) Act 1984 applies) after “1984” there shall be inserted the words “ or in Part II of the Housing (Scotland) Act 1988 ”.

Status: *Point in time view as at 03/09/2007.*
Changes to legislation: *Housing (Scotland) Act 1988 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

14 In section 145 (recovery of possession of overcrowded house that is let) after "1984" there shall be inserted the words " or in Part II of the Housing (Scotland) Act 1988 ".

15 In section 177 (statutory tenant to be regarded as lessee for purposes of the Act), in paragraph (a), after "1984" there shall be inserted the words " or Part II of the Housing (Scotland) Act 1988 ".

16 In section 180 (effect of control order), in subsection (4)—

(a) after the words "the Act)" there shall be inserted the words " and paragraph 11 of Schedule 4 to the Housing (Scotland) Act 1988 (which excludes lettings by local authorities from being assured tenancies within the meaning of the Act) ";

(b) after "1984" where it second occurs there shall be inserted the words " or an assured tenancy, within the meaning of the Housing (Scotland) Act 1988, ";

(c) for the words "protected or statutory" where they second and third occur there shall be substituted the words " protected, statutory or assured ";

(d) for the words "that Act" there shall be substituted the words " those Acts ".

17 In section 207 (local authority's duty to keep slum clearance revenue account) for paragraph (b) of subsection (2) there shall be substituted the following paragraph—

"(b) such of the expenditure of the authority in respect of houses and other property, being expenditure not included in paragraph (a), together with any income related to that expenditure as may be approved by the Secretary of State and falls within any of the following categories—

(i) any payment under section 308 (payments to certain owner-occupiers and others in respect of houses not meeting tolerable standard which are purchased or demolished) other than any such payment in respect of an interest in a house which has been purchased by the local authority for the purpose of bringing that house or another house up to the tolerable standard;

(ii) any payment under section 304 (payments in respect of well-maintained houses) other than any such payment in respect of an interest in a house which has been purchased by the local authority for the purpose of bringing that house or another house up to the tolerable standard;

(iii) any payment under section 234(5) or (6) (payment of removal and other allowances to person displaced);

(iv) such other expenditure as the Secretary of State may direct.".

18 In section 311 (interpretation of sections 308 to 310), in subsection (2), in the definition of "interest" after "1984" there shall be inserted the words " or of a statutory assured tenant within the meaning of the Housing (Scotland) Act 1988 ".

19 In section 328 (duty to inform tenant of assignation of landlord's interest), in subsection (6), after "1984" there shall be inserted the words " and a statutory assured tenancy within the meaning of the Housing (Scotland) Act 1988 ".

20 In section 338 (interpretation), in subsection (1) in the definition of "tenancy" after the word "applies" there shall be inserted the words " and a statutory assured tenancy within the meaning of the Housing (Scotland) Act 1988 ".

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[F162]21 . . . . . .

Textual Amendments

F162 Sch. 9 para. 21 repealed (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(15)**; S.I. 2002/321, arts. 2(2), **Sch.** Table (subject to transitional provisions in arts. 3-5)

SCHEDULE 10

Section 72.

REPEALS

1951 c. 65.	The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951.	In section 16, in each of subsections (3) and (4), the words “30 or”.
1971 c. 40.	The Fire Precautions Act 1971.	In Part III of the Schedule, in paragraph 3(1) the words from “(and the” in sub-sub-paragraph (a) to “accordingly); and”.
1975 c. 24.	The House of Commons Disqualification Act 1975.	In Schedule 1, in Part III the words “Chairman, Deputy Chairman or member of the Council of Management of the Scottish Special Housing Association, appointed at a salary.”.
1984 c. 58.	The Rent (Scotland) Act 1984.	In section 28(2), the words “and 49(5)”.
		In section 29(2), the words “Subject to section 49(5) below”.
		Section 30.
		In section 32(1) the words “or 30(2)”.
1984 c. 58.*cont.*	The Rent (Scotland) Act 1984*cont.*	The proviso to section 34(1).
		In section 40, the words “or rates”.
		Section 42(2).
		Section 49(4) and (5).
		Section 54(2).
		In section 56(2) the words “(except section 49(5))”.

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		The proviso to section 57(2).
		Section 57(5).
		In section 58(2) the words "subject to section 57(5) above".
		In section 61(1) in the definition of "housing association", paragraph (a).
		In section 65(1) the words "or the local authority".
		In section 66(1) the words "or the local authority".
		Section 67(3).
		In section 68, the words "or the local authority".
		Section 69(2).
		Section 70(2).
		In section 71(1) the words "or the local authority".
		In section 95(1) paragraph (a) and in paragraph (b) the words "or dwellinghouse exceeding a specified rateable value".
		Section 98(5).
		In section 103(2) the words "42(2), 54(2)".
		Section 105(2).
		Schedule 3.
		Schedule 7, paragraph 5.
. . . **F163**	. . . **F163**	. . . **F163**
1987 c. 26.	The Housing (Scotland) Act 1987.	Section 62(11) to (13).
		In section 151 in the definition of "house" the words from ", not being" to the end of the definition.
		In section 194, in subsection (1) the words "the Scottish Special Housing Association ("the

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		Association”) and to” and in subsection (2) the words “the Association and to” and “the Association, acting otherwise than as agents, or by”.
1987 c. 26.*cont.*	The Housing (Scotland) Act 1987.*cont.*	Section 196.
		Section 200.
		Sections 254 and 255.
		Sections 296 and 297.
		In Schedule 12, in paragraph 2, Part III.
		In Schedule 13, the entries relating to section 59 of the Housing (Scotland) Act 1969, Part I of the Housing (Scotland) Act 1974 and sections 254 and 255 of the Housing (Scotland) Act 1987.
		In Schedule 14, the entries relating to section 59 of the Housing (Scotland) Act 1969, Part I of the Housing (Scotland) Act 1974 and Part IX and sections 254 and 255 of the Housing (Scotland) Act 1987.
		In Schedule 16, paragraph 1 (b).
1988 c. 9.	The Local Government Act 1988.	In section 1(1), paragraph (1) and the word “and” immediately preceding it.
		In Schedule 2, the words “The Scottish Special Housing Association”.

Textual Amendments

F163 Entry repealed by Housing Act 1988 (c. 50, SIF 61), s. 140(2), **Sch. 18**

Status:
Point in time view as at 03/09/2007.

Changes to legislation:
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