



# Housing (Scotland) Act 2001

## 2001 asp 10

### PART 2

#### TENANTS OF SOCIAL LANDLORDS

#### CHAPTER 1

#### SCOTTISH SECURE TENANCIES

##### *Assignment, subletting and exchanges*

#### 32 Assignment, subletting etc.

- (1) It is a term of every Scottish secure tenancy that the tenant may assign, sublet or otherwise give up to another person possession of the house or any part of it or take in a lodger—
- (a) only with the consent in writing of the landlord, <sup>F1</sup>...
  - (b) in the case of an assignment, only where the house has been [<sup>F2</sup>the tenant's and] the assignee's only or principal home throughout the period of [<sup>F3</sup>12] months ending with the date of the application for the landlord's consent to the assignment under paragraph 9 of schedule 5 [<sup>F4</sup>and
  - (c) in the case of a sublet, only where the house has been the tenant's only or principal home throughout the period of 12 months ending with the date of the application for the landlord's consent to the sublet under paragraph 9 of schedule 5.]

[<sup>F5</sup>(1A) For the purposes of an assignment mentioned in subsection (1)(b), a period may be considered in relation to a person only if—

- (a) the person was the tenant of the house throughout that period, or
- (b) at any time before that period began, the landlord was notified by—
  - (i) the person, or
  - (ii) any other person who was the tenant of the house in question when the notice was given,that the house in question was the person's only or principal home.

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- (1B) For the purposes of a sublet mentioned in subsection (1)(c), a period may be considered in relation to a tenant only if—
- (a) the tenant was the tenant of the house throughout that period, or
  - (b) at any time before that period began, the landlord was notified by—
    - (i) the tenant, or
    - (ii) any other person who was the tenant of the house in question when the notice was given,
 that the house in question was the tenant's only or principal home.]
- (2) A landlord whose consent is required under subsection (1) may refuse such consent only if it has reasonable grounds for doing so.
- (3) There are, in particular, reasonable grounds for refusing such consent if—
- (a) a notice under section 14(2) has been served on the tenant specifying a ground set out in any of paragraphs 1 to 7 of schedule 2,
  - (b) an order for recovery of possession of the house has been made against the tenant under section 16(2),
  - (c) it appears to the landlord that a payment other than—
    - (i) a rent which is in its opinion a reasonable rent, or
    - (ii) a deposit which in its opinion is reasonable, returnable at the termination of the assignment, subletting or other transaction and given as security for the subtenant's obligations for accounts for supplies of gas, electricity, telephone or other domestic supplies and for damage to the house or contents,
 has been or is to be received by the tenant in consideration of the assignment, subletting or other transaction,
  - (d) the transaction for which consent is sought would lead to overcrowding of the house in such circumstances as to render the occupier guilty of an offence under section 139 of the 1987 Act,<sup>F6</sup>...
  - (e) the landlord proposes to carry out work on the house or on the building of which it forms part so that the proposed work will affect the accommodation likely to be used by the subtenant or other person who would reside in the house as a result of the transaction.
  - [<sup>F7</sup>(f) in the case of consent to an assignment by a local authority or a registered social landlord, if the proposed assignee is not a person to whom that local authority or registered social landlord would give a reasonable preference when selecting tenants under section 20(1) of the 1987 Act, or
  - (g) in the case of consent to an assignment, if the assignment would in the opinion of the landlord, result in the house being under-occupied.]
- (4) Where the landlord is a registered social landlord which is a co-operative housing association, any consent under subsection (1) is subject to the condition that the assignee, subtenant or other person is a member of the association when the assignment or sublease takes effect or, as the case may be, when possession is given to the other person.
- (5) The Scottish Ministers may by order modify subsection (3).
- (6) It is a term of every Scottish secure tenancy that, where the landlord has given consent to an assignment, subletting or other transaction under subsection (1), the tenant—

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- (a) must notify the landlord of any proposed increase in the rent which was payable by the subtenant at the commencement of the assignment, subletting or other transaction, and
  - (b) must not increase the rent if the landlord objects to the increase.
- (7) An assignment, subletting or other transaction to which this section applies is not—
- (a) a protected tenancy or a statutory tenancy within the meaning of the Rent (Scotland) Act 1984 (c.58), or
  - (b) an assured tenancy <sup>F8</sup>, or
  - (c) a private residential tenancy,
- and Part VII (rent assessment) of that Act does not apply to such an assignment, subletting or other transaction.
- (8) In this section and schedule 5, “subtenant” means a person entitled to possession of a house or any part of a house under an assignment, subletting or other transaction to which this section applies, and includes a lodger.
- (9) The provisions of Part 2 of schedule 5, so far as relating to this section, have effect as terms of every Scottish secure tenancy.

#### Textual Amendments

- F1** Word in s. 32(1) repealed (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 12(2)(a)(i)**, 104(3); [S.S.I. 2018/153](#), **art. 2**, **sch.** (with **arts. 6, 7, 9**)
- F2** Words in s. 32(1)(b) inserted (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 12(2)(a)(ii)**, 104(3); [S.S.I. 2018/153](#), **art. 2**, **sch.** (with **arts. 6, 7, 9**)
- F3** Word in s. 32(1)(b) substituted (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 12(2)(a)(iii)**, 104(3); [S.S.I. 2018/153](#), **art. 2**, **sch.** (with **arts. 6, 7, 9**)
- F4** S. 32(1)(c) and word inserted (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 12(2)(a)(iv)**, 104(3); [S.S.I. 2018/153](#), **art. 2**, **sch.** (with **arts. 6, 7, 9**)
- F5** S. 32(1A)(1B) inserted (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 12(2)(b)**, 104(3); [S.S.I. 2018/153](#), **art. 2**, **sch.** (with **arts. 6, 7, 9**)
- F6** Word in s. 32(3) repealed (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 12(2)(c)(i)**, 104(3); [S.S.I. 2018/153](#), **art. 2**, **sch.** (with **arts. 6, 7, 9**)
- F7** S. 32(3)(f)(g) inserted (1.11.2019) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), **ss. 12(2)(c)(ii)**, 104(3); [S.S.I. 2018/153](#), **art. 2**, **sch.** (with **arts. 6, 7, 9**)
- F8** S. 32(7)(c) inserted (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\)](#), **s. 79(2)**, **sch. 4 para. 7(3)**; [S.S.I. 2017/346](#), **reg. 2**, **sch.**

#### Commencement Information

- I1** S. 32 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), **art. 2** (subject to transitional provisions and savings in **arts. 3-5**)

### 33 Exchange of house

- (1) It is a term of every Scottish secure tenancy that the tenant may exchange the house which is the subject of the tenancy for another house which is the subject of a Scottish secure tenancy (whether or not of the same landlord) but only with the consent in writing of the landlord and (if different) the landlord of the other house.
- (2) A landlord whose consent is requested under subsection (1) may refuse such consent only if it has reasonable grounds for doing so.

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- (3) There are, in particular, reasonable grounds for refusing such consent if—
- (a) a notice under section 14(2) has been served on the tenant specifying a ground set out in any of paragraphs 1 to 7 of schedule 2,
  - (b) an order for recovery of possession of the house which is the subject of the current tenancy has been made against the tenant under section 16(2),
  - (c) that house was provided by the landlord in connection with the tenant's employment with it,
  - (d) that house has been designed or adapted for occupation by a person whose special needs require accommodation of the kind provided by the house and, if the exchange took place, there would no longer be a person with such special needs occupying the house,
  - (e) the accommodation in the other house—
    - (i) is substantially larger than that required by the tenant and the tenant's family, or
    - (ii) is not suitable to the needs of the tenant and the tenant's family, or
  - (f) the exchange would lead to overcrowding of the house in such circumstances as to render the occupier guilty of an offence under section 139 of the 1987 Act.
- (4) Where the landlord is a registered social landlord which is a co-operative housing association, any consent under subsection (1) is subject to the condition that the tenant of the other house is a member of the association when the exchange takes effect.
- (5) The Scottish Ministers may by order modify subsection (3).
- (6) On an exchange in accordance with this section, the existing tenancy is terminated and the tenant is taken to have been granted a Scottish secure tenancy of the other house by the landlord of that house; and this Part applies to that tenancy accordingly.
- (7) The provisions of Part 2 of schedule 5, so far as relating to this section, have effect as terms of every Scottish secure tenancy.

#### **Commencement Information**

- I2** S. 33 wholly in force at 30.9.2002, see s. 113(1)(2) and [S.S.I. 2002/321](#), [art. 2](#) (subject to transitional provisions and savings in [arts. 3-5](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 5(5A) inserted by [2003 asp 10 s. 5\(4\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S. 5 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 14(1)(a) words renumbered as s. 14(1)(a) by [2021 asp 16 s. 22\(2\)\(a\)\(i\)](#)
- s. 14(1)(b) inserted by [2021 asp 16 s. 22\(2\)\(a\)\(ii\)](#)
- s. 14(1A)(1B) inserted by [2021 asp 16 s. 22\(2\)\(b\)](#)
- s. 14(5C)-(5E) inserted by [2021 asp 16 s. 22\(2\)\(e\)](#)
- s. 16(2)(d)(e) inserted by [2021 asp 16 s. 22\(3\)\(b\)\(ii\)](#)
- s. 16(3ZA)(3ZB) inserted by [2021 asp 16 s. 22\(3\)\(c\)](#)
- s. 16(5C) inserted by [2021 asp 16 s. 22\(3\)\(e\)](#)
- s. 16(7)-(10) inserted by [2021 asp 16 s. 22\(3\)\(f\)](#)
- s. 34(7A)-(7C) inserted by [2003 asp 10 s. 6\(2\)](#) (This amendment not applied to legislation.gov.uk. S. 6 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 34(8)(b) and words inserted by [2003 asp 10 s. 6\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S. 6 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)
- s. 89(12) inserted by [2019 asp 10 s. 18\(3\)](#)
- sch. 2 para. 15A inserted by [2021 asp 16 s. 22\(4\)](#)
- sch. 6 para. 5A and cross-heading inserted by [2003 asp 10 s. 5\(5\)](#) (This amendment not applied to legislation.gov.uk. S. 5 omitted (31.12.2012) without ever being in force by virtue of S.S.I. 2012/330, arts. 1, 13)