



# Housing (Scotland) Act 2010

## 2010 asp 17

### PART 16

#### MISCELLANEOUS

#### 152 Tenant protection: orders for possession against landlord

(1) After section 5A(8) of the Heritable Securities (Scotland) Act 1894 (c.44) insert—

“(9) For the avoidance of doubt, a decree granted on an application to which this section applies is not an order for possession of a house let on an assured tenancy (within the meaning of Part II of the Housing (Scotland) Act 1988 (c.43)).”.

(2) After section 24(9) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35) insert—

“(10) For the avoidance of doubt, a decree granted on an application under subsection (1B) above is not an order for possession of a house let on an assured tenancy (within the meaning of Part II of the Housing (Scotland) Act 1988 (c.43)).”.

(3) After section 216(2) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) insert—

“(2A) Subsection (2) does not apply to an occupant with an assured tenancy (within the meaning of Part II of the Housing (Scotland) Act 1988 (c.43)) or any effects of that occupant where the decree for removing from heritable property was granted on an application—

- (a) to which section 5A of the Heritable Securities (Scotland) Act 1894 (c.44) applies; or
- (b) under section 24(1B) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35).”.

#### 153 Tenant protection: repossession orders

The Housing (Scotland) Act 2001 (asp 10) is amended as follows—

- (a) in section 16, after subsection (5) insert—

“(5A) Where an order is made under subsection (2) in proceedings under section 14 on the ground that rent lawfully due from the tenant has not been paid (as set out in paragraph 1 of schedule 2) or on grounds including that ground—

- (a) subsection (5)(a) does not apply,
- (b) the tenancy is terminated only if the landlord recovers possession of the house in pursuance of the order,
- (c) the order must specify the period for which the landlord’s right to recover possession of the house is to have effect (being no longer than any maximum period which the Scottish Ministers by order prescribe), and
- (d) the landlord must have regard to any guidance issued by the Scottish Ministers about recovery of possession in pursuance of the order.

(5B) Before making an order under subsection (5A)(c) or issuing guidance under subsection (5A)(d), the Scottish Ministers must consult—

- (a) such bodies representing local authorities,
- (b) such registered social landlords or bodies representing them,
- (c) such bodies representing tenants’ interests, and
- (d) such other persons,

as they think fit.”,

- (b) in section 109(6), after second “section” insert “16(5A)(c) or”.

## **154 Police accommodation not to be Scottish secure tenancy**

In paragraph 2 of schedule 1 to the Housing (Scotland) Act [2001 \(asp 10\)](#)—

- (a) sub-paragraph (a) is repealed,
- (b) in sub-paragraph (c), for the words “a police force or” substitute “an”,
- (c) at the end of the paragraph insert—

“(2) A tenancy is not a Scottish secure tenancy if the landlord is a local authority landlord and—

- (a) the house occupied by the tenant is held by the landlord for the purposes of a police force, or
- (b) the tenant is let the house expressly on a temporary basis pending its being required for the purposes of a police force.

(3) Sub-paragraph (2)(a) does not prevent a tenancy from being a Scottish secure tenancy if—

- (a) the tenancy was created before the relevant day,
- (b) the tenant moved to the house in pursuance of—
  - (i) an order for recovery of possession made under section 16(2) of the Housing (Scotland) Act [2001 \(asp 10\)](#), on any of the grounds set out in paragraphs 9 to 13 and 15 of schedule 2 to that Act, in respect of a house subject to a Scottish secure tenancy created before the relevant day, or

- (ii) the operation of section 19(3)(b), 21(3)(b) or 22(6) of that Act following termination of a Scottish secure tenancy created before the relevant day,
- (c) the tenant moved to the house from a house subject to a Scottish secure tenancy created before the relevant day in pursuance of a decision by the landlord to demolish that other house as a result of which—
  - (i) the tenancy of that other house was terminated by written agreement between the landlord and the tenant, and
  - (ii) the house was made available to the tenant,
- (d) the tenant occupied the house immediately before the relevant day under a short Scottish secure tenancy which has, since that day, been converted into a Scottish secure tenancy under section 37, or
- (e) the tenant—
  - (i) occupied the house (or any other house held by the landlord for the purposes of a police force) under a Scottish secure tenancy immediately before the creation of the tenancy, and
  - (ii) agreed to terminate that Scottish secure tenancy without having been notified by the landlord of the effect of sub-paragraph (2)(a) at least 28 days before so agreeing.

- (4) In this paragraph—  
“police force” has the same meaning as in the Police (Scotland) Act 1967 (c.77),  
“relevant day” means the day on which section 154 of the Housing (Scotland) Act 2010 (asp 17) comes into force.”.

## **155 Scottish secure tenancy: rent arrears pre-action requirements**

The Housing (Scotland) Act 2001 (asp 10) is amended as follows—

- (a) in section 14—
  - (i) after subsection (2) insert—

“(2A) Where such proceedings are to include the ground that rent lawfully due from the tenant has not been paid (as set out in paragraph 1 of schedule 2)—

    - (a) the notice under subsection (2) must not be served unless the landlord has complied with the pre-action requirements in section 14A, and
    - (b) the proceedings may not be raised unless the landlord has confirmed to the court in such form as the Scottish Ministers may prescribe by regulations that those requirements have been complied with.”,
  - (ii) the word “and” immediately following subsection (4)(a) is repealed, and
  - (iii) in subsection (4), at the end of paragraph (b) insert “, and

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*Status: This is the original version (as it was originally enacted).*

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- (c) where subsection (2A) applies, the steps taken by the landlord which the landlord considers to constitute compliance with the pre-action requirements in section 14A.”,
- (b) after section 14, insert—

**“14A Pre-action requirements where grounds for possession include rent arrears**

- (1) The pre-action requirements referred to in section 14(2A) are set out in subsections (2) to (7) below.
- (2) The landlord must provide the tenant with clear information about—
  - (a) the terms of the tenancy agreement, and
  - (b) outstanding rent and any other outstanding financial obligation of the tenancy.
- (3) The landlord must make reasonable efforts to provide the tenant with advice and assistance on the tenant’s eligibility to receive—
  - (a) housing benefit, and
  - (b) other types of financial assistance (for example, other benefits or grants).
- (4) The landlord must provide the tenant with information about sources of advice and assistance in relation to management of debt.
- (5) The landlord must make reasonable efforts to agree with the tenant a reasonable plan for future payments to the landlord, such plan to include proposals in respect of—
  - (a) future payments of rent, and
  - (b) outstanding rent and any other outstanding financial obligation of the tenancy.
- (6) The landlord must not serve a notice under section 14(2) if—
  - (a) an application for housing benefit for the tenant—
    - (i) has been made but has not yet been determined, and
    - (ii) is, in the opinion of the landlord, likely to result in the benefit being paid at a level allowing the tenant to pay, or reduce by an amount acceptable to the landlord, the outstanding rent and any other outstanding financial obligation of the tenancy,
  - (b) the tenant is taking other steps which, in the opinion of the landlord, are likely to result in the payment to the landlord within a reasonable time of—
    - (i) the outstanding rent, and
    - (ii) any other outstanding financial obligation of the tenancy, or
  - (c) the tenant is complying with the terms of a plan agreed to in accordance with subsection (5).
- (7) The landlord, unless it is a local authority landlord, must encourage the tenant to contact the local authority in whose area the house is situated.

- (8) In complying with the pre-action requirements the landlord must have regard to any guidance issued by the Scottish Ministers.
- (9) The Scottish Ministers may by order make further provision about the pre-action requirements, including provision—
  - (a) specifying particular steps to be taken, or not to be taken, by a landlord in complying with any requirement;
  - (b) modifying or removing any requirement.
- (10) In this section, “housing benefit” has the same meaning as in section 123 of the Social Security Contributions and Benefits Act 1992 (c.4).”, and
- (c) in section 109—
  - (i) in subsection (4), after “7(3)” insert “, 14A(9)”, and
  - (ii) in subsection (6), after second “section” insert “14A(9) or”.

#### **156 Local authority duties on homelessness: armed forces**

In section 27 of the Housing (Scotland) Act 1987 (c.26)—

- (a) sub-paragraph (i) of subsection (2)(a) and the word “or” following it are repealed,
- (b) paragraph (a) of subsection (3) and the word “or” following it are repealed,
- (c) in paragraph (b) of subsection (3), the word “other” is repealed.

#### **157 Vacant dwellings: use of information obtained for council tax purposes**

- (1) In paragraph 18A(1) of schedule 2 to the Local Government Finance Act 1992 (c.14)—
  - (a) for “A billing” substitute “An”,
  - (b) after “Part 1” insert “or Part 2”.
- (2) In section 129(8)(a) of the Local Government Act 2003 (c.26), the word “85,” is repealed.

#### **158 Housing support: persons found to be homeless or threatened with homelessness**

After section 32A of the Housing (Scotland) Act 1987 (c.26) insert—

##### **“32B Housing support: persons found to be homeless or threatened with homelessness**

- (1) Subsection (2) applies where a local authority—
  - (a) are subject to the duty under section 31(2) or 32(2) in relation to an applicant; and
  - (b) have reason to believe that the applicant may be in need of prescribed housing support services.
- (2) The local authority must assess whether the applicant, and any other person residing with the applicant, needs prescribed housing support services.

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*Status: This is the original version (as it was originally enacted).*

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- (3) In carrying out such an assessment the local authority must—
  - (a) conduct inquiries of such type as may be prescribed; and
  - (b) have regard to any prescribed matters.
- (4) Following such an assessment, the local authority must ensure that prescribed housing support services are provided to any person assessed as being in need of them.
- (5) The Scottish Ministers may by regulations made by statutory instrument make further provision about the provision of prescribed housing support services in pursuance of subsection (4) and may, in particular, specify—
  - (a) the period for which services are to be provided;
  - (b) matters to which a local authority are to have regard when ensuring provision of services.
- (6) Regulations made under this section may make different provision for different purposes and different areas.
- (7) Before making any regulations under this section, the Scottish Ministers must consult—
  - (a) such bodies representing local authorities;
  - (b) such bodies representing the interests of homeless persons; and
  - (c) such other persons,as they think fit.
- (8) Regulations under this section may be made only if a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.
- (9) In this section, “housing support services” includes any service which provides support, assistance, advice or counselling to an individual with particular needs with a view to enabling that individual to occupy, or to continue to occupy, residential accommodation as the individual’s sole or main residence.”.