



# Domestic Abuse (Protection) (Scotland) Act 2021

2021 asp 16

PROSPECTIVE

## PART 2

### TERMINATION OF SCOTTISH SECURE TENANCIES IN CASES INVOLVING ABUSIVE BEHAVIOUR

#### **22 Additional ground for ending tenant's interest in house**

- (1) The Housing (Scotland) Act 2001 is amended as follows.
- (2) In section 14 (proceedings for possession)—
  - (a) in subsection (1)—
    - (i) the words from “recovery” to the end become paragraph (a),
    - (ii) after that paragraph insert—

“(b) where subsection (1A) applies, termination of a tenant's interest in the tenancy.”,
  - (b) after subsection (1) insert—

“(1A) This subsection applies where—

    - (a) the tenancy is a joint tenancy, and
    - (b) the proceedings are raised against the tenant on the ground set out in paragraph 15A of schedule 2.

(1B) In this section and section 16, “the tenant”, in relation to proceedings under subsection (1)(b), means person T (within the meaning of paragraph 15A of schedule 2).”,
- (c) in subsection (2B)—
  - (i) the words “for recovery of possession” are repealed,
  - (ii) after “paragraph 2” insert “ or 15 A ”,
  - (iii) at the end insert “ or, as the case may be, terminating a tenant's interest in the tenancy. ”,

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** *There are currently no known outstanding effects for the Domestic Abuse (Protection) (Scotland) Act 2021, Part 2. (See end of Document for details)*

- (d) in subsection (4), for “proceedings for recovery of possession”, in both places where it occurs, substitute “ the proceedings ”,
- (e) after subsection (5B) insert—
  - “(5C) Where a landlord raises proceedings under subsection (1) which include the ground set out in paragraph 15A of schedule 2, the landlord must, as soon as reasonably practicable after raising the proceedings, give the tenant and any qualifying occupier advice and assistance in relation to the finding of alternative accommodation in the event that an order is made under section 16(2) or (3ZA).
  - (5D) The landlord must, in exercising the function conferred by subsection (5C), have regard to any guidance issued by the Scottish Ministers about the exercise of that function.
  - (5E) Before publishing any guidance under subsection (5D), the Scottish Ministers must consult such persons as they consider appropriate.”
- (3) In section 16 (powers of court in possession proceedings)—
  - (a) in subsection (1), for “7 and 15” substitute “ 7, 15 and 15A ”,
  - (b) in subsection (2)—
    - (i) in the opening words, for “14” substitute “ 14(1)(a) ”,
    - (ii) after paragraph (c) insert—
      - “(d) that—
        - (i) the landlord has a ground for recovery of possession set out in paragraph 15A of that schedule and so specified,
        - (ii) the tenant is the sole tenant, and
        - (iii) it is reasonable to make the order,
    - (e) whether or not paragraph (d) applies, that—
      - (i) the landlord has a ground for recovery of possession set out in paragraph 15A of that schedule and so specified,
      - (ii) the tenant is the sole tenant,
      - (iii) the tenant has been convicted of an offence—
        - (A) in respect of the abusive behaviour referred to in sub-paragraph (1) of that paragraph, and
        - (B) which is punishable by imprisonment, and
      - (iv) the landlord served the notice under section 14(2) before the day which is 12 months after—
        - (A) the day on which the tenant was convicted of the offence, or
        - (B) where that conviction was appealed, the day on which the appeal was dismissed or abandoned.”
  - (c) after subsection (3) insert—

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“(3ZA) Subject to subsection (1), in proceedings under section 14(1)(b) the court must make an order for termination of the tenant's interest in the tenancy if it appears to the court—

(a) that—

(i) the landlord has a ground for termination of the tenant's interest in the tenancy set out in paragraph 15A of that schedule and specified in the notice required by section 14, and

(ii) it is reasonable to make the order,

(b) whether or not paragraph (a) applies, that—

(i) the landlord has a ground for termination of the tenant's interest in the tenancy set out in paragraph 15A of that schedule and so specified,

(ii) the tenant has been convicted of an offence—

(A) in respect of the abusive behaviour referred to in sub-paragraph (1) of that paragraph, and

(B) which is punishable by imprisonment, and

(iii) the landlord served the notice under section 14(2) before the day which is 12 months after—

(A) the day on which the tenant was convicted of the offence, or

(B) where that conviction was appealed, the day on which the appeal was dismissed or abandoned.

(3ZB) For the purposes of subsections (2)(d)(iii) and (3ZA)(a)(ii), the court is to have regard, in particular, to any risk that the tenant will engage in further behaviour of the kind mentioned in paragraph 15A of schedule 2.”,

(d) in subsection (3A), for “Subsection (2) does” substitute “ Subsections (2) and (3ZA) do ”,

(e) after subsection (5B) insert—

“(5C) An order under subsection (3ZA) has the effect of bringing to an end the tenant's interest in the tenancy on the date specified in the order.”,

(f) after subsection (6) insert—

“(7) The landlord must, no later than 28 days after the date of termination of a tenancy which is terminated on the ground set out in paragraph 15A of schedule 2 (or on grounds including that ground), offer a tenancy of the house (beginning as soon as reasonably practicable) to person P.

(8) But the landlord need not comply with the duty imposed by subsection (7) if it is impossible or inappropriate to do so because of circumstances relating to person P.

(9) The landlord must have regard to any guidance issued by the Scottish Ministers about subsections (7) and (8).

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- (10) The references in subsections (7) and (8) to person P are to the person who, in relation to the house, is person P within the meaning of paragraph 15A of schedule 2.”.
- (4) In schedule 2 (Scottish secure tenancy: grounds for recovery of possession of house), after paragraph 15 insert—
- “15A (1) A person (“person T”) who is the tenant or one of the joint tenants has engaged in behaviour which is abusive of a person (“person P”) who is a partner or ex-partner of person T, and the conditions in sub-paragraph (2) are met.
- (2) The conditions are—
- (a) person T is the sole tenant, or person T and person P are joint tenants (whether or not with others),
  - (b) the house is person P's only or principal home,
  - (c) person P wishes to continue living in the house,
  - (d) the landlord wishes—
    - (i) where person T is the sole tenant, to recover possession of the house from person T for the purpose of entering into a tenancy with person P instead,
    - (ii) where person T is a joint tenant, to bring person T's interest in the tenancy to an end.
- (3) In sub-paragraph (1)—
- (a) “partner or ex-partner of person T” means—
    - (i) the spouse or civil partner of person T,
    - (ii) a former spouse or former civil partner of person T,
    - (iii) a person with whom person T has, in the period of 12 months ending with the date on which the proceedings are raised under section 14(1), lived in the house as if a spouse of person T for a period of, or more than one period amounting in total to, at least 6 months,
  - (b) the reference to behaviour by person T which is abusive of person P is to be construed in accordance with sections 2 and 3 of the Domestic Abuse (Protection) (Scotland) Act 2021, as if the references in those sections to—
    - (i) person A were references to person T,
    - (ii) person B were references to person P.”.
- (5) The title of section 14 becomes “ **Proceedings for recovery of possession or termination of joint tenant's interest** ”.
- (6) The title of section 16 becomes “ **Powers of court in proceedings for recovery of possession or termination of joint tenant's interest** ”.
- (7) The heading of schedule 2 becomes “SCOTTISH SECURE TENANCY: GROUNDS FOR RECOVERY OF POSSESSION OR TERMINATION OF JOINT TENANT'S INTEREST”.

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- (8) The heading of Part 1 of schedule 2 becomes “**FOUNDATIONS ON WHICH COURT MAY ORDER RECOVERY OF POSSESSION OR TERMINATION OF JOINT TENANT'S INTEREST**”.

**Status:**

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**Changes to legislation:**

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