

HOUSING (SCOTLAND) ACT 2001

EXPLANATORY NOTES

BACKGROUND AND OVERVIEW

Part 2 – Tenants of Social Landlords

Chapter 1 – Scottish Secure Tenancies

Section 11: Scottish secure tenancy

22. This section specifies which tenancies are to be Scottish secure tenancies and makes provision for joint tenancies and for transition from existing tenancies to the Scottish secure tenancy.
23. The Scottish Ministers may make orders specifying the dates on or after which the tenancies of any prescribed landlord or description of landlord will be Scottish secure tenancies. This would enable all tenancies to convert at the same time, but allows for phased implementation where necessary. Such orders may (*subsection (2)*) include provisions to protect the rights of the landlord, the tenant or a third party (eg a person with a heritable security over the property) in relation to a tenancy which is converted to a Scottish secure tenancy. An order under that subsection could be used to protect the terms and conditions of the right to buy for existing tenants.
24. In general, a tenancy will only be a Scottish secure tenancy if:
 - the house is let as a separate dwelling;
 - the tenant is an individual and the house is the tenant's only or principal home; and
 - the landlord is a local authority landlord (as defined in *subsection (3)*), a registered social landlord, or a water or sewerage authority.
 - where the landlord is a registered social landlord which is a co-operative housing association, the tenant is a member of the association; and
 - the tenancy was created on or after such date as specified by order or before that date if of a description specified by order
25. This section introduces *Schedule 1* which defines tenancies which could meet these general criteria but will nonetheless not be Scottish secure tenancies.
26. *Subsection (8)* provides that a tenancy which is a Scottish secure tenancy will continue to be one even where the landlord is no longer a local authority, a registered social landlord or a water or sewerage authority or where the house is no longer the only or principal home of the tenant, or where the landlord is a registered social landlord which is a co-operative housing association and the tenant is no longer a member of the association.
27. *Subsections (5) and (6)* make provisions for joint tenancies, including a requirement on a landlord to grant a joint tenancy, where it is requested in writing, unless it has reasonable grounds for not doing so. *Subsection (9)* protects the tenancy rights of those tenants who have been temporarily housed elsewhere.

Section 12: Restriction on termination of tenancy

28. This section sets out the six ways in which a Scottish secure tenancy may be terminated:
- by a court order for recovery of possession on one of the 15 grounds in *Part 1 of schedule 2* (under section 16(2));
 - where a tenancy has been abandoned (by operation of section 18(2));
 - on the death of a tenant, and subject to the provisions relating to succession (by operation of section 22);
 - on conversion to a short Scottish secure tenancy (by operation of section 35);
 - by written agreement between the landlord and tenant;
 - by 4 weeks' notice given by the tenant to the landlord.
29. *Subsections (2) and (3)* provide security of tenure for a tenant who is being accommodated temporarily in another house while their own house is not available for occupation.

Section 13: Termination of joint tenant's interest in tenancy

30. *Section 13* provides for the termination of a joint tenant's interest in the tenancy by 4 weeks notice given to the landlord and to each of the other joint tenants.

Section 14: Proceedings for possession

31. This section entitles a landlord under a Scottish secure tenancy to seek a court order for recovery of possession of a house. *Subsections (2) to (5)* specify the procedures which the landlord must follow in such circumstances, and include a power for the Scottish Ministers to prescribe the form of notice to tenants. Such a notice must be served on the tenant and any qualifying occupier and must include the ground on which the court order will be sought, which must be one of the 15 grounds set out in *Part 1 of schedule 2*, and must be served at least 4 weeks before the court order is sought. *Subsection (6)* defines "qualifying occupier" for the purposes of this section and section 15.

Section 15: Rights of qualifying occupiers in possession proceedings

32. This section enables a qualifying occupier (defined in section 14(6)) to play a part in possession proceedings, so that their rights as well as the tenant's rights may be considered by the court.

Section 16: Powers of court in possession proceedings

33. This section sets out the circumstances in which the court will make an order for terminating a Scottish secure tenancy and giving the landlord the right to recover possession of the house on a ground set out in *Part 1 of schedule 2*. In relation to grounds 1 to 7 ("conduct grounds") the court must make the order where it considers it reasonable to do so. In relation to grounds 8 to 14 ("management grounds"), the court must make the order if it considers other suitable accommodation will be available for the tenant. In relation to ground 15, the court must make the order where it considers that it is reasonable to do so and that other suitable accommodation will be available. Suitability of alternative accommodation is determined by reference to *Part 2 of schedule 2*. In relation to ground 10, if the house is being redeveloped the court can make an order entitling the tenant to return to the house when the work has been completed.
34. This section also sets out the matters to which the court should have regard in considering whether it is reasonable to make an order for termination of the tenancy.

Section 17: Abandoned tenancies

35. This section enables a landlord under a Scottish secure tenancy to take action to secure and take possession of a house which appears to have been abandoned by the tenant. The procedures to be followed before taking possession are set out in section 18.

Section 18: Repossession

36. This section sets out the procedures which must be followed by a landlord wishing to take possession of an abandoned house, in the circumstances defined in section 17. The landlord must:
- give 4 weeks notice in writing (*subsection (1)*);
 - make sufficient inquiries to satisfy itself that the house is unoccupied and that the tenant has no intention of re-occupying it (*subsection (2)*); and
 - serve a further notice on the tenant (*subsection (2)*), which brings the tenancy to an immediate end and allows the landlord to take possession of the house without further proceedings.
37. *Subsection (4)* gives an order making power to the Scottish Ministers to outline arrangements for the securing of tenants' belongings in their absence and arrangements for their return or disposal.

Section 19: Tenant's recourse to court

38. This section gives a Scottish secure tenant whose house has been repossessed in accordance with the abandonment procedures in sections 17 and 18 a right of appeal to the court. Where the court finds that the landlord acted wrongly or unreasonably it must order the tenancy to continue or direct the landlord to provide other suitable accommodation (as defined in *Part 2 of schedule 2*). *Subsection (4)* enables the court to make further orders in relation to cases where a tenant has successfully challenged an abandonment order, for example to instruct a landlord to forego rent due for the period of apparent abandonment.

Section 20: Abandonment by joint tenant

39. This section enables a landlord under a Scottish secure tenancy to take action to bring to an end the interest of a joint tenant where that joint tenant appears to have abandoned the joint tenancy. The procedures to be followed before taking possession are set out in *subsections (2) and (3)*. The landlord must:
- give 4 weeks notice in writing (*subsection (2)*);
 - make sufficient inquiries to satisfy itself that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant's home (*subsection (3)*); and
 - serve a further notice on the abandoning tenant (*subsection (3)*), bringing the abandoning tenant's interest in the tenancy to an end with effect from a date specified in the notice which must be not earlier than 8 weeks after the date of service of the notice.

Section 21: Joint tenancies: abandoning tenant's recourse to court

40. This section gives a joint tenant a right of recourse to the court where the tenant is aggrieved by a landlord bringing to an end his interest in the property under the abandonment procedures in section 20. Where the court finds in favour of the tenant it can effectively reinstate the joint tenant or direct the landlord to make other suitable accommodation available. The court can also make a further order providing, for example, for compensation to be paid.

Section 22: Succession to Scottish secure tenancy

41. This section and *schedule 3* make provision for succession to a Scottish secure tenancy on the death of the tenant. The section includes a right to a second round of succession (*subsection (2)*). *Schedule 3* defines who is a person qualified to succeed to a tenancy and the circumstances in which they can do so. A qualified person is, first, the tenant's spouse or cohabitee, or a surviving joint tenant; second, a member of the tenant's family aged 16 or over; or, third, a carer who is providing, or who has provided, care for the tenant or a member of the tenant's family. The carer must be aged 16 or over, and have given up his or her previous only or principal home, to be qualified to succeed. In all three cases the house of the deceased tenant must have been the only or principal home for the qualifying person.
42. Where a house has been designed or substantially adapted for the use of persons with special needs, then *paragraph 5 of schedule 3* specifies that only spouses, cohabitees, joint tenants or persons with special needs can succeed to that tenancy. Other persons who would otherwise be qualified to succeed have a right to alternative suitable accommodation by virtue of *subsections (6) and (7)*.
43. *Subsection (8)* clarifies that tenancies are not terminated on the death of a joint tenant if the remaining tenant or tenants continue to live in the house. *Subsection (9)* makes provision for a person who would have succeeded to the tenancy, but who cannot because the second round of succession has passed, to remain in the house for 6 months but not under a Scottish secure tenancy. *Subsection (10)* makes provision for a Scottish secure tenancy to continue (for the purposes of succession) where a tenant has to move to alternative accommodation.

Section 23: Tenant's right to written tenancy agreement and to information

44. This section gives tenants a right to a written tenancy agreement and to information about the landlord's policies and procedures. It permits the Scottish Ministers to issue guidance as to the form of the tenancy in a model agreement. *Subsection (4)* requires landlords to provide a prospective tenant with information, prior to the taking up of the tenancy, about the right to buy (this could include, for example, whether or not there are any relevant exemptions), and the obligations which the tenant is likely to incur if the right to buy is exercised (including responsibility for maintenance of parts of the building and areas owned in common). *Subsection (5)* requires the landlord to notify the tenant of any changes to the legislation, including subordinate legislation, governing the right to buy which might affect the tenant's right to purchase. *Subsection (6)* outlines information that the landlord must supply in relation to its complaints procedure. It also lists other information that it must supply on request.

Section 24: Restriction on variation of tenancy

45. This section limits the way in which changes to a Scottish secure tenancy can be made. Rents and other charges can be varied in accordance with section 25 and terms and conditions can be varied by court order under section 26, but otherwise the terms of the tenancy can only be changed by written agreement between the landlord and tenant, in line with the Requirements of Writing (Scotland) Act 1995 (which sets out provisions relating to the signing of contracts).

Section 25: Increase in rent or charges

46. This section requires landlords to give each tenant not less than four weeks notice, in writing, before increasing rents or other charges. Where a landlord proposes to increase rents generally, it must first consult those tenants who would be affected.

Section 26: Variation of tenancy by court order

47. This section allows either a landlord or a tenant to apply for a court order to change a term of Scottish secure tenancy where there is a dispute on a variation in terms. The grounds on which a tenant can seek a change are set out in *subsection (2)*.
48. The court has power to make any change in a term of a tenancy, apart from the level of rent or charge, that it considers reasonable having particular regard to safety considerations or likelihood of damage to the house. The court can require the tenant to pay compensation to the landlord for any financial loss arising from the variation, and to consult anyone who might be affected by the proposed change.

Sections 27 to 31 and [schedules 4 and 5](#): Repairs and improvements

49. Taken together, these provisions set out the rights and responsibilities of the landlord and tenant under a Scottish secure tenancy with respect to repairs and improvements to the house.

Section 27: Repairs

50. This section, with [schedule 4](#), puts the landlord under an obligation to ensure that the house is kept wind and watertight and reasonably fit for human habitation. It enables the tenant to have essential repairs done within a maximum time-scale, in line with regulations made by the Scottish Ministers. Secure tenants currently have this right under the [Secure Tenants \(Right to Repair\) \(Scotland\) Regulations 1994 \(SI 1994/1046\)](#). It also requires the landlord, before the tenancy begins, to inspect the house and identify any work necessary to ensure that the house is wind and watertight and in all other respects reasonable fit for human habitation and to notify the tenant of any such work. The landlord must also carry out any necessary work within a reasonable timescale and make good any damage caused in carrying out the work. The landlord or someone authorised by the landlord can also enter the tenant's home on 24 hours notice to inspect the house and carry out any necessary work.

Section 28: Landlord's consent to work

51. This section and *Part 1 of [schedule 5](#)* require a tenant to get the written consent of the landlord to undertaking any work, other than interior decoration, on a house. The landlord must not unreasonably withhold its consent, but can set any reasonable conditions with respect to the work, including any standards that the work must meet. The Scottish Ministers may give guidance to landlords on such conditions or standards of work. *Part 1 of [schedule 5](#)* includes provision for a tenant to appeal against either a refusal by a landlord to allow a tenant to undertake work, or against a particular condition imposed by the landlord.

Section 29: Reimbursement of cost of work

52. This section applies when a Scottish secure tenancy comes to an end. Where a tenant has carried out improvement work to the house, with the consent of the landlord, the landlord can make a payment to the tenant, or his representative, up to the cost of the improvement work, after deducting the amount of any grant paid by a local authority through a repairs or improvements grant (a "grant paid or payable under Part XIII of the 1987 Act").

Section 30: Right to compensation for improvements

53. This section sets out the detailed arrangements to support a tenant's entitlement under the right to compensation for improvement. Where the tenant has carried out certain improvement works with the consent of the landlord they are entitled to be compensated for the cost of those works when the tenancy comes to an end. The Scottish Ministers can make regulations prescribing:

- those works which qualify for compensation;
 - certain circumstances in which compensation is not payable;
 - minimum and maximum levels of compensation;
 - the procedures to be followed, and the factors to be taken into account, when claiming for or determining compensation.
54. Regulations in respect of these matters already exist for secure tenancies in the [Secure Tenants \(Compensation for Improvements\) \(Scotland\) Regulations 1994 \(SI 1994/632\)](#).

Section 31: Effect of work on rent

55. This section prevents a landlord increasing the rent of a tenant, the successor to the tenancy or the successor's spouse or cohabitee to reflect any increase in the value or amenities of the house arising from improvement works undertaken and agreed with the landlord by that tenant.

Section 32: Assignment, subletting etc.

56. This section entitles a tenant to assign or sublet their house or to take in a lodger with the consent of the landlord. In the case of an assignment, the house must have been the assignee's only or principal home for 6 months prior to application for consent to assign. The landlord's consent may only be withheld if there are reasonable grounds to do so; *subsection (3)* sets out examples of what such grounds might be. Those grounds can be modified by the Scottish Ministers by order. *Part 2 of schedule 5* provides, among other things, a right of appeal to the court by a tenant whose landlord refuses consent. Where the landlord is a registered social landlord which is a co-operative housing association any consent is subject to the condition that assignee, subtenant, or other person is a member of the association when the assignment or sublease takes effect or when possession is given to the other person.

Section 33: Exchange of house

57. This section provides a tenant with a right to exchange their house with another tenant, providing that both tenants are Scottish secure tenants and that the landlords of both tenants have given their consent. Such consent may only be refused if there are reasonable grounds to do so; *subsection (3)* sets out examples of what such grounds might be. Those grounds can be modified by order of the Scottish Ministers. *Part 2 of schedule 5* provides, among other things, a right of appeal to the court by a tenant whose landlord refuses consent. Where the landlord is a registered social landlord which is a co-operative housing association any consent is subject to the condition that the tenant of the other house is a member of the association when the exchange takes effect.

Section 34: Short Scottish secure tenancies

58. This section and *schedule 6* set out the arrangements for a new short form of tenancy in the social rented sector to be called a short Scottish secure tenancy. *Subsection (1)* sets out the basic conditions for this type of tenancy to apply, and requires the serving of a notice by the landlord on the prospective tenant that this type of tenancy will be offered. *Schedule 6* sets out a range of circumstances in which a landlord can offer a short tenancy: these include where prospective tenants have previously been evicted for anti-social behaviour; where prospective tenants or others who will reside with the tenant have had an anti-social behaviour order taken out against them; temporary lettings; and properties leased by the landlord from another body. The Scottish Ministers under *subsection (3)* may modify this list by order. *Subsection (7)* requires landlords to provide such housing support services as it considers appropriate to enable the tenancy to convert to a Scottish secure tenancy and *subsection (8)* enables Scottish Ministers to issue guidance as to the housing support services which are appropriate.

59. A short Scottish secure tenancy will be for a term of not less than 6 months and on its expiry may continue by tacit relocation (i.e. it will automatically be renewed for the same length of time), or by express agreement between landlord and tenant. *Subsection (6)* sets out the terms of a short Scottish secure tenancy and indicates that terms of a Scottish secure tenancy will apply with the exception of section 11(2) and (4) (which apply to existing tenancies which become Scottish secure tenancies); schedule 1 (tenancies which cannot be Scottish secure tenancies); section 12 (relating to termination of tenancy); and succession rights under section 22 and *schedule 3*. As a short Scottish secure tenancy is not included in the definition of a Scottish secure tenancy (section 111), the right to buy provisions do not apply to it. Provisions relating to tenant participation apply by virtue of sections 53 and 54.

Section 35: Conversion to short Scottish secure tenancy

60. This section entitles a landlord to serve a notice converting a Scottish secure tenancy to a short Scottish secure tenancy where an anti-social behaviour order has been taken out against the tenant or a member of the tenant's household. The notice must specify the tenant or other person who is subject to the anti-social behaviour order.
61. *Subsection (5)* gives a tenant a right of recourse to the court where the tenant is aggrieved by a landlord converting a Scottish secure tenancy to a short Scottish secure tenancy. Where the court finds in favour of the tenant it can effectively reinstate the Scottish secure tenancy .

Section 36: Recovery of possession

62. This section sets out the arrangements under which a landlord may recover possession of a short Scottish secure tenancy. *Subsections (2) to (4)* set out the arrangements in more detail including the service of a notice and raising of proceedings. *Subsection (5)* outlines the circumstances when a court must make an order for recovery of possession: where the tenancy has reached its term, tacit relocation is not operating (i.e. it will not be automatically renewed for the same length of time) and no further contractual tenancy has been entered into, and where a notice has been served.

Section 37: Conversion to Scottish secure tenancy

63. Where a tenant has been granted a short Scottish secure tenancy because they have previously been evicted from a tenancy for anti-social behaviour or because an anti-social behaviour order has been taken out against the tenant or one of the tenant's household this section provides for the automatic conversion of the short tenancy to a full Scottish secure tenancy after a period of 12 months, unless the landlord has served a notice to quit on the tenant. *Subsections (2) and (3)* make further provisions for cases where a landlord has served such a notice to quit. There is no such automatic conversion for tenants who have been granted a short tenancy on other grounds.

Section 38: Appeals

64. This provision establishes a right of appeal to the courts against a decision of a landlord not to offer either a Scottish secure tenancy or a short Scottish secure tenancy.

Section 39: Application of sections 23 to 33 to other tenancies

65. This section applies the rights and obligations of the Scottish secure tenancy to a tenancy which would be a Scottish secure tenancy if it were not tied accommodation or part of a building which is primarily for non-housing use. The key provisions of the Scottish secure tenancy which do not apply to such tenancies relate to termination of the tenancy and repossession of the house; to joint tenancies; to succession rights; to the right to buy; and to the tenant participation provisions.

*These notes relate to the Housing (Scotland) Act 2001
(asp 10) which received Royal Assent on 18 July 2001*

Sections 40 and 41: Notices and interpretation of Chapter 1

66. These sections clarify what is meant by certain terms used in this Chapter of the Act.