



# Housing (Scotland) Act 1988

## 1988 CHAPTER 43

### PART I

#### SCOTTISH HOMES

##### *Establishment and functions*

#### **1 Scottish Homes**

- (1) There shall be a body to be known as Scottish Homes.
- (2) Schedule 1 to this Act shall have effect with respect to the constitution and proceedings of and other matters relating to Scottish Homes.
- (3) Scottish Homes shall have the general functions of—
  - (a) providing, and assisting in the provision of, finance to persons or bodies intending to provide, improve, repair, maintain or manage housing;
  - (b) providing, improving, repairing, maintaining and managing housing (whether solely or in conjunction with any other person or body);
  - (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 housing associations, 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;
  - (g) such other general functions as are conferred upon Scottish Homes by or under this Act or any other enactment.

## 2 General functions of Scottish Homes

- (1) Scottish Homes may do anything, whether in Scotland or elsewhere, which is calculated to facilitate or is incidental or conducive to the discharge of its general functions.
- (2) Without prejudice to the generality of subsection (1) above and subject to subsection (3) below Scottish Homes 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 it;
  - (j) acquire and dispose of plant, machinery, equipment and other property;
  - (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 its agents;
  - (n) act as agents for other persons;
  - (o) form companies within the meaning of the 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 its general functions and powers and to matters relating to housing;
  - (t) make such charge as it thinks fit for any of its services;
  - (u) accept any gift or grant made to it for the purposes of any of its general functions and powers and, subject to the terms of the gift or grant and to the provisions of this Act, apply it for those purposes;
  - (v) turn its resources to account so far as they are not required for the exercise of any of its general functions and powers.
- (3) The powers of Scottish Homes mentioned—
  - (a) in subsection (2)(a) to (d), (m) and (o) above may be exercised only with the approval of the Secretary of State given with the consent of the Treasury or in accordance with a general authority given by him with such consent;
  - (b) in subsection (2)(e) to (l) above may be exercised only in accordance with arrangements made with the Secretary of State.
- (4) For the purpose of the acquisition of land by Scottish Homes by agreement—
  - (a) the Lands Clauses Acts (except so much of them as relates to the acquisition of land otherwise than by agreement, the provisions relating to access to

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the special Act and sections 120 to 125 of the Lands Clauses Consolidation (Scotland) Act 1845); and

- (b) sections 6 and 70 to 78 of the Railway Clauses Consolidation (Scotland) Act 1845 (as originally enacted and not as amended by section 15 of the Mines (Working Facilities and Support) Act 1923),

shall be incorporated with this section and in construing those Acts for the purposes of this section this section shall be deemed to be the special Act and Scottish Homes to be the promoters of the undertaking or company, as the case may require.

- (5) For the purpose of the acquisition of land by Scottish Homes compulsorily the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply as if Scottish Homes were a local authority and as if this section were contained in an Act in force immediately before the commencement of that Act.
- (6) Scottish Homes shall not, except with the consent of the Secretary of State, dispose of any land intended for use for commercial, recreational or other non-domestic purposes for less than the best consideration which can reasonably be obtained.
- (7) For the purposes of section 278 of the Town and Country Planning (Scotland) Act 1972 (general vesting declarations) Scottish Homes shall be deemed to be a public authority to which that section applies.
- (8) After section 239 of the 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 Homes as 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 Housing (Scotland) Act 1987 there shall be added the following section—

**“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.”.

- (10) The Secretary of State may give Scottish Homes directions of a general or specific character as to the exercise of its general functions and powers and it shall be the duty of Scottish Homes to comply with any such directions.
- (11) Section 71 of the Race Relations Act 1976 (local authorities: general statutory duty) shall apply to Scottish Homes as it applies to a local authority.

### **3 Dissolution of SSHA and transfer of its property, rights, liabilities and obligations to Scottish Homes**

- (1) The Scottish Special Housing Association shall be dissolved on such date as the Secretary of State may by order specify (the “specified date”) and all heritable or moveable property wherever situated held by the Scottish Special Housing Association immediately before the specified date shall, on that date, be transferred to and vest in Scottish Homes and all rights, liabilities and obligations of the Scottish Special Housing Association to which it was entitled or subject immediately before the specified date shall, on that date, be transferred to Scottish Homes.
- (2) For sub-paragraph (iv) of section 61(2)(a) of the Housing (Scotland) Act 1987 (secure tenant’s right to purchase from SSHA) there shall be substituted the following —  
“(iv) Scottish Homes”.
- (3) Schedule 2 to this Act has effect for the purpose of making other amendments to the enactments specified in that Schedule consequential upon the abolition of the Scottish Special Housing Association and the establishment of Scottish Homes and for connected purposes.
- (4) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### **4 Regulation of housing associations in Scotland and transfer to Scottish Homes of certain property, rights, liabilities and obligations of Housing Corporation**

- (1) Every housing association to which this subsection applies, that is to say, every housing association which immediately before the specified date—
  - (a) was registered in the register maintained under section 3(1) of the Housing Associations Act 1985 by the Housing Corporation; and
  - (b) was a society registered under the Industrial and Provident Societies Act 1965, and had its registered office for the purposes of that Act in Scotland,shall, on the specified date, cease to be registered in the register so maintained by the Housing Corporation and shall, as from that date, be registered by virtue of this subsection in the register maintained under section 3(1) of the Housing Associations Act 1985 by Scottish Homes.
- (2) The Secretary of State shall, not later than one month before the specified date, notify every housing association which appears to him to be one to which, on that date, subsection (1) above will apply of that fact and of the effect of that subsection.
- (3) As soon as may be after the specified date, Scottish Homes shall notify the assistant registrar of friendly societies for Scotland of every registration which has taken place by virtue of subsection (1) above.
- (4) The provisions of Part I of the Housing Associations Act 1985 (regulation of housing associations) shall have effect subject to the amendments of that Part of that Act set out in Schedule 3 to this Act.
- (5) All heritable or moveable property held in Scotland by the Housing Corporation immediately before the specified date shall, on that date, be transferred to and vest in Scottish Homes and all rights, liabilities and obligations relating to or arising in connection with—
  - (a) the housing associations to which subsection (1) above applies, and

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- (b) land in Scotland held by unregistered housing associations, being rights, liabilities and obligations to which the Housing Corporation was entitled or subject immediately before the specified date shall, on that date, be transferred to Scottish Homes.
- (6) Any question as to whether any property, right, liability or obligation has been transferred to Scottish Homes under subsection (5) above shall be determined by the Secretary of State.
- (7) In this section, “specified date” has the same meaning as in section 3 above.

### *Finance and administration*

## **5 Determination of financial duties of Scottish Homes**

- (1) The Secretary of State may, with the approval of the Treasury, determine the financial duties of Scottish Homes, and different determinations may be made in relation to different general functions, powers and activities of Scottish Homes.
- (2) The Secretary of State shall give Scottish Homes notice of every determination, and a determination may—
- relate to a period beginning before the date on which it is made;
  - contain incidental or supplemental provisions; and
  - be varied by a subsequent determination.

## **6 Government grants to Scottish Homes**

- (1) The Secretary of State may, with the consent of the Treasury, make such grants to Scottish Homes as appear to him to be required to enable Scottish Homes to meet the expenses it incurs in the exercise of its general functions and powers.
- (2) A grant under subsection (1) above may be subject to such conditions as the Secretary of State may determine.

## **7 Borrowing by and government loans to Scottish Homes**

- (1) For the purpose of the exercise of any of its general functions or powers Scottish Homes may borrow money from the Secretary of State and may, with the consent of the Secretary of State given with the approval of the Treasury, borrow money, whether in sterling or otherwise, from any other person or body, whether in the United Kingdom or elsewhere.
- (2) Scottish Homes may borrow money from any of its wholly owned subsidiaries without obtaining the consent of the Secretary of State.
- (3) It shall be the duty of Scottish Homes to secure that none of its wholly owned subsidiaries borrows money otherwise than from Scottish Homes or from another wholly owned subsidiary of Scottish Homes, except with the consent of the Secretary of State and the approval of the Treasury.
- (4) The Secretary of State may lend to Scottish Homes any sums which Scottish Homes has power to borrow from him under subsection (1) above, for such purposes as the Secretary of State may specify and the Treasury may issue to the Secretary of State

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out of the National Loans Fund any sums necessary to enable the Secretary of State to make loans in pursuance of this subsection.

- (5) Any loans made in pursuance of subsection (4) above shall be repaid to the Secretary of State at such times and by such methods, and interest on the loans shall be paid to him at such times and at such rates, as he may from time to time direct; and all sums received by the Secretary of State in pursuance of this subsection shall be paid into the National Loans Fund.
- (6) The Secretary of State shall prepare in respect of each financial year an account of the sums issued to him in pursuance of subsection (4) above and the sums received by him in pursuance of subsection (5) above and of the disposal by him of those sums, and shall send the account to the Comptroller and Auditor General before the end of the month of November next following the end of that year; and the Comptroller and Auditor General shall examine, certify and report on the account and lay copies of it and of his report before each House of Parliament.
- (7) The Secretary of State shall not make a loan or give a direction in pursuance of this section except with the approval of the Treasury; and the form of the account prepared in pursuance of subsection (6) above and the manner of preparing it shall be such as the Treasury may direct.
- (8) In this section and in sections 8, 10 and 11 below, “financial year” means the period beginning with the commencement of this section and ending with 31st March of the calendar year next following such commencement and each subsequent period of 12 months ending with 31st March.

## **8 Guarantees**

- (1) The Treasury may guarantee, in such manner and on such conditions as they think fit, the repayment of the principal of and the payment of interest on any sums which Scottish Homes borrows from a person other than the Secretary of State.
- (2) Immediately after a guarantee is given under this section, the Treasury shall lay a statement of the guarantee before each House of Parliament; and where any sum is issued for fulfilling a guarantee so given, the Treasury shall lay before each House of Parliament a statement relating to that sum, as soon as possible after the end of each financial year, beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged.
- (3) Any sums required by the Treasury for fulfilling a guarantee under this section shall be charged on and issued out of the Consolidated Fund.
- (4) If any sums are issued in fulfilment of a guarantee given under this section, Scottish Homes shall make to the Treasury, at such time and in such manner as the Treasury from time to time direct, payments of such amounts as the Treasury so direct in or towards repayment of the sums so issued and payments of interest, at such rate as the Treasury so direct, on what is outstanding for the time being in respect of sums so issued.
- (5) Any sums received by the Treasury in pursuance of subsection (4) above shall be paid into the Consolidated Fund.

## **9 Limit on borrowing etc**

- (1) The aggregate amount outstanding by way of principal of—
  - (a) money borrowed by Scottish Homes under section 7(1) above;
  - (b) money borrowed by wholly owned subsidiaries of Scottish Homes with the consent of the Secretary of State and approval of the Treasury under section 7(3) above;
  - (c) money borrowed by the Scottish Special Housing Association or the Housing Corporation the repayment of which is a liability or obligation transferred to Scottish Homes under section 3(1) or 4(5) above;
  - (d) sums issued by the Treasury in fulfilment of guarantees under section 8 above, shall not exceed £1,000 million or such greater sum not exceeding £1,500 million as the Secretary of State may specify by order made with the consent of the Treasury.
- (2) An order under subsection (1) above shall be made by statutory instrument and no such order shall be made unless a draft of it has been laid before and approved by the House of Commons.
- (3) In ascertaining the limit imposed by subsection (1) above, interest payable on a loan made by the Secretary of State to Scottish Homes which, with the approval of the Treasury, is deferred and treated as part of the loan shall, so far as outstanding, be treated as outstanding by way of principal.

## **10 Miscellaneous financial directions**

- (1) If for a financial year the revenues of Scottish Homes exceed the total sums properly chargeable to revenue account, it shall apply the excess in such manner as the Secretary of State may, after consultation with Scottish Homes direct; and the Secretary of State may direct that the whole or part of the excess be paid to him.
- (2) The Secretary of State may give directions to Scottish Homes as to matters relating to—
  - (a) the establishment or management of reserves;
  - (b) the carrying of sums to the credit of reserves; or
  - (c) the application of reserves for the purposes of the functions of Scottish Homes.
- (3) The Secretary of State may direct Scottish Homes to pay to him the whole or part of any sums for the time being standing to the credit of its reserves or being of a capital nature and not required for the exercise of its functions.
- (4) The Secretary of State may act under this section only with the approval of the Treasury.
- (5) It shall be the duty of Scottish Homes to comply with directions under this section.

## **11 Accounts, annual report of Scottish Homes, etc**

- (1) Scottish Homes shall keep proper accounts and other records in relation to the accounts and shall prepare in respect of each of its financial years a statement of account in such form as the Secretary of State may, with the approval of the Treasury, determine.
- (2) The statement of account prepared by Scottish Homes for each financial year shall be submitted to the Secretary of State at such time as he may direct.

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- (3) The Secretary of State shall, on or before the end of the month of August in any year, transmit to the Comptroller and Auditor General the statement of account prepared by Scottish Homes under this section for the financial year last ended.
- (4) The Comptroller and Auditor General shall examine and certify the statement of account transmitted to him under this section and lay before Parliament copies of the statement of account together with his report thereon.
- (5) Scottish Homes shall provide the Secretary of State with such information relating to its general functions, powers, activities and proposed activities as he may from time to time require, and for that purpose shall permit any person authorised in that behalf by the Secretary of State or the Comptroller and Auditor General to inspect and make copies of its accounts, books, documents or papers, and shall afford to that person such explanation thereof as he may reasonably require.
- (6) It shall be the duty of Scottish Homes to make to the Secretary of State, as soon as possible after the end of each financial year, a report dealing with the activities of Scottish Homes during that year.
- (7) It shall be the duty of the Secretary of State to lay before each House of Parliament a copy of each report received by him under subsection (6) above.

## PART II

### RENTED ACCOMMODATION

#### *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.
- (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.

#### **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.

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*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 that contract or by a percentage 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 Rent (Scotland) Act 1984.
- (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.

**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 rent assessment committee under subsection (4) below in the prescribed 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 rent assessment 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 rent assessment 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.
- (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 rent assessment 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 rent assessment 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.

## **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.

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- (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 subsection (6) below, he shall make an order for possession.
- (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.
- (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 or Ground 10 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.
- (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.

## **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 is 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 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.

## **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 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.

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## **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.
- (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 an assured tenancy, the landlord may serve on the tenant a notice in the prescribed form proposing a new rent to take effect—
  - (a) if the tenancy was a contractual tenancy (whether or not renewed by operation of tacit relocation), immediately after its termination; or
  - (b) if the tenancy was 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—
  - (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).
- (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 rent assessment 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 affects the operation of any term of a 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) by an amount specified in the tenancy contract or by a percentage there specified of an amount of rent payable under the tenancy.

## **25 Determination of rent by rent assessment committee**

- (1) Where, under subsection (3)(a) of section 24 above, a tenant refers to a rent assessment 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.

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- (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, 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 rent assessment committee shall make their determination under this section as if the rates were not so borne.
- (5) In any case where—
  - (a) a rent assessment 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 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 rent assessment 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 rent assessment 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 rent assessment 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).



## **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 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.

## **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;

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- (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.
- (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.

### **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 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 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—

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- (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 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
    - (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 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 as his or her wife or husband shall be treated as the tenant's spouse.

#### *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 end of a short assured tenancy—
- (a) it continues by tacit relocation; or
  - (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 end,

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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 rent assessment 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 rent assessment 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.
- (3) Where an application is made to a rent assessment 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 rent assessment 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.

### **35 Disapplication of rent assessment 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.

#### *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 calculated 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.

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- (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 proceedings are begun to enforce the liability, 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.
- (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 the withdrawal or withholding of services, he had reasonable grounds for 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).

### **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—

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- (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 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 Town and Country Planning (Scotland) Act 1972 and other expressions have the same meaning as in that Act.

### **38 Further offence of harassment**

In section 22 of the Rent (Scotland) Act 1984 (unlawful eviction and harassment of occupier) after subsection (2) there shall be inserted the following subsections—

“(2A) The landlord of any premises or an agent of the landlord shall be guilty of an offence if—

- (a) he does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household; or
- (b) subject to subsection (2B) below, 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 by reason only of conduct falling within paragraph (b) of that subsection if he

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proves that he had reasonable grounds for withdrawing or withholding the services in question.”.

### **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 Rent (Scotland) Act 1984 there shall be inserted the following section—

#### **“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;



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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.
- (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.”.

*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 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—

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- (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.”.

*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
  - (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 Rent (Scotland) Act 1984 (suitable alternative accommodation available) or on it appearing to the court, under section 48(2)(b) or (c) of the 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 the Rent (Scotland) Act 1984 is treated as a short tenancy.

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

#### **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 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—
    - (i) an islands or district council, or a joint board or joint committee of an islands or district council or the common good of an islands or district council, or any trust under the control of an islands or district council; or
    - (ii) a regional council, or a joint board or joint committee of 2 or more regional councils, or any trust under the control of a regional council; or
    - (iii) a development corporation within the meaning of the New Towns (Scotland) Act 1968 (including an urban development corporation within the meaning of Part XVI of the 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
    - (vii) a fire authority in Scotland; or
  - (b) it is entered into in pursuance of a contract made before the commencement of this section; or

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- (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 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.

#### **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 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 rent assessment 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.

#### **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—

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- (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—
  - (a) it belongs to an islands or district council, or a joint board or joint committee of an islands or district council or the common good of an islands or district council, or any trust under the control of an islands or district council; or
  - (b) it belongs to a regional council, or a joint board or joint committee of 2 or more regional councils, or any trust under the control of a regional council; or
  - (c) it belongs to a development corporation within the meaning of the New Towns (Scotland) Act 1968 (including an urban development corporation within the meaning of Part XVI of the 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
  - (g) it belongs to a fire authority in Scotland; or
  - (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 Rent (Scotland) Act 1984 applies; and
  - (b) “protected tenancy” has the same meaning as in that Act.

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#### **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 Rent (Scotland) Act 1984.
- (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.

#### *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 Rent assessment 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 rent assessment committees) there shall be added the words “whether under this Act or the Housing (Scotland) Act 1988”.
- (2) The rent assessment 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.

#### **49 Information as to determination of rents**

- (1) The rent assessment 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, rent assessment 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 rent assessment 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.

#### **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

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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 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.

## **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.

## **55 Interpretation of Part II**

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



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“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; and

“tenant” includes a sub-tenant and any person deriving title from the original tenant or sub-tenant.

- (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.

### PART III

#### CHANGE OF LANDLORD: SECURE TENANTS

#### 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 or Scottish Homes 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 uninfert person) to grant a disposition.
- (3) The following are public sector landlords for the purposes of this Part of this Act, namely—
  - (a) an islands or district council, or a joint board or joint committee of an islands or district council or the common good of an islands or district council, or any trust under the control of an islands or district council;
  - (b) a development corporation within the meaning of the New Towns (Scotland) Act 1968 (including an urban development corporation within the meaning of Part XVI of the Local Government Planning and Land Act 1980);
  - (c) the Scottish Special Housing Association;
  - (d) the Housing Corporation;
  - (e) Scottish Homes.
- (4) A secure tenant 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—

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- (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 islands or district council 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—
- (a) it is held by an islands council 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 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 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 islands or district council in whose area it was situated;
  - (b) at 7th January 1987, a registered housing association (within the meaning of the 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)”.

## **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 Scottish Homes under this section (in this Part of this Act referred to as an “approved person”) or by Scottish Homes; and neither a public sector landlord (other than Scottish Homes), nor a regional council, or a joint board or joint committee of two or more regional councils or any trust under the control of a regional council, may 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 Scottish Homes, but without prejudice to any transaction previously completed.

## **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 or, as the case may be, Scottish Homes) 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.

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.
- (3) The applicant shall, at the same time as he serves an application, serve a copy of it on the qualifying tenant and on Scottish Homes (where the applicant is not Scottish Homes).
- (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

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- 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 Scottish Homes or 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 Scottish Homes or 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 Scottish Homes or 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.

## **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;

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- (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.
- (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.

### **63 Consent for subsequent disposals**

- (1) A person other than Scottish Homes who acquires any property under this Part of this Act shall not dispose of it except with the consent in writing of Scottish Homes.
- (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.
- (3) The consent of Scottish Homes under section 9 of the Housing Associations Act 1985 (control of dispositions) 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.

### **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
  - (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 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.

(5) In section 76 of the Housing (Scotland) Act 1987 (duty of landlords to provide information to secure tenants) in subsection (1), for paragraph (c) there shall be substituted the following paragraph—

“(c) section 62(6A) may affect any price fixed as regards the house under section 62(1),”.

(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.

#### **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 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 Housing (Scotland) Act 1987.

## **67 Abolition and capitalisation of certain subsidies and contributions**

- (1) No subsidy or contribution shall be made under the following provisions of the 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)

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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 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 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.

**68 Abolition of local authority’s power to refer Part VII contracts to rent assessment committees**

In section 65(1) of the Rent (Scotland) Act 1984 (which empowers the lessor, the lessee and the local authority to refer a Part VII contract to the rent assessment 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.

**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.”.

**70 Rent officers: additional functions relating to housing benefit etc**

- (1) The Secretary of State may by order require rent officers to carry out such functions as may be specified in the order in connection with housing benefit and rent allowance subsidy.

- (2) An order under this section—

- (a) shall be made by statutory instrument which, except in the case of the first order to be made, shall be subject to annulment in pursuance of a resolution of either House of Parliament;
- (b) may make different provision for different cases or classes of case and for different areas; and
- (c) may contain such transitional, incidental and supplementary provisions as appear to the Secretary of State to be desirable;

and the first order under this section shall not be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

- (3) At the end of section 21(6) of the Social Security Act 1986 (regulations prescribing maximum family credit and maximum housing benefit) there shall be added the words “and regulations prescribing the appropriate maximum housing benefit may provide for benefit to be limited by reference to determinations made by rent officers in exercise of functions conferred under section 70 of the Housing (Scotland) Act 1988”.

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- (4) In section 30 of that Act (housing benefits finance) at the end of subsection (2) there shall be added the words “and, in relation to the rent allowance subsidy, the Secretary of State may exercise his discretion as to what is unreasonable for the purpose of paragraph (b) above by reference to determinations made by rent officers in exercise of functions conferred by section 70 of the Housing (Scotland) Act 1988.”.
- (5) In section 51(1)(h) of that Act (regulations may require information etc. needed for determination of a claim) the reference to information or evidence needed for the determination of a claim includes a reference to information or evidence required by a rent officer for the purpose of a function conferred on him under this section.
- (6) In this section “housing benefit” and “rent allowance subsidy” have the same meaning as in Part II of that Act.

## **71 Power of development corporations to dispose of housing land**

After section 18 of the 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.”.

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

- (1) The 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.

### **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.
- (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.