



# Housing (Scotland) Act 1988

## 1988 CHAPTER 43

### PART II

#### RENTED ACCOMMODATION

##### *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 [<sup>F1</sup>likely] 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.

- (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.

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- (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).
- [<sup>F2</sup>(4A) Any action to enforce liability arising from this section must be raised in the First-tier Tribunal unless the residential occupant's claim is founded on the premises in question being subject to a Scottish secure tenancy or to a short Scottish secure tenancy (within the meaning of the Housing (Scotland) Act 2001 (asp 10)).]
- (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 [<sup>F3</sup>the date on which the proceedings to enforce the liability are finally decided], 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 [<sup>F4</sup>or First-tier Tribunal] makes an order as a result of which he is reinstated as mentioned in paragraph (a) above.
- [<sup>F5</sup>(6A) For the purposes of subsection (6)(a) above, proceedings to enforce a liability are finally decided—
- (a) if no appeal may be made against the decision in these proceedings;
  - (b) if an appeal may be made against the decision with leave and the time limit for applications for leave expires and either no application has been made or leave has been refused;
  - (c) if leave to appeal against the decision is granted or is not required and no appeal is made within the time limit for appeals; or
  - (d) if an appeal is made but is abandoned before it is determined.
- (6B) If, in proceedings to enforce a liability arising by virtue of subsection (3) above, it appears to the court [<sup>F6</sup>or, as the case may be, the First-tier Tribunal] —
- (a) that, prior to the event which gave rise to the liability, the conduct of the former residential occupier or any person living with him in the premises concerned was such that it is reasonable to mitigate the damages for which the landlord would otherwise be liable, or
  - (b) that, before the proceedings were begun, the landlord offered to reinstate the former residential occupier in the premises in question and either it was unreasonable of the former residential occupier to refuse that offer or, if he had obtained alternative accommodation before the offer was made, it would have been unreasonable of him to refuse that offer if he had not obtained that accommodation,
- the court [<sup>F6</sup>or, as the case may be, the First-tier Tribunal] may reduce the amount of damages which would otherwise be payable to such amount as it thinks appropriate.]
- (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—

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- (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 [<sup>F7</sup>the doing of acts or] the withdrawal or withholding of services, he had reasonable grounds for [<sup>F8</sup>doing the acts or] 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).

#### Textual Amendments

- F1 Word substituted by [Housing Act 1988 \(c. 50, SIF 61\), s. 140\(1\), Sch. 17 para. 86\(a\)](#)
- F2 S. 36(4A) inserted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\), s. 104\(3\), sch. 1 para. 45\(a\); S.S.I. 2017/330, art. 3, sch.](#)
- F3 Words substituted by [Housing Act 1988 \(c. 50, SIF 61\), s. 140\(1\), Sch. 17 para. 88\(a\)](#)
- F4 Words in s. 36(6)(b) inserted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\), s. 104\(3\), sch. 1 para. 45\(b\); S.S.I. 2017/330, art. 3, sch.](#)
- F5 S. 36(6A)(6B) inserted by [Housing Act 1988 \(c. 50, SIF 61\), s. 140\(1\), Sch. 17 para. 88\(b\)](#)
- F6 Words in s. 36(6B) inserted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\), s. 104\(3\), sch. 1 para. 45\(c\); S.S.I. 2017/330, art. 3, sch.](#)
- F7 Words inserted by [Housing Act 1988 \(c. 50, SIF 61\), s. 140\(1\), Sch. 17 para. 86\(b\)\(i\)](#)
- F8 Words inserted by [Housing Act 1988 \(c. 50, SIF 61\), s. 140\(1\), Sch. 17 para. 86\(b\)\(ii\)](#)

#### Modifications etc. (not altering text)

- C1 S. 36 modified (temp.) (28.10.2022) by virtue of [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(asp 10\), s. 13\(1\), sch. 2 para. 7\(1\)-\(3\)](#) (with ss. 1(2), 6, 7, 8) (as amended (1.4.2023) by [S.S.I. 2023/82, regs. 1\(3\), 2\(2\)](#)); and (27.9.2023) by [S.S.I. 2023/275, regs. 1\(2\), 2\(2\)](#)

### 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—
- (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.

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- (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 <sup>M1</sup>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 <sup>M2</sup>Town and Country Planning (Scotland) Act 1972 and other expressions have the same meaning as in that Act.

**Modifications etc. (not altering text)**

**C2** S. 37 modified (temp.) (28.10.2022) by virtue of [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(asp 10\)](#), s. 13(1), [sch. 2 para. 7\(1\)\(2\)\(4\)](#) (with ss. 1(2), 6, 7, 8) (as amended (1.4.2023) by [S.S.I. 2023/82](#), regs. 1(3), [2\(2\)](#)); and (27.9.2023) by [S.S.I. 2023/275](#), regs. 1(2), [2\(2\)](#)

**Marginal Citations**

**M1** 1987 c. 26.  
**M2** 1972 c. 52.

**38 Further offence of harassment.**

[<sup>F9</sup>(1) Subsection (2) of section 22 of the Rent (Scotland) Act 1984 (unlawful eviction and harassment of occupier) shall, as respects acts done after the commencement of this section, have effect with the substitution of the word “likely” for the word “calculated”.

(2) After that subsection] there shall be inserted the following subsections—

“(2A) [<sup>F10</sup>Subject to subsection (2B) below] the landlord of any premises or an agent of the landlord shall be guilty of an offence if—

- (a) he does acts [<sup>F11</sup>likely] to interfere with the peace or comfort of the residential occupier or members of his household; or

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(b) . . . . .<sup>F12</sup>, 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 . . .<sup>F12</sup> if he proves that he had reasonable grounds for [<sup>F13</sup>doing the acts or] withdrawing or withholding the services in question.”.

**Textual Amendments**

- F9** S. 38(1)(2) substituted for words by [Housing Act 1988 \(c. 50, SIF 61\), s. 140\(1\), Sch. 17 para. 87\(a\)](#)
- F10** Words inserted by [Housing Act 1988 \(c. 50, SIF 61\), s. 140\(1\), Sch. 17 para. 87\(b\)](#)
- F11** Words substituted by [Housing Act 1988 \(c. 50, SIF 61\), s. 140\(1\), Sch. 17 para. 87\(c\)](#)
- F12** Words repealed by [Housing Act 1988 \(c. 50, SIF 61\), s. 140\(1\)\(2\), Sch. 17 Pt. I para. 87\(d\), Sch. 18](#)
- F13** Words inserted by [Housing Act 1988 \(c. 50, SIF 61\), s. 140\(1\), Sch. 17 Pt. I para. 87\(e\)](#)

**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<sup>M3</sup> 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—

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- (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;
- 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.”.

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**Marginal Citations**

**M3** [1984 c. 58.](#)

**Changes to legislation:**

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

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

- s. 66(1)(aa) and word inserted by [2001 asp 10 s. 50\(2\)\(c\)](#)
- s. 66(2A) inserted by [2001 asp 10 s. 50\(3\)](#)
- s. 66(5A) inserted by [2001 asp 10 s. 50\(4\)](#)
- sch. 17 para. 19-26 repealed by [2014 asp 14 sch. 2 para. 5\(4\)](#)