



# Housing (Scotland) Act 2001

## 2001 asp 10

### PART 2

#### TENANTS OF SOCIAL LANDLORDS

#### CHAPTER 1

#### SCOTTISH SECURE TENANCIES

##### *Creation and termination of tenancy*

#### **11 Scottish secure tenancy**

- (1) A tenancy of a house is a Scottish secure tenancy if—
- (a) the house is let as a separate dwelling,
  - (b) the landlord is—
    - (i) a local authority landlord,
    - (ii) a registered social landlord, or
    - (iii) a water authority or sewerage authority,specified, or of a description specified, in an order made by the Scottish Ministers,
  - (c) the tenant is an individual and the house is the tenant's only or principal home,
  - (d) where the landlord is a registered social landlord which is a co-operative housing association, the tenant is a member of the association, and
  - (e) the tenancy—
    - (i) was created on or after such date as the order may specify in relation to the landlord, or
    - (ii) was created before that date and is of a description specified in the order in relation to the landlord.
- (2) An order under subsection (1) may, without prejudice to section 109(2) or 110, make provision for ensuring that rights of the landlord, the tenant and any other person under or in relation to a tenancy which becomes a Scottish secure tenancy by virtue of the order are not adversely affected by the tenancy becoming a Scottish secure tenancy.

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- (3) In this Act, “local authority landlord” means a landlord which is a local authority, a joint board or joint committee of two or more local authorities, or the common good of a local authority, or any trust under the control of a local authority.
- (4) A tenancy is not a Scottish secure tenancy if it is a tenancy of a kind mentioned in schedule 1.
- (5) The tenant under a Scottish secure tenancy and one or more other individuals falling within subsection (6) may jointly apply in writing to the landlord for the other individuals to be included with the tenant as joint tenants under the tenancy; and the landlord must consent to the alteration of the tenancy unless it has reasonable grounds for not doing so.
- (6) An individual falls within this subsection if the house in question is, or is intended to be, that person’s only or principal home.
- (7) It is a term of every Scottish secure tenancy that the tenant complies with paragraphs (c) and (d) of subsection (1).
- (8) Without prejudice to sections 14 and 16 and schedule 2, a tenancy which is a Scottish secure tenancy continues to be a Scottish secure tenancy even if subsection (1)(b), (c) or (d) is no longer satisfied.
- (9) Where—
  - (a) the house which a tenant under a Scottish secure tenancy normally occupies is not available for occupation, and
  - (b) the tenant is accommodated temporarily in another house the landlord of which is a local authority landlord or a registered social landlord,
 the other house is to be taken, for the purposes of this Chapter except sections 12 to 16 and paragraph 4 of schedule 1, to be the house which the tenant normally occupies.

## **12      Restriction on termination of tenancy**

- (1) Despite anything in the tenancy agreement, a Scottish secure tenancy may not be brought to an end except—
  - (a) by an order for recovery of possession under section 16(2),
  - (b) by operation of section 18(2),
  - (c) by operation of section 22,
  - (d) by operation of section 35,
  - (e) by written agreement between the landlord and the tenant, or
  - (f) by 4 weeks' notice given by the tenant to the landlord.
- (2) Subsection (3) applies where—
  - (a) the house which a tenant under a Scottish secure tenancy normally occupies is not available for occupation, and
  - (b) the tenant is—
    - (i) by agreement, or
    - (ii) following an order under section 16(2) (where an order has also been made under subsection (6) of that section),
 accommodated temporarily in another house the landlord of which is a landlord mentioned in section 11(1)(b).

- (3) Where this subsection applies, the landlord is not entitled to bring the tenant's occupation of the other house to an end before the house which the tenant normally occupies is available for occupation unless the Scottish secure tenancy has been brought to an end.

### **13 Termination of joint tenant's interest in tenancy**

A joint tenant under a Scottish secure tenancy may bring to an end that tenant's interest in the tenancy by 4 weeks' notice given to the landlord and each of the other joint tenants under the tenancy.

### **14 Proceedings for possession**

- (1) The landlord under a Scottish secure tenancy may raise proceedings by way of summary cause for recovery of possession of the house.
- (2) Such proceedings may not be raised unless—
- (a) the landlord has served on the tenant and any qualifying occupier a notice complying with subsection (4),
  - (b) the proceedings are raised on or after the date specified in the notice, and
  - (c) the notice is in force at the time when the proceedings are raised.
- (3) Before serving a notice under subsection (2) the landlord must make such inquiries as may be necessary to establish so far as is reasonably practicable whether there are any qualifying occupiers of the house and, if so, their identities.
- (4) A notice under subsection (2) must be in such form as the Scottish Ministers may prescribe by regulations, and must specify—
- (a) the ground, being a ground set out in Part 1 of schedule 2, on which proceedings for recovery of possession are to be raised, and
  - (b) a date, not earlier than—
    - (i) 4 weeks from the date of service of the notice, or
    - (ii) the date on which the tenancy could have been brought to an end by a notice to quit had it not been a Scottish secure tenancy,whichever is later, on or after which the landlord may raise proceedings for recovery of possession.
- (5) A notice under subsection (2) ceases to be in force 6 months after the date specified in it in accordance with subsection (4)(b) or when it is withdrawn by the landlord, whichever is earlier.
- (6) In this section and section 15, “qualifying occupier” means a person who occupies the house as that person's only or principal home and who is—
- (a) a member of the tenant's family aged at least 16 years,
  - (b) a person to whom the tenant has, with the landlord's consent under section 32(1), assigned, sublet or otherwise given up possession of the house or any part of it, or
  - (c) a person whom the tenant has, with such consent, taken in as a lodger.

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## **15 Rights of qualifying occupiers in possession proceedings**

Where a qualifying occupier applies to the court to be sisted as a party to proceedings under section 14, the court must grant the application.

## **16 Powers of court in possession proceedings**

- (1) The court may, as it thinks fit, adjourn proceedings under section 14 on a ground set out in any of paragraphs 1 to 7 and 15 of schedule 2 for a period or periods, with or without imposing conditions as to payment of outstanding rent or otherwise.
- (2) Subject to subsection (1), in proceedings under section 14 the court must make an order for recovery of possession if it appears to the court—
  - (a) that—
    - (i) the landlord has a ground for recovery of possession set out in any of paragraphs 1 to 7 of that schedule and specified in the notice required by section 14, and
    - (ii) it is reasonable to make the order,
  - (b) that—
    - (i) the landlord has a ground for recovery of possession set out in any of paragraphs 8 to 14 of that schedule and so specified, and
    - (ii) other suitable accommodation will be available for the tenant when the order takes effect, or
  - (c) that—
    - (i) the landlord has a ground for recovery of possession set out in paragraph 15 of that schedule and so specified,
    - (ii) it is reasonable to make the order, and
    - (iii) other suitable accommodation will be available for the tenant when the order takes effect.
- (3) For the purposes of subsection (2)(a)(ii) the court is to have regard, in particular, to—
  - (a) the nature, frequency and duration of—
    - (i) where the ground for recovery of possession is one set out in any of paragraphs 1 and 3 to 7 of schedule 2, the conduct taken into account by the court in concluding that the ground is established,
    - (ii) where the ground for recovery of possession is that set out in paragraph 2 of that schedule, the conduct in respect of which the person in question was convicted,
  - (b) the extent to which that conduct is or was conduct of, or a consequence of acts or omissions of, persons other than the tenant,
  - (c) the effect which that conduct has had, is having and is likely to have on any person other than the tenant, and
  - (d) any action taken by the landlord, before raising the proceedings, with a view to securing the cessation of that conduct.
- (4) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (2)(b) or (c).
- (5) An order under subsection (2) must appoint a date for recovery of possession and has the effect of—
  - (a) terminating the tenancy, and

(b) giving the landlord the right to recover possession of the house, at that date.

- (6) Where, in proceedings under section 14 on the ground set out in paragraph 10 of schedule 2, it appears to the court that the landlord intends that—
- (a) substantial work will be carried out on the building (or a part of the building) which comprises or includes the house, and
  - (b) the tenant should return to the house after the work is completed,
- the court must make an order that the tenant is entitled to return to the house after the work is completed; and subsection (5)(a) does not apply in such a case.

## **17 Abandoned tenancies**

- (1) This section applies where a landlord under a Scottish secure tenancy has reasonable grounds for believing that—
- (a) the house is unoccupied, and
  - (b) the tenant does not intend to occupy it as the tenant's home.
- (2) The landlord may enter the house at any time for the purpose of securing the house and any fittings, fixtures or furniture against vandalism.
- (3) For the purposes of subsection (2), the landlord and its servants or agents may open, by force if necessary, doors and lockfast places.
- (4) The landlord may take possession of the house in accordance with section 18.

## **18 Repossession**

- (1) A landlord wishing to take possession of a house under section 17(4) must serve on the tenant a notice—
- (a) stating that the landlord has reason to believe that the house is unoccupied and that the tenant does not intend to occupy it as the tenant's home,
  - (b) requiring the tenant to inform the landlord in writing within 4 weeks of service of the notice if the tenant intends to occupy the house as the tenant's home, and
  - (c) informing the tenant that, if it appears to the landlord at the end of that period that the tenant does not intend so to occupy the house, the tenancy will be terminated with immediate effect.
- (2) Where—
- (a) the landlord has—
    - (i) served on the tenant a notice complying with subsection (1), and
    - (ii) made such inquiries as may be necessary to satisfy the landlord that the house is unoccupied and that the tenant does not intend to occupy it as the tenant's home, and
  - (b) at the end of the period mentioned in subsection (1)(b) the landlord is so satisfied,
- the landlord may serve a further notice on the tenant bringing the tenancy to an end with immediate effect.
- (3) Where a tenancy has been terminated in accordance with this section the landlord is entitled to take possession of the house without any further proceedings.

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- (4) The Scottish Ministers may by order make provision for the landlord, in taking possession of the house, to secure the safe custody and delivery to the tenant of any property which is found in a house to which this section applies and, in particular—
- (a) for requiring charges to be paid in respect of such property before it is delivered to the tenant, and
  - (b) for authorising the disposal of such property, if the tenant has not arranged for its delivery to the tenant before the expiry of such period as the order may specify, and the application of any proceeds towards any costs incurred by the landlord and any rent due but unpaid by the tenant to the landlord.

## **19 Tenant’s recourse to court**

- (1) A tenant under a Scottish secure tenancy who is aggrieved by termination of the tenancy by the landlord under section 18(2) may raise proceedings by summary application within 6 months after the date of the termination.
- (2) Subsection (3) applies where, in proceedings under this section, it appears to the court that the landlord—
  - (a) has failed to comply with any provision of section 18,
  - (b) did not have reasonable grounds for finding—
    - (i) that the house was unoccupied, or
    - (ii) that the tenant did not intend to occupy it as the tenant’s home, or
  - (c) was in error in finding that the tenant did not intend to occupy the house as the tenant’s home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of the tenant’s intention so to occupy it.
- (3) Where this subsection applies the court must—
  - (a) if the house has not been let to a new tenant, grant a declarator that the notice under section 18(2) is of no effect, or
  - (b) in any other case, direct the landlord to make other suitable accommodation available to the tenant.
- (4) On granting a declarator under subsection (3)(a) the court may make such further order in relation to the Scottish secure tenancy as it thinks fit.
- (5) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (3)(b).

## **20 Abandonment by joint tenant**

- (1) This section applies where a landlord under a Scottish secure tenancy has reasonable grounds for believing that a joint tenant under the tenancy (the “abandoning tenant”)—
  - (a) is not occupying the house, and
  - (b) does not intend to occupy it as the tenant’s home.
- (2) A landlord wishing to bring to an end the interest of an abandoning tenant in the tenancy must serve on the abandoning tenant a notice—
  - (a) stating that the landlord has reason to believe that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant’s home,

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- (b) requiring the abandoning tenant to inform the landlord in writing within 4 weeks of service of the notice if the abandoning tenant intends to occupy the house as the tenant's home, and
  - (c) informing the abandoning tenant that, if it appears to the landlord at the end of that period that the abandoning tenant does not intend so to occupy the house, the abandoning tenant's interest in the tenancy will be brought to an end by the service of a notice under subsection (3).
- (3) Where—
- (a) the landlord has—
    - (i) served on the abandoning tenant a notice complying with subsection (2), and
    - (ii) made such inquiries as may be necessary to satisfy the landlord that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant's home, and
  - (b) at the end of the period mentioned in subsection (2)(b) the landlord is so satisfied,
- the landlord may serve a further notice on the abandoning tenant bringing the abandoning tenant's interest in the tenancy to an end with effect from a date specified in the notice, being a date not earlier than 8 weeks after the date of service of the notice.
- (4) A landlord serving a notice on an abandoning tenant under subsection (2) or (3) must serve a copy of the notice on each of the other joint tenants under the tenancy.

## **21 Joint tenancies: abandoning tenant's recourse to court**

- (1) A joint tenant under a Scottish secure tenancy who is aggrieved by the bringing to an end of the tenant's interest in the tenancy under subsection (3) of section 20 may raise proceedings by summary application within 8 weeks after the date of service of the notice under that subsection.
- (2) Subsection (3) of this section applies where, in proceedings under this section, it appears to the court that the landlord—
- (a) has failed to comply with any provision of section 20,
  - (b) did not have reasonable grounds for finding that the tenant—
    - (i) was not occupying the house, or
    - (ii) did not intend to occupy it as the tenant's home, or
  - (c) was in error in finding that the tenant did not intend to occupy the house as the tenant's home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of the tenant's intention so to occupy it.
- (3) Where this subsection applies, the court must—
- (a) grant a declarator that the notice under section 20(3) is of no effect, or
  - (b) if it would be unreasonable to grant such a declarator, direct the landlord to make other suitable accommodation available to the tenant.
- (4) On granting a declarator under subsection (3)(a) the court may make such further order in relation to the tenant's interest in the tenancy as it thinks fit.
- (5) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (3)(b).

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### *Succession*

## **22 Succession to Scottish secure tenancy**

- (1) On the death of a tenant under a Scottish secure tenancy, the tenancy passes by operation of law to a qualified person.
- (2) On the death of a qualified person who succeeded to a tenancy under subsection (1), the tenancy passes by operation of law to another qualified person.
- (3) If, for the purpose of subsection (1) or (2), there is no qualified person, or every qualified person declines the tenancy, the tenancy is terminated.
- (4) On the death of a qualified person who succeeded to a tenancy under subsection (2), the tenancy is terminated.
- (5) Schedule 3, which makes provision as to who are qualified persons for the purposes of this section and as to the operation of subsections (1) and (2), has effect.
- (6) Where, in a case to which paragraph 5 of schedule 3 applies—
  - (a) a tenancy is terminated by operation of subsection (3), and
  - (b) there is a person who would have been a qualified person but for that paragraph,the landlord must make other suitable accommodation available to that person.
- (7) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (6).
- (8) Subsection (4) does not operate so as to terminate the Scottish secure tenancy of any tenant under a joint tenancy where such a joint tenant continues to use the house as that person's only or principal home.
- (9) Where a tenancy is terminated by operation of subsection (4) and there is a qualified person (other than a joint tenant to whom subsection (8) applies), that person is entitled to continue as tenant for a period not exceeding 6 months, but the tenancy ceases to be a Scottish secure tenancy.
- (10) Where a tenant gives up a Scottish secure tenancy in order to occupy another house which is subject to a Scottish secure tenancy, following termination of the first tenancy by an order under section 16(2)(b), those tenancies are, for the purposes of this section, to be treated as being a single tenancy.

### *Tenancy agreement and information*

## **23 Tenant's right to written tenancy agreement and information**

- (1) The landlord under a Scottish secure tenancy must—
  - (a) draw up a tenancy agreement stating (expressly or by reference) the terms of the tenancy,
  - (b) ensure that it is, before the commencement of the tenancy, subscribed by the landlord and the tenant in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7), and
  - (c) supply a copy to the tenant.



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- (2) The tenant is not liable for any fees in respect of anything done under subsection (1).
- (3) The Scottish Ministers may issue guidance as to the form and content of a tenancy agreement; and such guidance may include, in particular, a model tenancy agreement.
- (4) Before the creation of a Scottish secure tenancy the landlord must provide the tenant with information about—
  - (a) the tenant’s right under Part III of the 1987 Act to purchase the house which is the subject of the tenancy, and
  - (b) the obligations which the tenant is likely to incur if that right is exercised, including any obligation to maintain any building of which the house forms part and any common areas.
- (5) Where the tenant’s right under that Part to purchase the house is affected by any amendment to that Part or the exercise of any power conferred by that Part, the landlord must inform the tenant of that fact and of the extent to which the tenant’s right to purchase is affected.
- (6) The landlord under a Scottish secure tenancy must provide the tenant with information about its complaints procedure and must, if the tenant so requests, provide the tenant with information about—
  - (a) the terms of the tenancy,
  - (b) the landlord’s policy and procedure in relation to setting of rent and charges,
  - (c) the landlord’s policy and rules in relation to—
    - (i) admission of applicants to any housing list,
    - (ii) priority of allocation of houses,
    - (iii) transfers of tenants between houses owned by the landlord,
    - (iv) exchanges of houses owned by the landlord with houses owned by other bodies,
    - (v) repairs and maintenance,
  - (d) the application of Part III of the 1987 Act to the tenant, the tenancy and the house,
  - (e) the obligations which the tenant is likely to incur if the tenant’s right under that Part to purchase the house is exercised, including any obligation to maintain any building of which the house forms part and any common areas,
  - (f) where the landlord is a local authority landlord or a registered social landlord, the landlord’s tenant participation strategy,
  - (g) the landlord’s arrangements for taking decisions in the exercise of its functions in relation to the management of housing accommodation and the provision of related services by it.

### *Variation*

## **24      Restriction on variation of tenancy**

- (1) Despite anything in the tenancy agreement, the terms of a Scottish secure tenancy may not be varied except—
  - (a) by written agreement between the landlord and the tenant, or
  - (b) under section 25 or 26.

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- (2) A variation referred to in subsection (1) does not terminate the tenancy.
- (3) The landlord must draw up any agreement under subsection (1)(a) and ensure that it is subscribed by the parties in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7).

## **25 Increase in rent or charges**

- (1) The landlord under a Scottish secure tenancy may increase the rent or any other charge payable under the tenancy by giving the tenant notice of the increase not less than 4 weeks before the beginning of any rental period (or any earlier day on which the payment of rent in respect of that period falls to be made).
- (2) Where a notice is given under subsection (1), the rent or charge is increased in relation to that and every subsequent rental period.
- (3) In subsections (1) and (2), “rental period” means a period in respect of which an instalment of rent falls to be paid.
- (4) Where the landlord under a Scottish secure tenancy proposes to increase the rents or any other charges payable by all, or any class of, its tenants it must, before giving notice under subsection (1)—
  - (a) consult those of its tenants who would be affected by the proposal, and
  - (b) have regard to the views expressed by those consulted.

## **26 Variation of tenancy by court order**

- (1) Where the landlord under a Scottish secure tenancy wishes to vary the terms or conditions of the tenancy, but the tenant refuses or fails to agree the variation, the landlord may raise proceedings by summary application.
- (2) Where the tenant under a Scottish secure tenancy wishes to vary any term of the tenancy which restricts the tenant’s use or enjoyment of the house, on the ground that—
  - (a) by reason of changes in the character of the house or of the neighbourhood or other circumstances, the term is or has become unreasonable or inappropriate,
  - (b) the term is unduly burdensome compared with any benefit resulting from its performance, or
  - (c) the existence of the term impedes some reasonable use of the house,but the landlord refuses or fails to agree the variation, the tenant may raise proceedings by summary application.
- (3) In proceedings under subsection (1) or (2) the court may make such order varying any term of the tenancy (other than a term relating to the amount of rent or of any other charge payable by the tenant) as it considers reasonable in all the circumstances, having particular regard to—
  - (a) the safety of any person, and
  - (b) any likelihood of damage to the house or to any premises of which it forms part.
- (4) An order under subsection (3) in proceedings under subsection (2) may require the tenant to pay to the landlord such sum (if any) as the court considers reasonable to compensate the landlord for any patrimonial loss arising from the variation.

- (5) At any time before making an order in proceedings under subsection (2), the court may order the tenant to serve a copy of the application on any person who, in the capacity of owner or tenant of any land, appears to the court—
- (a) to benefit from the term of which variation is sought, or
  - (b) to be adversely affected by the proposed variation.

### *Repairs and improvements*

## **27 Repairs**

- (1) Schedule 4, which makes provision about the landlord's obligations to repair a house let under a Scottish secure tenancy, has effect.
- (2) The Scottish Ministers may make regulations for entitling a tenant under a Scottish secure tenancy whose landlord is a landlord specified in the regulations to have qualifying repairs carried out to the house which is the subject of the tenancy.
- (3) The regulations must specify, in particular—
  - (a) the maximum amount payable in respect of any single qualifying repair,
  - (b) the period within which a qualifying repair is to be completed, and
  - (c) the repairs which are qualifying repairs for the purposes of this section.

## **28 Landlord's consent to work**

- (1) It is a term of every Scottish secure tenancy that the tenant is not to carry out work, other than interior decoration, in relation to the house without the consent in writing of the landlord, which must not be unreasonably withheld.
- (2) In this section and Part 1 of schedule 5, "work" means—
  - (a) alteration, improvement or enlargement of the house or of any fittings or fixtures,
  - (b) addition of new fittings or fixtures,
  - (c) erection of a garage, shed or other structure,but does not include repairs or maintenance of any of these.
- (3) The provisions of Part 1 of schedule 5 have effect as terms of every Scottish secure tenancy.
- (4) The Scottish Ministers may issue guidance to landlords as to the standards to which different descriptions of work should be carried out and as to the matters to which landlords should have regard in considering imposing conditions under paragraph 2(b) of schedule 5 as to the standard of work.

## **29 Reimbursement of cost of work**

- (1) On the termination of a Scottish secure tenancy, the landlord may (without prejudice to any other power to that effect) make any payment to the tenant which it considers appropriate in respect of improvement work carried out by the tenant (or by any predecessor of the tenant under the same tenancy) with the landlord's consent under section 28.

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- (2) The amount of any payment under subsection (1) must not exceed the cost of the work in respect of which it is made, after deduction of the amount of any grant paid or payable under Part XIII (grants for improvement, repairs etc.) of the 1987 Act.
- (3) Where a Scottish secure tenancy is terminated (under section 22(3) or (4)) by the death of the tenant, a payment under subsection (1) may be made to the tenant's personal representatives.

### **30 Right to compensation for improvements**

- (1) For the purposes of this section—
  - “qualifying improvement work” is improvement work which is prescribed as such and which is begun not earlier than the commencement of this section,
  - “qualifying person” is a person who is, immediately before the tenancy is terminated, a tenant under a Scottish secure tenancy, and—
    - (a) is the tenant who carried out the qualifying improvement work,
    - (b) is a tenant of a joint tenancy which existed at the time the work was carried out, or
    - (c) succeeded to the tenancy under section 22 on the death of the tenant who carried out the work and the tenancy did not cease to be a Scottish secure tenancy on the succession.
- (2) For the purposes of this section, a tenancy is terminated when—
  - (a) any of the circumstances of subsection (1) of section 12 apply and, in a case where the termination is under paragraph (d), (e) or (f) of that subsection, the house is vacated,
  - (b) there is a change of landlord, or
  - (c) it is assigned to a new tenant.
- (3) Where the tenant under a Scottish secure tenancy has carried out qualifying improvement work with the consent of the landlord under section 28, a qualifying person is on the termination of the tenancy entitled to be paid compensation by the landlord in respect of the work.
- (4) Compensation is not payable if—
  - (a) the tenancy comes to an end in prescribed circumstances,
  - (b) compensation has been paid under section 29 in respect of the improvement, or
  - (c) the amount of any compensation which would otherwise be payable is less than such amount as may be prescribed.
- (5) Regulations under this section may provide that—
  - (a) any compensation payable is to be—
    - (i) determined by the landlord in such manner and taking into account such matters as may be prescribed, or
    - (ii) calculated in such manner and taking into account such matters as may be prescribed, and is not to exceed such amount, if any, as may be prescribed,
  - (b) the landlord may set off against any compensation payable under this section any sums owed to it by any qualifying person.

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- (6) Where, in the case of two or more qualifying persons, one of them (“the missing person”) cannot be found—
- (a) a claim for compensation under this section may be made by, and compensation may be paid to, the other qualifying person or persons, but
  - (b) the missing person is entitled to recover the missing person’s share of any compensation so paid from the other qualifying person or persons.
- (7) Regulations under this section may—
- (a) provide for the manner in which and the period within which claims for compensation under this section are to be made, and for the procedure to be followed in determining such claims,
  - (b) prescribe the form of any document required to be used for the purposes of or in connection with such claims, and
  - (c) provide for the determination of questions arising under the regulations.
- (8) In this section, “prescribed” means prescribed by regulations made by the Scottish Ministers.

### **31 Effect of work on rent**

In assessing the rent to be payable under a Scottish secure tenancy by—

- (a) a tenant who has carried out work on the house,
- (b) a person who has succeeded that tenant in the tenancy, or
- (c) the spouse of a person mentioned in paragraph (b) or a person living with that person as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex,

no account is to be taken at any time of any improvement in the value or amenities of the house resulting from the work.

*Assignment, subletting and exchanges*

### **32 Assignment, subletting etc.**

- (1) It is a term of every Scottish secure tenancy that the tenant may assign, sublet or otherwise give up to another person possession of the house or any part of it or take in a lodger—
- (a) only with the consent in writing of the landlord, and
  - (b) in the case of an assignment, only where the house has been the assignee’s only or principal home throughout the period of 6 months ending with the date of the application for the landlord’s consent to the assignment under paragraph 9 of schedule 5.
- (2) A landlord whose consent is required under subsection (1) may refuse such consent only if it has reasonable grounds for doing so.
- (3) There are, in particular, reasonable grounds for refusing such consent if—
- (a) a notice under section 14(2) has been served on the tenant specifying a ground set out in any of paragraphs 1 to 7 of schedule 2,

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- (b) an order for recovery of possession of the house has been made against the tenant under section 16(2),
  - (c) it appears to the landlord that a payment other than—
    - (i) a rent which is in its opinion a reasonable rent, or
    - (ii) a deposit which in its opinion is reasonable, returnable at the termination of the assignation, subletting or other transaction and given as security for the subtenant’s obligations for accounts for supplies of gas, electricity, telephone or other domestic supplies and for damage to the house or contents,
 has been or is to be received by the tenant in consideration of the assignation, subletting or other transaction,
  - (d) the transaction for which consent is sought would lead to overcrowding of the house in such circumstances as to render the occupier guilty of an offence under section 139 of the 1987 Act, or
  - (e) the landlord proposes to carry out work on the house or on the building of which it forms part so that the proposed work will affect the accommodation likely to be used by the subtenant or other person who would reside in the house as a result of the transaction.
- (4) Where the landlord is a registered social landlord which is a co-operative housing association, any consent under subsection (1) is subject to the condition that the assignee, subtenant or other person is a member of the association when the assignation or sublease takes effect or, as the case may be, when possession is given to the other person.
- (5) The Scottish Ministers may by order modify subsection (3).
- (6) It is a term of every Scottish secure tenancy that, where the landlord has given consent to an assignation, subletting or other transaction under subsection (1), the tenant—
- (a) must notify the landlord of any proposed increase in the rent which was payable by the subtenant at the commencement of the assignation, subletting or other transaction, and
  - (b) must not increase the rent if the landlord objects to the increase.
- (7) An assignation, subletting or other transaction to which this section applies is not—
- (a) a protected tenancy or a statutory tenancy within the meaning of the Rent (Scotland) Act 1984 (c. 58), or
  - (b) an assured tenancy,
- and Part VII (rent assessment) of that Act does not apply to such an assignation, subletting or other transaction.
- (8) In this section and schedule 5, “subtenant” means a person entitled to possession of a house or any part of a house under an assignation, subletting or other transaction to which this section applies, and includes a lodger.
- (9) The provisions of Part 2 of schedule 5, so far as relating to this section, have effect as terms of every Scottish secure tenancy.

### **33 Exchange of house**

- (1) It is a term of every Scottish secure tenancy that the tenant may exchange the house which is the subject of the tenancy for another house which is the subject of a Scottish

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- secure tenancy (whether or not of the same landlord) but only with the consent in writing of the landlord and (if different) the landlord of the other house.
- (2) A landlord whose consent is requested under subsection (1) may refuse such consent only if it has reasonable grounds for doing so.
- (3) There are, in particular, reasonable grounds for refusing such consent if—
- (a) a notice under section 14(2) has been served on the tenant specifying a ground set out in any of paragraphs 1 to 7 of schedule 2,
  - (b) an order for recovery of possession of the house which is the subject of the current tenancy has been made against the tenant under section 16(2),
  - (c) that house was provided by the landlord in connection with the tenant's employment with it,
  - (d) that house has been designed or adapted for occupation by a person whose special needs require accommodation of the kind provided by the house and, if the exchange took place, there would no longer be a person with such special needs occupying the house,
  - (e) the accommodation in the other house—
    - (i) is substantially larger than that required by the tenant and the tenant's family, or
    - (ii) is not suitable to the needs of the tenant and the tenant's family, or
  - (f) the exchange would lead to overcrowding of the house in such circumstances as to render the occupier guilty of an offence under section 139 of the 1987 Act.
- (4) Where the landlord is a registered social landlord which is a co-operative housing association, any consent under subsection (1) is subject to the condition that the tenant of the other house is a member of the association when the exchange takes effect.
- (5) The Scottish Ministers may by order modify subsection (3).
- (6) On an exchange in accordance with this section, the existing tenancy is terminated and the tenant is taken to have been granted a Scottish secure tenancy of the other house by the landlord of that house; and this Part applies to that tenancy accordingly.
- (7) The provisions of Part 2 of schedule 5, so far as relating to this section, have effect as terms of every Scottish secure tenancy.

#### *Short Scottish secure tenancies*

### **34 Short Scottish secure tenancies**

- (1) A tenancy of a house is a short Scottish secure tenancy if—
- (a) it would have been a Scottish secure tenancy but for this section,
  - (b) it is for a term of not less than 6 months, and
  - (c) before its creation, the prospective landlord serves on the prospective tenant a notice under subsection (4).
- (2) A prospective landlord may serve a notice under subsection (4) only where any of the paragraphs of schedule 6 is satisfied.
- (3) The Scottish Ministers may by order modify that schedule.

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- (4) A notice under this subsection—
  - (a) must be in such form as the Scottish Ministers may prescribe by regulations,
  - (b) must state that the tenancy to which it relates is to be a short Scottish secure tenancy and specify the paragraph of that schedule which is satisfied in relation to it, and
  - (c) must specify the term of the tenancy.
- (5) At the ish of the tenancy it may continue—
  - (a) by tacit relocation, or
  - (b) by express agreement,
 and the continued tenancy is a short Scottish secure tenancy despite subsection (1) not being satisfied.
- (6) The provisions of this Chapter, except sections 11(2) and (4), 12 and 22 and schedules 1 and 3, apply to a short Scottish secure tenancy as they do to a Scottish secure tenancy.
- (7) Where a tenancy is a short Scottish secure tenancy by virtue of section 35 or paragraph 1 or 2 of schedule 6 the landlord must provide, or ensure the provision of, such housing support services as it considers appropriate with a view to enabling the conversion of the tenancy to a Scottish secure tenancy by virtue of section 37.
- (8) The Scottish Ministers may issue guidance as to the housing support services which are appropriate for the purposes of subsection (7).

### **35 Conversion to short Scottish secure tenancy**

- (1) A Scottish secure tenancy of a house becomes a short Scottish secure tenancy by virtue of this section immediately on the landlord serving on the tenant a notice under subsection (3).
- (2) The landlord may serve a notice under subsection (3) only where the tenant (or any one of joint tenants) or a person residing or lodging with, or subtenant of, the tenant is subject to an anti-social behaviour order under section 19 of the Crime and Disorder Act 1998 (c. 37).
- (3) A notice under this subsection must—
  - (a) state that the Scottish secure tenancy to which it relates becomes a short Scottish secure tenancy by virtue of service of the notice, and
  - (b) specify the tenant or other person who is subject to the anti-social behaviour order.
- (4) Subsections (5) and (6) of section 34 apply to a tenancy which becomes a short Scottish secure tenancy by virtue of this section.
- (5) Where a Scottish secure tenancy becomes a short Scottish secure tenancy by virtue of this section, a tenant who is aggrieved by the conversion may raise proceedings by summary application.
- (6) In such proceedings the court may, if it considers that there are good grounds for doing so, grant a declarator that the notice under subsection (3) is of no effect.



### **36 Recovery of possession**

- (1) The landlord under a short Scottish secure tenancy may raise proceedings by way of summary cause for recovery of possession of the house which is the subject of the tenancy.
- (2) Such proceedings may not be raised unless—
  - (a) the landlord has served on the tenant a notice complying with subsection (3),
  - (b) the proceedings are raised on or after the date specified in the notice, and
  - (c) the notice is in force at the time when the proceedings are raised.
- (3) A notice under subsection (2) must be in such form as the Scottish Ministers may prescribe by regulations, and must—
  - (a) state that the landlord requires possession of the house,
  - (b) specify a date, not earlier than—
    - (i) 2 months, or such longer period as the tenancy agreement may provide, from the date of service of the notice, or
    - (ii) the date on which the tenancy could have been brought to an end by a notice to quit had it not been a short Scottish secure tenancy,whichever is later, on or after which the landlord may raise proceedings for recovery of possession.
- (4) A notice under subsection (2) ceases to be in force 6 months after the date specified in it in accordance with subsection (3)(b) or when it is withdrawn by the landlord, whichever is earlier.
- (5) The court must make an order for recovery of possession if it appears to the court that—
  - (a) the tenancy has reached the ish referred to in section 34(5),
  - (b) tacit relocation is not operating,
  - (c) no further contractual tenancy (whether or not a short Scottish secure tenancy) is in existence, and
  - (d) subsection (2) has been complied with.
- (6) An order under subsection (5) must appoint a date for recovery of possession and has the effect of—
  - (a) terminating the tenancy, and
  - (b) giving the landlord the right to recover possession of the house, at that date.
- (7) This section is without prejudice to sections 14 and 16.

### **37 Conversion to Scottish secure tenancy**

- (1) Where—
  - (a) a tenancy is a short Scottish secure tenancy by virtue of section 35 or paragraph 1 or 2 of schedule 6, and
  - (b) the landlord has not, in the period of 12 months following the creation of the tenancy, served on the tenant a notice under section 14(2) or 36(2),the tenancy becomes, by virtue of this section, a Scottish secure tenancy with effect from the expiry of that period.

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- (2) Where subsection (1)(a) applies and the landlord has, in the period of 12 months following the creation of the tenancy, served a notice referred to in subsection (1)(b), then—
- (a) if the notice—
    - (i) has ceased to be in force in accordance with section 14(5) or, as the case may be, 36(4), or
    - (ii) has been withdrawn by the landlord without proceedings for recovery of possession having been raised,
 the tenancy becomes, by virtue of this section, a Scottish secure tenancy with effect from the date on which the notice ceased to be in force or was withdrawn or the expiry of that period of 12 months, whichever is the later,
  - (b) if proceedings for recovery of possession have been raised and have been finally determined in favour of the tenant, the tenancy becomes, by virtue of this section, a Scottish secure tenancy with effect from the date on which the proceedings were finally determined or the expiry of that period of 12 months, whichever is the later.
- (3) For the purposes of subsection (2)(b) proceedings are finally determined when—
- (a) the period for appealing against the interlocutor disposing of the proceedings has expired without an appeal being lodged, or
  - (b) where an appeal has been lodged, the appeal is withdrawn or finally determined.
- (4) Where a tenancy becomes a Scottish secure tenancy by virtue of this section, the landlord must notify the tenant of that fact and of the date on which the tenancy became a Scottish secure tenancy.

*Miscellaneous and general*

### **38 Appeals**

- (1) A person who is aggrieved by a decision of a landlord mentioned in section 11(1)(b) to make a house available to the person for occupancy on the basis of—
- (a) an occupancy agreement instead of a Scottish secure tenancy or a short Scottish secure tenancy,
  - (b) a tenancy which is not a Scottish secure tenancy or a short Scottish secure tenancy, or
  - (c) a short Scottish secure tenancy instead of a Scottish secure tenancy,
- may raise proceedings by summary application.
- (2) In such proceedings the court may, if it considers that there are good grounds for doing so, order the landlord to let the house to the person under a Scottish secure tenancy or, as the case may be, a short Scottish secure tenancy.

### **39 Application of sections 23 to 33 to other tenancies**

Where a tenancy is excluded from being a Scottish secure tenancy only by the operation of paragraph 1 or 9 of schedule 1, sections 23 to 33 apply to the tenancy as if it were a Scottish secure tenancy.

#### **40 Notices**

- (1) A notice or other document authorised or required by this Chapter to be given to a person (however expressed) may be given—
  - (a) by delivering it to that person,
  - (b) by leaving it at that person’s proper address, or
  - (c) by sending it by recorded delivery letter to that person at that address.
- (2) For the purposes of subsection (1) and of paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I.1999/1379), a person’s proper address is that person’s last known address.

#### **41 Interpretation of Chapter 1**

In this Chapter, unless otherwise expressly provided—

“co-operative housing association” has the meaning given in section 300(1)(b) of the 1987 Act,

“court” means the sheriff court for the district in which is situated the house to which the tenancy in question relates, and “proceedings” means proceedings in that court,

“landlord” means a person who lets a house to a tenant for human habitation, and includes any person from time to time deriving title under the original landlord,

“notice” means notice in writing,

“tenancy” means an agreement under which a house is made available for human habitation, and “lease” and related expressions are to be construed accordingly,

“tenant” means a person who leases a house from a landlord and whose right in the house derives directly from the landlord, and in the case of a joint tenancy means all the tenants.