



# Private Rented Housing (Scotland) Act 2011

2011 asp 14

## PART 4

### MISCELLANEOUS

#### 32 Premiums

- (1) In section 82 of the Rent (Scotland) Act 1984 (c. 58) (prohibition of premiums and loans on grant of protected tenancies)—
  - (a) in subsection (1), “, in addition to the rent,” is repealed,
  - (b) in subsection (2), “in addition to the rent” is repealed.
- (2) After section 89 of that Act insert—

#### “89A Premiums: regulations

- (1) The Scottish Ministers may by regulations make provision about sums which may be charged in connection with the grant, renewal or continuance of a protected tenancy.
- (2) Such regulations may, in particular, specify—
  - (a) categories of sum which are not to be treated as a premium for the purposes of this Part;
  - (b) the maximum amount which tenants may be asked to pay in respect of such a sum.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
  - (a) such persons or bodies as they consider representative of the interests of—
    - (i) tenants;
    - (ii) private sector landlords;
    - (iii) persons who act as agents for such landlords,

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- as they consider appropriate; and
  - (b) such other persons or bodies as the Scottish Ministers consider appropriate (which may include tenants, private sector landlords and persons who act as agents for such landlords).
- (4) The power conferred by subsection (1) on the Scottish Ministers to make regulations—
- (a) must be exercised by statutory instrument;
  - (b) may be exercised so as to make different provision for different purposes.
- (5) No regulations are to be made under subsection (1) unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.
- (3) In section 90(1) of that Act (interpretation of Part 8), for the entry for “premium” substitute—
- ““premium” means any fine, sum or pecuniary consideration, other than the rent, and includes any service or administration fee or charge;”.
- (4) In section 115(1) of that Act (interpretation), for the entry for “premium” substitute—
- ““premium” has the meaning given in section 90;”.

### **33 Tenant information packs**

After section 30 of the 1988 Act insert—

#### **“30A Duty of landlord to provide certain information**

- (1) A person who is to be the landlord under an assured tenancy (of whatever duration) must provide the person who is to be the tenant of that tenancy with the documents specified by virtue of section 30B(1) (“the standard tenancy documents”).
- (2) The standard tenancy documents must be provided no later than the date on which the assured tenancy commences.
- (3) Where there are to be joint landlords under the tenancy, the duty under subsection (1) may be satisfied by any one of them.
- (4) A person under the duty mentioned in subsection (1) who (without reasonable excuse) does not comply with that duty is guilty of an offence.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) Where an offence under subsection (4) 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 similar officer of the body, or a person purporting to act in any such capacity, that person, as well as the body corporate, is guilty of an offence and liable to be proceeded against and punished accordingly.

### **30B Duty of landlord to provide certain information: further provision**

- (1) The Scottish Ministers may by order—
- (a) specify the documents to be provided under section 30A(1) which may, in particular, include—
    - (i) documents containing information about the tenancy;
    - (ii) documents containing information about the house;
    - (iii) documents containing information about the person who is to be the landlord;
    - (iv) documents containing information about the rights and responsibilities of tenants and landlords;
    - (v) copies of documents which the person who is to be the landlord is under a duty to provide by virtue of this Act (other than section 30A(1)) or any other enactment;
  - (b) make such further provision about the documents as they think fit, including, in particular, provision about the form of, and the information to be included in (or excluded from), any of the documents;
  - (c) make provision so that the giving of a document (or copy of a document) specified under subsection (1)(a)(v), either in pursuance of the duty under section 30A(1) or by virtue of another provision of this Act or any other enactment, has the effect of satisfying all or any such obligations;
  - (d) make provision about whether the documents may be provided separately or whether they must all be provided at the same time.
- (2) Before making an order under subsection (1), the Scottish Ministers must consult—
- (a) such persons and bodies as they consider representative of the interests of—
    - (i) tenants;
    - (ii) private sector landlords;
    - (iii) persons who act as agents for such landlords,as they consider appropriate; and
  - (b) such other persons or bodies as the Scottish Ministers consider appropriate (which may include tenants, private sector landlords and persons who act as agents for such landlords).”.

### **34 Notices required for termination of short assured tenancy**

In section 33 of the 1988 Act (recovery of possession on termination of a short assured tenancy), after subsection (4) insert—

“(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.”.

### **35 Landlord application to private rented housing panel**

- (1) The 2006 Act is amended as follows.
- (2) In section 21 (naming of panel and re-naming of committees)—

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- (a) in subsection (3), after “panel,” where it first occurs, insert “the members of the panel,”
- (b) in subsection (4)—
  - (i) the words from “the exercise” to the end become paragraph (a), and
  - (ii) after that paragraph insert—
    - “(b) the exercise by members of the panel of the functions conferred on them under sections 28A and 28C.”.
- (3) At the beginning of the title of section 22 (application to private rented housing panel) insert “Tenant”.
- (4) After section 28 insert—

**“28A Landlord application to private rented housing panel**

- (1) A landlord may apply to the private rented housing panel for assistance under section 28C in exercising the landlord’s right of entry to the house concerned under section 181(4).
- (2) The president of the panel must allocate an application under subsection (1) to an individual member of the panel, and may subsequently reallocate it at any time to another individual member of the panel (the member to whom it is, for the time being, allocated being referred to as “the panel member”).
- (3) The panel member must decide whether—
  - (a) to assist the landlord in exercising the landlord’s right of entry to the house concerned under section 181(4) in accordance with section 28C, or
  - (b) to reject the application (and notify the landlord accordingly).
- (4) The panel member may require the landlord to produce such further information as the panel member considers necessary to reach a decision on the application.
- (5) Where the panel member decides to assist the landlord under subsection (3)
  - (a) the panel member must send the landlord and the tenant a notice—
    - (a) indicating that—
      - (i) the panel member has decided to assist the landlord, and
      - (ii) the panel member will be seeking to arrange a suitable time for the landlord to exercise the landlord’s right of entry under section 181(4), and
    - (b) informing the tenant of the tenant’s right under subsection (6).
- (6) A tenant may, within the period of 14 days beginning with the date of receipt of a notice under subsection (5) (or such longer period as the panel member considers appropriate in the circumstances), make representations to the panel member as to why it is inappropriate or unnecessary for the landlord to exercise the landlord’s right of entry under section 181(4) at that time.
- (7) Where representations are made by the tenant under subsection (6), the panel member—
  - (a) may make such further enquiries of the landlord and tenant as the panel member considers appropriate, and

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- (b) must decide whether to—
  - (i) continue to assist the landlord, or
  - (ii) stop assisting the landlord.
- (8) A decision—
  - (a) to reject an application under subsection (3),
  - (b) of the panel member under subsection (7),
  - (c) by the panel member to stop acting in accordance with section 28C(9),is final.
- (9) No application may be made under subsection (1) where the landlord is—
  - (a) a local authority landlord (within the meaning of the Housing (Scotland) Act 2001 (asp 10)),
  - (b) a registered social landlord (being a body registered in the register maintained under section 57 of that Act), or
  - (c) Scottish Water.

### **28B Landlord application to private rented housing panel: further provision**

- (1) The Scottish Ministers may by regulations make further provision about the making or deciding of applications under section 28A.
- (2) Those regulations may, in particular, make provision—
  - (a) about the form and content of applications and notices,
  - (b) prescribing a fee to accompany applications,
  - (c) specifying circumstances when the panel member must decide to reject an application or stop assisting a landlord,
  - (d) about the procedure for—
    - (i) making decisions under section 28A(3) or (7),
    - (ii) giving notice under section 28A(5),
    - (iii) making representations under section 28A(6).
- (3) In this section, “the panel member” means the member of the private rented housing panel to whom the case has been allocated under section 28A(2).

### **28C Panel member to arrange suitable time for access**

- (1) Subsection (2) applies where the panel member has decided to assist the landlord under section 28A(3)(a).
- (2) The panel member must liaise with the landlord and the tenant with a view to agreeing a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).
- (3) Subsection (4) applies if the tenant (without reasonable excuse) has failed or refused, within a reasonable time, to—
  - (a) respond to the panel member, or
  - (b) agree a suitable date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).

- (4) The panel member may fix a date and time (or dates and times) for the landlord to exercise the landlord’s right of entry to the house under section 181(4).
  - (5) Where a date and time has been agreed under subsection (2), the panel member may, on the request of either the landlord or the tenant and where there are reasonable grounds for doing so, liaise with the parties with a view to agreeing a different date and time (or dates and times) for the landlord to exercise the landlord’s right of entry under section 181(4).
  - (6) The panel member must as soon as reasonably practicable notify the landlord and tenant of any date and time (or dates and times) agreed or fixed under this section for the landlord to exercise the landlord’s right of entry under section 181(4).
  - (7) When notifying the parties of the date and time (or dates and times) agreed or fixed under this section, the panel member must also—
    - (a) provide the tenant with information about the action that the panel member may take under section 182 if the tenant refuses the landlord’s exercise of the landlord’s right of entry to the house under section 181(4), and
    - (b) inform both parties that the panel member (or a person authorised by the panel member) may be requested to attend when the landlord exercises such right of entry.
  - (8) The panel member may, at the request of the landlord or the tenant, attend at the house at the time agreed or fixed for the landlord to exercise the landlord’s right of entry under section 181(4).
  - (9) The panel member may, at any time, stop assisting the landlord under this section if the panel member considers it appropriate to do so.
  - (10) The panel member may—
    - (a) authorise a person (other than the landlord or a representative of the landlord) to exercise any function conferred on the panel member under this section, or
    - (b) arrange for any such function to be carried out by another panel member.
  - (11) The Scottish Ministers may by regulations make further provision about the action the panel member is to take under this section.
  - (12) In this section, “the panel member” means the member of the private rented housing panel to whom the case has been allocated under section 28A(2).”
- (5) In section 29 (annual report)—
- (a) in subsection (1), after “panel” where it second occurs insert “, by the members of the panel”,
  - (b) in subsection (2)—
    - (i) the words from “the frequency” to the end become paragraph (a), and
    - (ii) after that paragraph insert—
      - “(b) the number of—
      - (i) applications made under section 28A,

- (ii) cases in which it has been possible to agree a suitable date and time (or dates and times) under section 28C for the landlord to exercise the landlord’s right of entry under section 181(4),
  - (iii) houses attended by a member of the private rented housing panel (or a person authorised by such a member) as a result of a request made under section 28C(8), and
  - (iv) warrants sought to authorise entry under section 182(1) in pursuance of section 181(2A).”.
- (6) In section 181 (rights of entry: general), after subsection (2) insert—
- “(2A) A member of the private rented housing panel, and any other person authorised by any such member, is entitled to enter any house in respect of which a decision has been made under section 28A(3) to assist the landlord’s exercise of the landlord’s right of entry under subsection (4) of this section for the purpose of enabling the landlord to exercise such right of entry.”.
- (7) In section 182(1) (warrants authorising entry), for “or (2)” substitute “, (2) or (2A)”.
- (8) In section 191 (orders and regulations), after subsection (4) insert—
- “(4A) Regulations under subsection (1) of section 28B (other than such regulations containing only provision under subsection (2)(b) of that section) are not to be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.”.

### **36 Relaxation of residential restriction on leases of more than 20 years**

- (1) Section 8 of the Land Tenure Reform (Scotland) Act 1974 (c. 38) (property let under a future long lease, etc. not to be used as a private dwelling) is amended as follows.
- (2) In subsection (3A)—
- (a) the word “or” immediately following paragraph (b) is repealed, and
  - (b) after paragraph (c), add “; or
  - (d) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.”.
- (3) After subsection (3A), insert—
- “(3B) An order under subsection (3A)(d) may—
- (a) prescribe a body or type of body subject to conditions or restrictions,
  - (b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),
  - (c) restrict the application of subsection (3A) to specified leases, or leases of specified descriptions,
  - (d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any lease,
  - (e) make provision about the consequences, in relation to any lease, of—

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- (i) a breach of any condition or restriction prescribed by the order, or
- (ii) subsection (3A) otherwise ceasing to apply in relation to a body or type of body or the lease.

(3C) Provision made by virtue of subsection (3B)(e) may, in particular, include provision for the protection of the interests of tenants or occupiers of any dwelling-houses on the property which is subject to the lease.

(3D) An order under subsection (3A)(d)—

- (a) may modify any enactment, and
- (b) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.”.

### **37 Restriction of right to redeem heritable securities after 20 years**

(1) Section 11 of the Land Tenure Reform (Scotland) Act 1974 (c. 38) (right to redeem heritable security after 20 years where security subjects used as a private dwelling) is amended as follows.

(2) In subsection (3A)(b)—

- (a) the word “or” immediately following sub-paragraph (ii) is repealed, and
- (b) after sub-paragraph (iii), add “; or
  - (iv) a body prescribed, or of a type prescribed, by the Scottish Ministers by order made by statutory instrument.”.

(3) After subsection (3A), insert—

“(3B) An order under subsection (3A)(b)(iv) may—

- (a) prescribe a body or type of body subject to conditions or restrictions,
- (b) prescribe conditions which a body or type of body must meet for the purposes of subsection (3A),
- (c) restrict the application of subsection (3A) to specified heritable securities, or heritable securities of specified descriptions,
- (d) prescribe circumstances in which subsection (3A) is to apply or cease to apply in relation to a body or type of body or any heritable security.

(3C) A statutory instrument containing an order under subsection (3A)(b)(iv) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.