

# HOUSING (SCOTLAND) ACT 2014

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## EXPLANATORY NOTES

### THE STRUCTURE AND A SUMMARY OF THE ACT

#### *Schedule 1 – Transfer of Jurisdiction to First-Tier Tribunal*

#### **Part 1 – Regulated tenancies, Part VII contracts and assured tenancies**

218. **Part 1** of schedule 1 makes consequential amendments to the Rent (Scotland) Act 1984 (“the 1984 Act”) and the Housing (Scotland) Act 1988 (“the 1988 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

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

219. **Paragraph 2** amends section 7(2) of the 1984 Act. Section 7(1) of the 1984 Act makes provision for how the rateable value of dwelling houses should be ascertained and section 7(2) provides the sheriff with powers to determine the proper apportionment of value of a dwelling house, where any question in relation to this arises.
220. **Paragraphs 3 and 31** amend section 11 and Schedule 2 of the 1984 Act. Section 11 provides for the grounds for possession of certain dwelling houses repossession cases and schedule 2 specifies the circumstances in which orders for possession can be made. These include non-payment of rent or antisocial behaviour.
221. **Paragraph 4** amends section 12 of the 1984 Act. Section 12 provides extended discretion to sist or suspend proceedings to allow the sheriff to manage proceedings for repossession. For example, this could be to allow a party to fulfil or complete an action or to pay arrears.
222. Consequential to the transfer of repossession cases to the FTT in paragraph 3, paragraph 5 amends section 19 of the 1984 Act. Section 19 regards the rights of subtenants in circumstances where an order for possession of a dwelling house has been made.
223. **Paragraph 6** amends section 21 of the 1984 Act. Section 21 regards circumstances where it appears to a sheriff court, after having given a landlord an order for possession of a dwelling house let on a protected tenancy or subject to a statutory tenancy, that the order was maintained by misrepresentation or concealment of material facts, and provides that the court has the power to order compensation be paid to the former tenants for loss or damage sustained.
224. **Paragraph 7** amends section 23(1) of the 1984 Act. Section 23 regards tenancies which are not regulated tenancies or Part VII contracts and provides that the enforcement of repossession eviction for these tenancies is unlawful other than through proceedings before the sheriff.

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225. [Paragraph 8](#) amends section 24 of the 1984 Act. Section 24 makes special provision with regard to proceedings for repossession where the tenant is a person employed in agriculture (as defined in section 17 of the Agricultural Wages (Scotland) Act 1949).
226. [Paragraph 9](#) repeals the definition of court from section 25 of the 1984 Act as this is no longer required as relevant proceedings are transferred to the FTT.
227. Consequentially to the transfer of jurisdiction for repossession in paragraphs 7 and 8, paragraph 10 amends section 26 of the 1984 Act. Section 26 provides that proceedings for repossession under Part III of that Act are binding on the Crown.
228. [Paragraph 11](#) repeals section 27 of the 1984 Act which set out the procedure for applications to the sheriff under Part III.
229. [Paragraph 12](#) amends section 31(2) of the 1984 Act. Section 31(2) regards rents under regulated tenancies and provides powers to adjust recoverable rent to cover services and furniture.
230. [Paragraph 13](#) amends section 32(4) and (5) of the 1984 Act. Section 32(4) and (5) regard notices of increase to rent under regulated tenancies and provides powers to amend errors.
231. [Paragraph 14](#) amends section 35(12) of the 1984 Act. Section 35(12) provides for the sufficiency of evidence in relation to rent agreements. The effect of the amendment is to ensure that this applies to proceedings before the Scottish Tribunals.
232. [Paragraph 15](#) amends section 39 of the 1984 Act. Section 39 provides powers to order rectification of rent books after determination of recoverable rent. The effect of the amendment is to provide that the FTT can order the rectification of rent books in applicable cases.
233. [Paragraph 16](#) amends section 43B(4) of the 1984 Act. Section 43B(4) regards changes of rent registration service providers and provides for the continuation of proceedings. The effect of the amendment is to provide that tribunal proceedings can continue following changes of responsibility.
234. [Paragraph 17](#) amends section 45(3) of the 1984 Act. Section 45(3) provides for the sufficiency of evidence in relation to rent registers similar to section 35(12) of the 1984 Act. The effect of the amendment is to ensure that this applies to proceedings before the Scottish Tribunals.
235. [Paragraph 18](#) amends section 60(3) of the 1984 Act. Section 60(3) provides powers to determine questions about rent limits for housing association and housing corporation tenancies.
236. [Paragraph 19](#) amends section 64(6)(b) of the 1984 Act. Section 64(6)(b) regards the rateable value of dwelling houses for the purpose of determining whether Part VII of the 1984 Act applies. It provides powers to determine apportionment of rateable value where parties fail to agree.
237. [Paragraphs 20 and 21](#) amend sections 75 and 76 of the 1984 Act. Sections 75 and 76 provide power to reduce the period of notice to quit or postpone the date of possession in relation to contracts described in Part VII of the 1984 Act.
238. [Paragraph 22](#) amends section 77 of the 1984 Act. Section 77 regards cases under Part VII of the 1984 Act and the jurisdiction of the sheriff and private rented housing panel.
239. [Paragraph 23](#) amends section 97(8) and (9) of the 1984 Act. Section 97(8) and (9) provides powers to terminate or modify rights for tenants who share accommodation.
240. [Paragraph 24](#) inserts new subsection (A1) into section 102 of the 1984 Act, and repeals subsection (2) and amends subsection (3) of that section. Section 102 provides power to determine any question with regard to the application of the 1984 Act. The effect of

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the amendment is to make clear that the FTT shall have jurisdiction over civil matters arising from this act with the exception of matters arising under Part IX which will remain within the jurisdiction of the sheriff.

241. [Paragraph 25](#) amends section 103 of the 1984 Act. Section 103 regards the procedure by which certain actions are to be raised in the sheriff court.
242. [Paragraph 26](#) amends section 104 of the 1984 Act. Section 104 regards the Court of Session's power to make certain rules of procedure. The effect of the amendment is to retain this power for criminal proceedings under Part IX of the 1984 Act and not to apply it for tribunal procedures.
243. [Paragraph 27](#) amends section 115(1) of the 1984 Act to include a definition of the FTT.
244. [Paragraph 28](#) amends paragraphs 3 and 7 of Schedule 1 to the 1984 Act. Schedule 1 regards succession rights of protected tenants following the death of protected tenants and provides powers to determine matters where parties fail to agree.
245. [Paragraphs 29 and 30](#) amend paragraphs 3 and 6 of Schedule 1A and paragraph 3 of Schedule 1B to the 1984 Act. Schedules 1A and 1B regard succession rights for tenants and should be read in conjunction with Section 3A of the 1984 Act.

### **Housing (Scotland) Act 1988**

246. [Paragraph 33](#) amends section 16(2) of the 1988 Act. Section 16(2) regards the power to end assured tenancies.
247. [Paragraph 34](#) amends section 17(8) of the 1988 Act. Section 17(8) regards proceedings to fix terms for statutory assured tenancies.
248. [Paragraphs 35 and 48](#) amend section 18 and Schedule 5 of the 1988 Act. Section 18 and Schedule 5 regard repossession cases for assured and short assured tenancies and specifies the circumstances in which orders for possession can be made.
249. [Paragraph 36](#) amends section 19 of the 1988 Act. Section 19 requires that proceedings must not be entertained unless a notice of proceedings has been served in the prescribed format.
250. [Paragraph 37](#) amends section 20 of the 1988 Act. Section 20 regards discretion to sist or adjourn proceedings for possession to allow the sheriff to manage proceedings for repossession. This could be to allow parties to complete a specific action or to repay arrears.
251. [Paragraph 38](#) amends section 21(3) of the 1988 Act. Section 21(3) regards special powers in relation to shared accommodation.
252. [Paragraph 39](#) amends section 22(1) and (2) of the 1988 Act. Section 22(1) and (2) regards powers to order payment of removal expenses.
253. [Paragraph 40](#) amends section 25(7) of the 1988 Act. Section 25(7) regards determinations of rent.
254. [Paragraph 41](#) amends section 28(1) of the 1988 Act. Section 28(1) regards the effect of the termination of assured tenancies on sub-tenancies.
255. [Paragraph 42](#) amends section 29 of the 1988 Act. Section 29 regards the power to permit diligence in respect of houses let on assured tenancies.
256. [Paragraph 43](#) amends section 30(2) of the 1988 Act. Section 30(2) regards failure to provide a tenancy agreement for an assured tenancy and provides power to draw up an agreement if one does not already exist.

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257. [Paragraph 44](#) amends section 33(1) and (4) of the 1988 Act. Section 33(1) and (4) regards the recovery of possession of short assured tenancies under certain circumstances.
258. [Paragraph 45](#) inserts new subsection (4A) into section 36 of the 1988 Act, and amends section 36(6)(b) and (6B). Section 36(6)(b) and (6B) provides power to award damages for unlawful eviction.
259. [Paragraph 46](#) amends section 42(1)(c) of the 1988 Act. Section 42 regards restrictions on assured tenancies.
260. [Paragraph 47](#) amends section 55(1) of the 1988 Act to include a definition of the FTT.

### **Schedule 1 - Part 2 - Repairing Standard**

261. [Part 2](#) of schedule 1 makes consequential amendments to the Housing (Scotland) Act 2006 (“the 2006 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

### **Housing (Scotland) Act 2006**

262. [Paragraph 50](#) amends section 24(7) of the 2006 Act. Section 24(7) regards repairing standard orders when an order has been made regarding contracting out of the repairing standard.
263. [Paragraph 51](#) amends section 194 of the 2006 Act to include a definition of the FTT.

### **Schedule 1 – Part 3 – Right to Adapt Rented Houses**

264. [Part 3](#) of schedule 1 makes consequential amendments to the Housing (Scotland) Act 2006 (“the 2006 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.
265. [Paragraph 53](#) amends section 64 of the 2006 Act. Section 64 relates to appeals from decisions by local authorities and the private rented housing panel in relation to the repairing standard.
266. [Paragraph 54](#) repeals section 65(3) and (4) of the 2006 Act. Section 65 relates to the determination of an appeal under section 64.
267. [Paragraph 55](#) repeals section 67 of the 2006 Act. Section 67 provides the Scottish Ministers with the power to transfer jurisdiction for appeals under section 52 of that Act (regarding the right to adapt rented houses) from the sheriff to the private rented housing panel.

### **Schedule 1 - Part 4 – Landlord Registration**

268. [Part 4](#) of schedule 1 makes consequential amendments to the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) to transfer the jurisdiction for specific civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal (FTT) and to enable the FTT to use the same powers and procedures as the court currently has at its disposal to make determinations for the types of actions outlined below.

**Antisocial Behaviour etc. (Scotland) Act 2004**

- 269. [Paragraph 57](#) repeals section 92(4) and amends section 92(5) and (6) of the 2004 Act which regard the procedure for making appeals to the sheriff against decisions of local authorities about landlord registration.
- 270. [Paragraph 58](#) amends section 92ZA of the 2004 Act. Section 92ZA regards the duty on local authorities to note refusals and removals for the register of landlords.
- 271. [Paragraph 59](#) amends section 97(6) and (7) of the 2004 Act. Section 97(6) and (7) regards appeals against local authority decisions regarding landlord registration
- 272. [Paragraph 60](#) amends section 101(1) of the 2004 Act to include a definition of the FTT.