

CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) ACT 2022

EXPLANATORY NOTES

THE ACT: OVERVIEW

Part 4: Tenancies

Removal of mandatory eviction grounds

Section 44: Assured tenancies: discretionary eviction grounds

163. This section puts on a permanent footing the temporary changes made by paragraph 3 of schedule 1 of the Coronavirus (Scotland) Act 2020. It amends the Housing (Scotland) Act 1988 (“the 1988 Act”) which governs assured tenancies, including short assured tenancies. The result of this section is that all eviction grounds for such tenancies will become discretionary eviction grounds on a permanent basis, in a similar fashion to the change made by section 43 in respect of private residential tenancies.
164. Prior to the 2016 Tenancies Act, most tenancies were assured tenancies. As with private residential tenancies, it was not possible to opt out of the assured tenancy regime, although there were some tenancies which did not meet the necessary criteria to fall within it. For example, to be an assured tenancy, the tenant had to be a person occupying the property as their only or main home. In addition, schedule 4 of the 1988 Act lists various property types or letting arrangements which cannot be assured tenancies, such as certain student lets, a tenant living with a resident landlord or social housing. The private residential tenancy replaced the assured tenancy and since the 2016 Tenancies Act came fully into force, it has not been possible to grant a new assured tenancy (see schedule 5 of that Act). However, existing assured tenancies were allowed to continue (although the parties could opt to convert them if they wished).
165. As with private residential tenancies, prior to the temporary modifications made by the Coronavirus (Scotland) Act 2020, some eviction grounds for assured tenancies were mandatory and some were discretionary. A commonly used type of assured tenancy was the short assured tenancy, which, unlike other assured tenancies, could be terminated under section 33 of the 1988 Act simply on the basis of having reached its previously agreed end date. However, the majority of eviction grounds (referred to in the 1988 Act as “grounds for possession”) are set out in schedule 5 of the 1988 Act and apply to all types of assured tenancy.
166. The eviction grounds which change from mandatory to discretionary on a permanent basis under this section can be broadly summarised as follows—
- the property was let under a short assured tenancy, the tenancy has reached its end date, and tacit relocation is not operating (section 33 of the 1988 Act),
 - the property was previously occupied by the landlord and is now needed for the landlord or their spouse/civil partner as their only or main home (ground 1 in schedule 5 of the 1988 Act),

These notes relate to the Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8) which received Royal Assent on 10 August 2022

- the property is to be sold by the lender under a heritable security (ground 2 in schedule 5),
 - the property was let for 8 months or less, and was let as a holiday home within the year preceding the tenancy (ground 3 in schedule 5),
 - the property was let for a year or less, and was let as student accommodation within the year preceding the tenancy (ground 4 in schedule 5),
 - the property is held for use in connection with a religious purpose and is required for that purpose (ground 5 in schedule 5),
 - the landlord intends to demolish or carry out substantial work to the property and cannot reasonably carry out the work without the tenant giving up possession (ground 6 in schedule 5),
 - the tenancy was inherited and proceedings for recovery of possession were commenced within a year of the former tenant's death (ground 7 in schedule 5),
167. These eviction grounds will be dealt with in the same way as those eviction grounds which have always been discretionary under the 1988 Act (such as the tenant having been convicted of relevant anti-social behaviour, having been persistently late in paying rent, or having breached the tenancy agreement in some other way).
168. In addition, one eviction ground is repealed on the basis that it is now superfluous. Ground 8 in schedule 5 allowed eviction on the basis of rent arrears provided that, both at the date of serving notice of proceedings and at the date the proceedings begin, the arrears amounted to at least three months' rent. However, Ground 12 in schedule 5 allows eviction on the basis of rent arrears without the arrears having to be of a particular amount (although they must still exist both at the date of serving notice of proceedings and at the date the proceedings begin). While previously the more serious rent arrears ground served a purpose because it gave rise to a mandatory, rather than discretionary, case for eviction, that will no longer apply. As such, ground 8 no longer serves any purpose as any eviction that would otherwise have been sought under it can be sought under ground 12 instead.