

# HOUSING (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### STRUCTURE OF THE ACT

#### Part 16 – Miscellaneous

##### Protection of unauthorised tenants

177. [Section 152](#) provides increased protection for ‘unauthorised tenants’ (tenants who are granted a lease of a property in breach of their landlord’s standard security conditions), who are at risk of losing their home following repossession action against their landlord. It does so by bringing the protection recognised through the Tamroui case (a Sheriff Court decision, *Tamroui v Clydesdale Bank plc* 1997 (SLT (Sh.Ct.) 20)) onto a statutory basis. However, the provision in section 152 applies to all assured tenancies, whether they are authorised or unauthorised tenancies.
178. The amendments in section 152(1) and (2) confirm that any decree for repossession of a property granted in favour of a lender in proceedings under the Conveyancing and Feudal Reform (Scotland) Act 1970 or the Heritable Securities (Scotland) Act 1894 is not a warrant for the ejection of an assured tenant under the Housing (Scotland) Act 1988. This means that after obtaining a repossession decree against the borrower/landlord, the lender must raise further proceedings to evict any assured tenant under the 1988 Act. Subsection (3) ensures consistent application of the [Bankruptcy and Diligence \(Scotland\) Act 2007 \(asp 3\)](#) in relation to this principle that there is a requirement to get a separate decree of eviction against any assured tenant.

##### Tenant protection: repossession orders

179. [Section 153](#) amends section 16 of the Housing (Scotland) Act 2001 to provide landlords with discretion to retain tenants in their existing tenancies where agreement has been reached about payment of rent arrears after a court has granted a decree for eviction.
180. By requiring the court to set a second date after which the decree can no longer be relied upon to evict the tenant, section 16(5A) as inserted by section 153 creates a period during which the landlord can either exercise the right to terminate the tenancy and evict the tenant, or simply allow the decree to lapse and the existing tenancy to continue. (The possibility of carrying out a ‘technical eviction’ whereby the existing tenancy is terminated and a new tenancy begun will also continue to exist, should the landlord wish to use that option).
181. Subsection (5A)(a) provides that section 16(5)(a), which requires termination of a tenancy in all cases on the date set by the court for recovery of possession, does not apply in cases where rent arrears is one of the grounds for eviction. The tenancy is terminated only if the landlord actually recovers possession of the house. Under subsection (5A) (c), the court order must specify the period for which the landlord’s right to recover possession is to have effect. The Scottish Ministers have a power to prescribe the maximum period and to issue guidance about recovery of possession under the court order, which landlords must have regard to under subsection (5A)(d). Scottish Ministers

are required to consult the interested parties specified in subsection (5B) before making an order or issuing guidance.

### **Police accommodation not to be Scottish secure tenancy**

182. [Section 154](#) amends schedule 1 to the Housing (Scotland) Act 2001, which sets out those tenancies which are not Scottish secure tenancies, to ensure that tenancies of police houses are not Scottish secure tenancies. It does so by amending paragraph 2 of that schedule to provide that a tenancy of a house which is created on or after the relevant day (which is the day on which section 154 comes into force) is not a Scottish secure tenancy where the house is held by the local authority landlord for the purposes of a police force (subparagraph (2)(a)) or is let expressly on a temporary basis pending its being so required (subparagraph (2)(b)).
183. New sub-paragraph (3) provides that sub-paragraph (2)(a) does not prevent a tenancy from being a Scottish secure tenancy in the following circumstances:
- Where the tenant moved to the house following an order for recovery of possession under section 16(2) of the Housing (Scotland) Act 2001, on any of the grounds set out in paragraphs 9 to 13 and 15 of schedule 2 to that Act.
  - Where the tenant moved to the house from another house where the landlord erroneously terminated the previous tenancy in the belief that the tenant was not occupying the house; or where the tenant of a house that has been designed for a person with special needs dies and as a result the landlord is required to re-accommodate the tenant.
  - Where the tenant was re-accommodated by the landlord in the house after moving from another house, the tenancy of which was terminated by written agreement between the landlord and tenant following the landlord's decision to demolish that other house.
  - Where a tenant's short Scottish secure tenancy is converted into a Scottish secure tenancy under section 37 of the 2001 Act.
  - Where the tenant occupied that or another police house under a Scottish secure tenancy immediately before the creation of the tenancy and agreed to terminate that Scottish secure tenancy without being given at least 28 days notice before so agreeing that the new tenancy would not be a Scottish secure tenancy.

### **Scottish secure tenancy: rent arrears pre-action requirements**

184. [Section 155](#) amends section 14 of, and inserts new section 14A in, the Housing (Scotland) Act 2001. It requires landlords to comply with certain pre-action requirements (where the tenancy is a Scottish Secure Tenancy), before raising proceedings for recovery of possession in all cases which include the ground that rent lawfully due from the tenant has not been paid.
185. New section 14(2A) requires the landlord to comply with pre-action requirements before sending a pre-action notice to the tenant. Before the proceedings commence, the landlord must confirm to the court (in the form prescribed by Scottish Ministers in regulations) that the pre-action requirements have been complied with. The pre-action notice to the tenant must also specify the steps the landlord has taken to comply with the pre-action requirements.
186. The pre-action requirements are set out in new section 14A of the 2001 Act, inserted by section 155(b). They are listed in subsections (2) to (7). Subsection (8) requires landlords to have regard to any guidance issued by Scottish Ministers in complying with the pre-action requirements, and subsection (9) allows Ministers to make further provision about the pre-action requirements by order.

**Local authority duties on homelessness: armed forces**

187. [Section 156](#) amends section 27 of the Housing (Scotland) Act 1987, which specifically prohibits a person or household forming a local connection with an area due to employment or residence in it as a result of service in the armed forces. In contrast civilian residence or employment forms such a connection. The duties of a local authority to a homeless person are affected by whether the person has a local connection with that authority. This amendment will allow people serving in the regular armed forces of the Crown, and those who live with them, to form a local connection with the area they have lived or worked in.

**Vacant dwellings: use of information obtained for council tax purposes**

188. [Section 157](#) amends Schedule 2 to the Local Government Finance Act 1992 and section 129(8)(a) of the Local Government Act 2003 to allow local authorities to use information obtained for council tax purposes to identify vacant dwellings in their area.

**Duty to assess and provide housing support needs of person who are homeless or threatened with homelessness**

189. [Section 158](#) places a duty on local authorities to assess the housing support needs of, and provide support services to, persons who are homeless or threatened with homelessness by inserting new section 32B into the Housing (Scotland) Act 1987. Section 32B(1) and (2) require the local authority, if they are subject to a duty to the applicant under section 31(2) or 32(2) of the 1987 Act and have reason to believe the applicant might need housing support services, to assess whether the applicant or any person residing with them needs prescribed services.
190. Section 32B(3) requires the local authority to conduct inquiries for that purpose (which may be prescribed by Scottish Ministers) and to have regard to any prescribed matters. Section 32B(4) requires the local authority, after assessment, to ensure the provision of prescribed housing support services to any persons assessed as being in need of them.
191. Section 32B(5) gives Scottish Ministers the power to make regulations about the provision of prescribed housing support services, which may specify the period for which services are to be provided and any matters the local authority is to have regard to when ensuring the provision of services. Section 32B(6) allows for regulations made to have different provision for different purposes and in different areas. Section 32B(7) requires Scottish Ministers to consult with bodies representing local authorities, bodies representing the interests of homeless persons and other persons as they think fit, before making regulations.
192. Section 32B(9) defines housing support services as including services which provide support, assistance, advice or counselling to an individual with a view to enabling the individual to occupy accommodation as their sole or main residence.