



# Housing (Scotland) Act 1988

## 1988 CHAPTER 43

### PART II

#### RENTED ACCOMMODATION

##### *Phasing out of Rent (Scotland) Act 1984 and other transitional provisions*

#### **42 New protected tenancies restricted to special cases.**

- (1) A tenancy which begins on or after the commencement of this section cannot be a protected tenancy, unless—
- (a) it is entered into in pursuance of a contract made before the commencement of this section; or
  - (b) it is granted to a person (alone or jointly with others) who, immediately before the tenancy was granted, was the protected tenant (or one of the protected tenants) or a statutory tenant of the same landlord; or
  - (c) it is granted to a person (alone or jointly with others) in the following circumstances—
    - (i) prior to the grant of the tenancy, an order for possession of a dwelling-house was made against him (alone or jointly with others) on the [<sup>F1</sup>First-tier Tribunal] being satisfied as mentioned in section 11(1)(a) of the <sup>M1</sup>Rent (Scotland) Act 1984 (suitable alternative accommodation available) or on it appearing to the court, under section 48(2)(b) or (c) of the <sup>M2</sup>Housing (Scotland) Act 1987, that other suitable accommodation was available; and
    - (ii) the tenancy is of the premises which constitute the suitable alternative accommodation as to which the [<sup>F2</sup>First-tier Tribunal] was so satisfied or, as the case may be, the other suitable accommodation which appeared to the court to be available; and
    - (iii) in the proceedings for possession [<sup>F3</sup>the First-tier Tribunal or, as the case may be,] the court directed that the tenancy would be a protected tenancy; or

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- (d) it is granted in compliance with a direction under section 51(2)(ii) of the Housing (Scotland) Act 1987 (power of sheriff to direct that tenant of wrongfully repossessed house be given suitable alternative accommodation) or in pursuance of section 282(3)(b) of that Act (grant of tenancy upon acquisition by public sector authority of defective dwelling).
- (2) In subsection (1)(b) above “protected tenant” and “statutory tenant” do not include—
- (a) a tenant under a short tenancy;
  - (b) a protected or statutory tenant of a dwelling-house which was let under a short tenancy which has ended and in respect of which either there has been no grant of a further tenancy or any grant of a further tenancy has been to the person who, immediately before the grant, was in possession of the dwelling-house as a protected or statutory tenant,
- and in this subsection “short tenancy” includes a tenancy which, in proceedings for possession under Case 15 in Schedule 2 to the Rent (Scotland) Act 1984 is treated as a short tenancy.
- (3) Expressions used in this section have the same meaning as in the <sup>M3</sup>Rent (Scotland) Act 1984.

#### Textual Amendments

- F1** Words in s. 42(1)(c)(i) substituted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\), s. 104\(3\), sch. 1 para. 46\(a\)](#); S.S.I. 2017/330, art. 3, sch.
- F2** Words in s. 42(1)(c)(ii) substituted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\), s. 104\(3\), sch. 1 para. 46\(b\)](#); S.S.I. 2017/330, art. 3, sch.
- F3** Words in s. 42(1)(c)(iii) inserted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\), s. 104\(3\), sch. 1 para. 46\(c\)](#); S.S.I. 2017/330, art. 3, sch.

#### Marginal Citations

- M1** 1984 c. 58.  
**M2** 1987 c. 26.  
**M3** 1984 c. 58.

### 43 Removal of special regimes for tenancies of housing associations etc.

- (1) In this section—
- (a) “housing association tenancy” means a tenancy to which Part VI of the Rent (Scotland) Act 1984 applies;
  - (b) “secure tenancy” has the same meaning as in Part III of the <sup>M4</sup>Housing (Scotland) Act 1987.
- (2) A tenancy which is entered into on or after the commencement of this section cannot be a housing association tenancy unless—
- (a) it is entered into in pursuance of a contract made before the commencement of this section; or
  - (b) it is granted to a person (alone or jointly with others) who, immediately before the tenancy was granted, was the tenant (or one of the tenants) under a housing association tenancy of the same landlord; or
  - (c) it is granted to a person (alone or jointly with others) in the following circumstances—

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- (i) prior to the grant of the tenancy, an order for possession of a dwelling-house was made against him (alone or jointly with others) on the court being satisfied as mentioned in paragraph (b) or paragraph (c) of subsection (2) of section 48 of the Housing (Scotland) Act 1987; and
  - (ii) the tenancy is of the premises which constitute the suitable accommodation as to which the court was so satisfied; and
  - (iii) in the proceedings for possession the court directed that it would be a housing association tenancy.
- (3) A tenancy which is entered into on or after the commencement of this section cannot be a secure tenancy unless—
- (a) the interest of the landlord belongs to—
    - <sup>F4</sup>(i) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, or a joint board or joint committee of two or more such councils, or the common good of such a council or any trust under the control of such a council; or
    - (ia) <sup>F5</sup>Scottish Water;]
    - (iii) a development corporation within the meaning of the <sup>M5</sup>New Towns (Scotland) Act 1968 (including an urban development corporation within the meaning of Part XVI of the <sup>M6</sup>Local Government, Planning and Land Act 1980); or
    - (iv) the Scottish Special Housing Association; or
    - (v) Scottish Homes; <sup>F6</sup>...
    - <sup>F6</sup>(vi) .....
    - <sup>F7</sup>(vii) .....
  - (b) it is entered into in pursuance of a contract made before the commencement of this section; or
  - (c) it is granted to a person (alone or jointly with others) who, immediately before it was entered into, was the secure tenant (or any one of the secure tenants) of the same landlord; or
  - (d) it is granted to a person (alone or jointly with others) in the following circumstances—
    - (i) prior to the grant of the tenancy, an order for possession of a house was made against him (alone or jointly with others) on the court being satisfied as mentioned in paragraph (b) or paragraph (c) of subsection (2) of section 48 of the <sup>M7</sup>Housing (Scotland) Act 1987; and
    - (ii) the tenancy is of premises which constitute the suitable accommodation as to which the court was so satisfied; and
    - (iii) in the proceedings for possession referred to in sub-paragraph (i) above the court directed that it would be a secure tenancy.

#### Textual Amendments

- F4** S. 43(3)(a)(i)(ia) substituted (1.4.1996) for s. 43(3)(a)(i)(ii) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(2)** (with 128(8)); S.I. 1996/323, **art. 4**
- F5** Words in s. 43(3)(a)(ia) substituted (25.6.2003) by **The Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003 (S.S.I. 2003/331), art. 1, Sch. para. 6(2)**

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- F6** S. 43(3)(a)(vi) and preceding word omitted (1.4.2013) by virtue of [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Modifications and Savings\) Order 2013 \(S.S.I. 2013/119\)](#), art. 1, [sch. 1 para. 11\(2\)](#)
- F7** S. 43(3)(a)(vii) and preceding word repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 8 Pt. 2](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### Marginal Citations

- M4** 1987 c. 26.  
**M5** 1968 c. 16.  
**M6** 1980 c. 65.  
**M7** 1987 c. 26.

#### 44 New “Part VII” contracts limited to transitional cases.

- (1) No contract entered into after the commencement of this section shall be a Part VII contract for the purposes of the <sup>M8</sup>Rent (Scotland) Act 1984 unless it is entered into in pursuance of a contract made before the commencement of this section.
- (2) If the terms of a Part VII contract are varied after the commencement of this section then, subject to subsection (3) below—
- (a) if the variation affects the amount of the rent which, under the contract, is payable for the dwelling in question, the contract shall be treated as a new contract entered into at the time of the variation (and subsection (1) above shall have effect accordingly); and
- (b) if the variation does not affect the amount of the rent which, under the contract, is so payable, nothing in this section shall affect the determination of the question whether the variation is such as to give rise to a new contract.
- (3) Any reference in subsection (2) above to a variation affecting the amount of the rent which, under a contract, is payable for a dwelling does not include a reference to—
- (a) a reduction or increase effected under section 66 of the Rent (Scotland) Act 1984 (power of [<sup>F8</sup>the First-tier Tribunal]); or
- (b) a variation which is made by the parties and has the effect of making the rent expressed to be payable under the contract the same as the rent for the dwelling which is entered in the register under section 67 of the Rent (Scotland) Act 1984.
- (4) Section 70(2) of the Rent (Scotland) Act 1984 (no cancellation of registration of rent until after 3 years) shall cease to have effect.
- (5) In this section “rent” has the same meaning as in Part VII of the Rent (Scotland) Act 1984.

#### Textual Amendments

- F8** Words in s. 44(3)(a) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Private Rented Housing Committees\) Regulations 2016 \(S.S.I. 2016/337\)](#), reg. 1(2), [Sch. 2 para. 2\(12\)](#) (with Sch. 1)

#### Marginal Citations

- M8** 1984 c. 58.

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#### 45 Transfer of existing tenancies.

- (1) The provisions of subsection (3) below apply in relation to a tenancy which was entered into before, or pursuant to a contract made before, the commencement of this section if—
  - (a) at that commencement or, if it is later, at the time it is entered into, the interest of the landlord is held by a public body (within the meaning of subsection (4) below); and
  - (b) at some time after that commencement the interest of the landlord ceases to be so held.
- (2) The provisions of subsection (3) below also apply in relation to a tenancy which was entered into before, or pursuant to a contract made before, the commencement of this section if—
  - (a) at that commencement or, if it is later, at the time it is entered into, it is a housing association tenancy; and
  - (b) at some time after that commencement, it ceases to be such a tenancy.
- (3) On and after the time referred to in subsection (1)(b) or, as the case may be, subsection (2)(b) above—
  - (a) the tenancy shall not be capable of being a protected tenancy or a housing association tenancy;
  - (b) the tenancy shall not be capable of being a secure tenancy unless (and only at a time when) the interest of the landlord under the tenancy is (or is again) held by a public body; and
  - (c) paragraph 1 of Schedule 4 to this Act shall not apply in relation to it, and the question whether at any time thereafter it becomes (or remains) an assured tenancy shall be determined accordingly.
- (4) For the purposes of this section, the interest of a landlord under a tenancy is held by a public body at a time when—
  - <sup>F9</sup>(a) it belongs to a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, or a joint board or joint committee of two or more such councils, or the common good of such a council or any trust under the control of such a council; or
  - (aa) it belongs to <sup>F10</sup>Scottish Water;]
  - (c) it belongs to a development corporation within the meaning of the <sup>M9</sup>New Towns (Scotland) Act 1968 (including an urban development corporation within the meaning of Part XVI of the <sup>M10</sup>Local Government, Planning and Land Act 1980); or
  - (d) it belongs to the Scottish Special Housing Association; or
  - (e) it belongs to Scottish Homes; <sup>F11</sup>...
  - <sup>F11</sup>(f) .....
  - <sup>F12</sup>(g) .....
  - (h) it belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department.
- (5) In this section—
  - (a) “housing association tenancy” means a tenancy to which Part VI of the <sup>M11</sup>Rent (Scotland) Act 1984 applies; and
  - (b) “protected tenancy” has the same meaning as in that Act.

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#### Textual Amendments

- F9** S. 45(4)(a)(aa) substituted (1.4.1996) for s. 45(4)(a)(b) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(3)** (with s. 128(8)); S.I. 1996/323, **art. 4**
- F10** Words in s. 45(4)(aa) substituted (25.6.2003) by The Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003 (S.S.I. 2003/331), **art. 1, Sch. para. 6(2)**
- F11** S. 45(4)(f) and preceding word omitted (1.4.2013) by virtue of The Police and Fire Reform (Scotland) Act 2012 (Consequential Modifications and Savings) Order 2013 (S.S.I. 2013/119), **art. 1, Sch. 1 para. 11(3)**
- F12** S. 45(4)(g) repealed (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 8 Pt. 2**; S.S.I. 2013/51, **art. 2** (with transitional provisions and savings in S.S.I. 2013/121)

#### Marginal Citations

- M9** 1968 c. 16.  
**M10** 1980 c. 65.  
**M11** 1984 c. 58.

## 46 Statutory tenants: succession.

- (1) In section 3 of the Rent (Scotland) Act 1984 (which makes provision as to statutory tenants and tenancies) in subsection (1) after the word “sections” there shall be inserted “3A,”.
- (2) After section 3 of that Act there shall be inserted the following section—

### “3A Statutory tenants and tenancies: further provision as to succession.

- (1) Where the person who is the original tenant, within the meaning of Schedule 1 to this Act, dies after the commencement of section 46 of the Housing (Scotland) Act 1988, the provisions of Schedule 1A to this Act shall have effect for determining what person (if any) is entitled to a statutory or statutory assured tenancy of the dwelling-house.
- (2) Where subsection (1) above does not apply but the person who is the first successor, within the meaning of the said Schedule 1, dies after the commencement of the said section 46, the provisions of Schedule 1B to this Act shall have effect for determining what person (if any) is entitled to a statutory assured tenancy of the dwelling-house by succession.
- (3) In any case where, by virtue of any provision of the said Schedules 1A or 1B to this Act, a person becomes entitled to an assured tenancy of a dwelling-house by succession, that tenancy shall be a statutory assured tenancy arising by virtue of the said section 46.”.
- (3) Part I of Schedule 6 to this Act shall have effect for the purpose of inserting new Schedules 1A and 1B into the <sup>M12</sup>Rent (Scotland) Act 1984.
- (4) If and so long as a house is subject to an assured tenancy to which a person has become entitled by succession, section 18 of and Schedule 5 to this Act shall have effect subject to the modifications in Part II of Schedule 6 to this Act.

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**Marginal Citations**

**M12** [1984 c. 58.](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 66(1)(aa) and word inserted by [2001 asp 10 s. 50\(2\)\(c\)](#)
- s. 66(2A) inserted by [2001 asp 10 s. 50\(3\)](#)
- s. 66(5A) inserted by [2001 asp 10 s. 50\(4\)](#)
- sch. 17 para. 19-26 repealed by [2014 asp 14 sch. 2 para. 5\(4\)](#)