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SCHEDULES

SCHEDULE 4

Section 12.

TENANCIES WHICH CANNOT BE ASSURED TENANCIES

Tenancies entered into before commencement

- 1 A tenancy which is entered into before, or pursuant to a contract made before, this Schedule comes into force.

Tenancies at a low rent

- 2 (1) A tenancy under which, at any time after this Schedule comes into force, either no rent is payable or the rent payable is less than that specified by order made by the Secretary of State, but no tenancy which is or, at any time, was an assured tenancy shall cease to be an assured tenancy by virtue only of this paragraph of this Schedule.
- (2) In determining whether the rent under a tenancy falls within sub-paragraph (1) above, there shall be disregarded such part (if any) of the sums payable by the tenant as is or was expressed (in whatever terms) to be payable in respect of services, repairs, maintenance or insurance, unless it could not have been regarded by the parties to the tenancy as a part so payable.
- (3) An order under sub-paragraph (1) above may specify different rents in relation to—
- (a) different kinds of houses;
 - (b) different areas.
- (4) An order under sub-paragraph (1) above may specify rent by reference to such periods or times or such other factors or such combinations thereof as may be specified in the order.

Tenancies of shops

- 3 A tenancy to which the ^{M1}Tenancy of Shops (Scotland) Act 1949 applies.

Marginal Citations

M1 1949 c. 25.

Licensed premises

- 4 A tenancy under which the house consists of or comprises premises licensed for the sale of alcoholic liquor for consumption on the premises.

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Tenancies of agricultural land

- 5 (1) A tenancy under which agricultural land, exceeding two acres, is let together with the house.
- (2) In this paragraph “agricultural land” has the same meaning as in section 115(1) of the ^{M2}Rent (Scotland) Act 1984.

Marginal Citations

M2 1984 c. 58.

Tenancies of agricultural holdings

- 6 A tenancy under which the house—
- [^{F1}(a) is on or comprised in a lease constituting a 1991 Act tenancy within the meaning of the [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#) or in a lease constituting a short limited duration tenancy [^{F2}, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy] (within the meaning of that Act); and]
- (b) is occupied by the person responsible for the control (whether as tenant or as servant or agent of the tenant) of the farming of the [^{F3} and comprised in the lease].

Textual Amendments

- F1** Sch. 4 para. 6(a) substituted (27.11.2003) by [The Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, **Sch. para. 11(a)**
- F2** Words in Sch. 4 para. 6(a) substituted (30.11.2017) by [The Land Reform \(Scotland\) Act 2016 \(Supplementary, Consequential, Transitory and Saving Provisions\) Regulations 2017 \(S.S.I. 2017/416\)](#), reg. 1(1), **sch. 1 para. 7(2)** (with sch. 2 para. 7)
- F3** Words in Sch. 4 para. 6(b) substituted (27.11.2003) by [The Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, **Sch. para. 11(b)**

Lettings to students

- 7 (1) A tenancy which is granted to a person who is pursuing, or intends to pursue, a course of study provided by a specified educational institution and is so granted either by that institution or by another specified institution or body of persons.
- (2) In sub-paragraph (1) above “specified” means specified, or of a class specified, for the purposes of this paragraph by regulations made by the Secretary of State.

Holiday lettings

- 8 A tenancy the purpose of which is to confer on the tenant the right to occupy the house for a holiday.

Resident landlords

- 9 (1) A tenancy in respect of which the following conditions are fulfilled—

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- (a) that the house forms part only of a building;
 - (b) subject to sub-paragraph (2) below, that the tenancy was granted by a person who, at the time when he granted it, occupied as his only or principal home another house which also forms part of the building;
 - (c) that, at the time when the tenancy was granted, there was an ordinary means of access—
 - (i) to or from the house by way of that other house; or
 - (ii) to or from that other house by way of the house(whether or not that access was available to the tenant as of right); and
 - (d) subject to sub-paragraph (3) below, at all times since the tenancy was granted the interest of the landlord under the tenancy has belonged to a person who, at the time he owned that interest, occupied as his only or principal home another house which also formed part of the building.
- (2) The condition in sub-paragraph (1)(b) above shall be deemed to be fulfilled if the tenancy was granted by trustees and, at the time when the tenancy was granted, the interest of the landlord under the tenancy thereby created was held on trust for a person who was entitled to the liferent or to the fee or a share of the fee of that interest and who occupied as his only or principal home a house which forms part of the building referred to in sub-paragraph (1)(a) above.
- (3) In determining whether the condition in sub-paragraph (1)(d) above is at any time fulfilled with respect to a tenancy, there shall be disregarded—
- (a) any period of not more than 28 days beginning with the date of the conveyance of the interest of the landlord under the tenancy to an individual who, during that period, does not occupy as his only or principal home another house which forms part of the building concerned;
 - (b) if, within a period falling within paragraph (a) above, the individual concerned notifies the tenant in writing of his intention to occupy as his only or principal home another such house as is referred to in that paragraph, the period beginning with the date of the conveyance mentioned in that paragraph and ending—
 - (i) at the expiry of the period of 6 months beginning on that date; or
 - (ii) on the date on which the interest of the landlord under the tenancy ceases to be held by that individual; or
 - (iii) on the date on which the condition in sub-paragraph (1)(c) above again applies,whichever is the earliest; and
 - (c) any period of not more than 24 months beginning with the date of death of the landlord under the tenancy during which the interest of the landlord under the tenancy is vested in his executor.
- (4) Throughout any period which, by virtue of sub-paragraph (3)(a) or (b) above, falls to be disregarded for the purpose of determining whether the condition in sub-paragraph (1)(d) above is fulfilled with respect to a tenancy, no order for possession of the house subject to that tenancy shall be made, other than an order which might be made if that tenancy were or, as the case may be, had been an assured tenancy.
- (5) During any period—
- (a) when—

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- (i) the interest of the landlord under the tenancy referred to in sub-paragraph (1) above is vested in trustees; and
 - (ii) that interest is held on trust for a person who is entitled to the liferent or to the fee or a share of the fee of that interest and who occupies as his residence a house which forms part of the building referred to in sub-paragraph (1)(a) above;
 - (b) of not more than 24 months beginning with the date of death of the occupier referred to in sub-paragraph (a)(ii) above and ending with the date of occupation of the house by any other person who is entitled to the liferent or to the fee or to a share of the fee of that interest,
- the condition in sub-paragraph (1)(d) above shall be deemed to be fulfilled and, accordingly, no part of that period shall be disregarded by virtue of sub-paragraph (3) above.
- (6) This paragraph does not apply to a tenancy of a house which forms part of a building if the tenancy is granted to a person who, immediately before it was granted, was an assured tenant of that house or of any other house in that building.
 - (7) For the purposes of this paragraph—
 - (a) “conveyance” includes the grant of a tenancy and any other conveyance or transfer other than upon death;
 - (b) “the date of the conveyance” means the date on which the conveyance was granted, delivered or otherwise made effective.

Crown tenancies

- 10 A tenancy under which the interest of the landlord 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 but not including such a tenancy if it is under the management of the Crown Estate Commissioners [^{F4} or if it is a tenancy to which section 90B(5) of the Scotland Act 1998 applies].

Textual Amendments

F4 Words in Sch. 4 para. 10 inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), **Sch. 5 para. 21**

Modifications etc. (not altering text)

C1 Sch. 4 para. 10 modified (1.4.1991) by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 60(2)(c), **Sch. 8 Pt. III para. 20(2)(a)**; S.I. 1990/1329, art. 2(8), **Sch. 3**

Local authority and other tenancies

- 11 A tenancy under which the interest of the landlord belongs to—
 - [^{F5}(a) 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;]
 - [^{F6}(aa) Scottish Water;]
 - (b)

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- ^{F7}(c)
^{F7}(d)
(e) a co-operative housing association within the meaning of section 1 of the Housing Associations Act 1985; [^{F8}or]
^{F9}(ea) a registered social landlord within the meaning of the Housing (Scotland) Act 2010 (asp 17).]
^{F10}(f)

Textual Amendments

- F5** Sch. 4 para. 11(a)(aa) substituted (1.4.1996) for Sch. 4 para. 11(a) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(7)(a)** (with s. 128(8)); S.I. 1996/323, **art. 4**
- F6** Sch. 4 para. 11(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(4)**
- F7** Sch. 4 para. 11(b)-(d) repealed (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(12)(a)(i)**; S.S.I. 2002/321, **art. 2(2), Sch. Table** (subject to transitional provisions in arts. 3-5)
- F8** Word in Sch. 4 para. 11(e) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 157(7)(b)** (with s. 128(8)); S.I. 1996/323, **art. 4**
- F9** Sch. 4 para. 11(ea) substituted (1.4.2012) by Housing (Scotland) Act 2010 (asp 17), s. 166(2), **Sch. 2 para. 4(4)**; S.S.I. 2012/39, **art. 2, Sch. 1** (with Sch. 2) (as amended (1.4.2012) by S.S.I. 2012/91, **art. 4**)
- F10** Sch. 4 para. 11(f) repealed (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(12)(a)(iii)**; S.S.I. 2002/321, **art. 2(2), Sch. Table** (subject to transitional provisions in arts. 3-5)

Modifications etc. (not altering text)

- C2** Sch. 4 para. 11 excluded by Housing (Scotland) Act 1987 (c. 26, SIF 61), **ss. 180(4), 335**

[^{F11}Accommodation for offenders

Textual Amendments

- F11** Sch. 4 para. 11A inserted (30.9.2002) by 2001 asp 10, s. 112, **Sch. 10 para. 14(12)(b)**; S.S.I. 2002/321, **art. 2(2), Sch. Table** (subject to transitional provisions in arts. 3-5)

- 11A A tenancy granted, for a term of less than 6 months, to a person—
- (a) who is under supervision in pursuance of the functions of a local authority under paragraph (b)(i), (ii) or (vi) of subsection (1) of section 27 (supervision and care of persons on probation, released from prison etc.) of the Social Work (Scotland) Act 1968 (c.49), or
- (b) who has requested, in accordance with paragraph (c) of that subsection, the provision of advice, guidance or assistance by a local authority in pursuance of the authority's functions under that paragraph.]

[^{F12}Accommodation for homeless persons

Textual Amendments

- F12** Sch. 4 para. 11A inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 Pt. I para. 90**

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- 11A A tenancy granted expressly on a temporary basis in the fulfilment of a duty imposed on a local authority by Part II of the Housing (Scotland) Act 1987.]

^{F13}[Accommodation for asylum-seekers]

Textual Amendments

F13 Sch. 4 para. 11B and crossheading inserted (11.11.1999) by 1999 c. 33, ss. 169(1), 170(3)(s), **Sch. 14 para. 87**

- [^{F14}11B A tenancy granted under arrangements for the provision of support for asylum-seekers or dependants of asylum-seekers made [^{F15}under section 4 or Part VI of the Immigration and Asylum Act 1999].]

Textual Amendments

F14 Sch. 4 para. 11B inserted (11.11.1999) by 1999 c. 33, ss. 169(1), 170(3)(s), **Sch. 14 para. 87**

F15 Words in Sch. 4 para. 11B substituted (16.6.2006) by Immigration, Asylum and Nationality Act 2006 (c. 13), ss. 43(4)(e), 62(1)(2); S.I. 2006/1497, art. 3, Sch.

^{F16}Accommodation for persons with Temporary Protection

Textual Amendments

F16 Sch. 4 para. 11C and cross-heading inserted (15.6.2005) by The Displaced Persons (Temporary Protection) Regulations 2005 (S.I. 2005/1379), reg. 1, **Sch. para. 5**

- 11C A tenancy granted under arrangements for the provision of accommodation for persons with temporary protection made under the Displaced Persons (Temporary Protection) Regulations 2005.]

Shared ownership agreements

- 12 A tenancy under a shared ownership agreement within the meaning of [^{F17}section 83(3) of the Housing (Scotland) Act 2001 (asp 10)].

Textual Amendments

F17 Words in Sch. 4 para. 12 substituted (1.11.2001) by 2001 asp 10, ss. 112, 113(1), **Sch. 10 para. 14(12)(e)**; S.S.I. 2001/336, art. 2(3), **Sch. Pt. II** Table (subject to transitional provisions in art. 3)

Transitional cases

- 13 (1) A protected tenancy within the meaning of the ^{M3}Rent (Scotland) Act 1984.
 (2) A housing association tenancy, being a tenancy to which Part VI of that Act applies.
 (3) A secure tenancy within the meaning of Part III of the ^{M4}Housing (Scotland) Act 1987.

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[^{F18}(4) A tenancy which is a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016.]

Textual Amendments

F18 Sch. 4 para. 13(4) inserted (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\)](#), s. 79(2), [sch. 5 para. 1\(4\)](#); S.S.I. 2017/346, reg. 2, sch. (with reg. 6)

Marginal Citations

M3 1984 c. 58.
M4 1987 c. 26.

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