



# Tenants' Rights, Etc. (Scotland) Act 1980

## 1980 CHAPTER 52

### PART IV

#### PROVISIONS RELATING TO PRIVATE SECTOR TENANCIES

##### *Miscellaneous amendments of enactments relating to private sector tenancies*

#### **41 Amendment of enactments relating to housing associations**

- (1) Section 5 of the Rent (Scotland) Act 1971 shall be amended as follows—
  - (a) in subsection (4) the words from the beginning to " fulfilled, " are repealed ;  
and
  - (b) subsection (5) is repealed.
- (2) Sections 64 and 65 of the Housing (Financial Provisions) (Scotland) Act 1972 are repealed.
- (3) Section 66 of the said Act of 1972 shall be amended by substituting for the words " to (4) " the words ", (2) and (4)".
- (4) Section 18 of the Housing Act 1974 shall be amended as follows—
  - (a) in subsection (2) the words " in such form as may be prescribed " are repealed ;  
and
  - (b) subsection (5) is repealed.

#### **42 Prohibition of eviction without due process of law to apply to Part VII contracts**

Section 32(1) of the Rent Act 1965 (which prohibits eviction of tenants without due process of law) shall apply to contracts to which Part VII of the 1971 Act applies created before or after the commencement of this section, and accordingly the said section 32(1) shall be amended as follows—

- (a) after the first "Part of this Act" there shall be inserted " or a right of a kind to which Part VII of the Rent (Scotland) Act 1971 applies to use a dwelling-

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house has been granted before or after the date of commencement of section 42 of the Tenants' Rights, Etc. (Scotland) Act 1980 " ; and

- (b) in paragraph (a) after " tenancy " there shall be inserted " or, as the case may be, the right to use " .

#### **43 Amendment of sections 1 and 86 of the 1971 Act**

The Rent (Scotland) Act 1971 shall be amended as follows—

- (a) in sections 1 (protected tenancies) and 86 (dwelling-houses to which Part VII applies) by adding after subsection (1) in each section the following subsection—

“(1A) In relation to dwelling-houses comprising or forming part of lands and heritages for which a rateable value is or was first shown on the valuation roll on or after 1st April 1978, the Secretary of State may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament increase the said sum of £200 in subsection (1) above, and he may make different provision for different classes of cases.”;

- (b) in section 86(3) by leaving out the words " this section " and inserting the words " subsection (2) above " ;
- (c) in section 86(4) by leaving out the words " this section " and by inserting the words " subsection (2) above " .

#### **44 Modifications of section 5A of the 1971 Act**

Section 5A of the 1971 Act (no protected tenancy where landlord's interest belongs to resident landlord) shall, in relation to a tenancy granted before or after the commencement of this section, be amended as follows—

- (a) in subsection (3)(a) for " 14 " there shall be substituted " 28 " ;
- (b) in subsection (3)(e) for " 12 " there shall be substituted " 24 " ; and
- (c) in subsection (4), after " (3) " there shall be inserted " (a) or (b) " .

#### **45 Resident landlords**

In relation to tenancies granted after the commencement of this section, section 5A(1) of the 1971 Act (no protected tenancy where landlord's interest belongs to resident landlord) shall have effect subject to the substitution for paragraphs (a) to (c) of the following paragraphs—

- “(a) the dwelling-house (not being a whole flat in a purpose built block of flats) forms part only of a building ; and
- (b) subject to subsection (2) below, the tenancy was granted by a person who, at the time when he granted it, occupied as his residence another dwelling-house which also forms part of the building ; and
- (c) subject to subsection (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 residence another dwelling-house which also formed part of the building.”.

#### **46 Conversion of all remaining controlled tenancies**

- (1) Every controlled tenancy for the purposes of the 1971 Act in existence at the date of commencement of this section shall then cease to be a controlled tenancy and shall become a regulated tenancy for the purposes of the 1971 Act.
- (2) Where a part of premises which include a dwelling-house is used as a shop or office or for business, trade or professional purposes, and the premises were let immediately before the commencement of this section under a controlled tenancy, section 9 of the 1971 Act shall not prevent that tenancy becoming a regulated tenancy under subsection (1) above nor shall it prevent a new tenancy granted to the tenant or to any person who is entitled to succeed him as a statutory tenant from becoming a regulated tenancy.
- (3) In section 36(1) of the 1972 Act (conversion of controlled tenancies), after paragraph (c), there shall be added a new paragraph as follows—
  - “; or
  - (d) section 46(1) of the Tenants' Rights, Etc. (Scotland) Act 1980 (conversion of all remaining controlled tenancies),”.
- (4) In case 8 of Schedule 3 to the 1971 Act for the words " if the dwelling-house is let on or subject to a controlled tenancy after 7th November 1956 " there shall be substituted the words " if the dwelling-house was on 7th November 1956 let on or subject to a controlled tenancy, after the last-mentioned date. " .

#### **47 Determination of fair rent**

Section 42 of the 1971 Act (determination of fair rent) shall be amended by substituting for subsection (1) the following subsection—

- “(1) In determining for the purposes of this Part of this Act what rent is or would be a fair rent under a regulated tenancy of a dwelling-house, it shall be the duty of the rent officer or, as the case may be, of the rent assessment committee, subject to the provisions of this section, to have regard to all the circumstances (other than personal circumstances), and in particular to apply their knowledge and experience of current rents of comparable property in the area, as well as having regard to the age, character and locality of the dwelling-house in question and to its state of repair and, if any furniture is provided for use under the tenancy, to the quantity, quality and condition of the furniture.”.

#### **48 Effect of registration of rent**

- (1) For section 44 of the 1971 Act (effect of registration of rent) there shall be substituted the following section—

**“44 Effect of registration of rent.**

- (1) Subject to subsection (2) below, the registration of a rent for a dwelling-house takes effect if the rent was determined by the rent officer, from the date when it was registered.
- (2) If (by virtue of section 40(3A) of this Act) an application for registration of rent is made before the expiry of the period of 3 years referred to in

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subsection (3) of that section, the registration of a rent for the dwelling-house does not take effect before the end of that period.

- (3) If, on application for the registration of a different rent, the rent officer confirms the rent for the time being registered, the confirmation of that rent takes effect from the date when it is noted in the register.
  - (4) If the rent for a dwelling-house is determined by a rent assessment committee, the registration of that rent takes effect from the date when the committee make their decision.
  - (5) The date from which the registration or confirmation of a rent takes effect shall be entered in the register.
  - (6) As from the date on which the registration of a rent takes effect any previous registration of a rent for the dwelling-house ceases to have effect.
  - (7) Where a valid notice of increase under any provision of Part III of this Act has been served on a tenant and, in consequence of the registration of a rent, part but not the whole of the increase specified in the notice becomes irrecoverable from the tenant, the registration shall not invalidate the notice, but the notice shall, as from the date from which the registration takes effect, have effect as if it specified such part only of the increase as has not become irrecoverable.”.
- (2) In section 21(3) of the 1971 Act (limit of rent during statutory periods) for the words " on which the rent was registered " there shall be substituted the words " from which the registration of the rent took effect " .
- (3) For section 40(4) of the 1971 Act (meaning of a " relevant date " in relation to applications for registration of rent) there shall be substituted the following subsections—
- “(4) In this section and section 41 of this Act, " relevant date ", in relation to a rent which has been registered under this Part of this Act, means the date from which the registration took effect or, in the case of a registered rent which has been confirmed by the rent officer, the date from which the confirmation (or, where there have been two or more confirmations, the last of them) took effect.
  - (4A) For the purposes of subsection (4) above, where a rent is registered as a result of a decision of a rent assessment committee the date from which that registration took effect shall be taken to be the date on which the rent determined by the rent officer was registered or, as the case may be, the confirmation of the registered rent by the rent officer was noted.”.
- (4) In paragraph 9(2) of Schedule 6 to the 1971 Act (procedure on application for registration of rent), for the word " accordingly " there shall be substituted the words " of their decision and, in the case of the determination of a rent, of the date on which their decision was made. " .

#### **49 Repeal of provisions relating to increase of recoverable rent on account of improvements**

- (1) Subject to subsection (2) below, sections 24, 29 and 30 of the 1971 Act, all of which relate to increase of recoverable rent on account of improvements, shall cease to have effect.

- (2) Where a notice of increase has been served by the landlord under subsection (2) of the said section 24 before the commencement of this section, the said sections 24, 29 and 30 shall continue to apply in relation to the rent increase to which the notice relates as they applied before the said commencement.
- (3) The 1971 Act is amended as follows—
  - (i) in section 21(4) for "to 24 " there shall be substituted " and 23 ";
  - (ii) in section 25(1)—
    - (a) after " 21(2) " insert " or " ; and
    - (b) the words " section 24(2) " shall cease to have effect.

## **50 Cancellation of registration**

After section 44A of the 1971 Act there shall be inserted the following new section—

### **“44B Cancellation of registered rent at instance of landlord.**

- (1) Where the rent for a dwelling-house has been registered but the dwelling-house has ceased to be let under a regulated tenancy, an application to the rent officer may be made by the landlord in accordance with this section for the cancellation of the registration, and the provisions of section 44A (2) to (4), (7) and (8) of this Act shall apply, with any necessary modifications, to an application made under this section as they apply to an application made under the said section 44A.”.

## **51 Cancellation of entries in register relating to Part VII contracts at instance of landlord**

After section 91 of the 1971 Act there shall be inserted the following section—

### **“91A Cancellation of entries in register on termination of Part VII contracts.**

- (1) Where a rent has been registered under section 89 of this Act but the dwelling-house has ceased to be subject to a Part VII contract, an application to a rent assessment committee may be made by the landlord in accordance with this section for the cancellation of the registration.
- (2) An application under this section shall not be entertained before the expiry of three years from the date when the registration of the rent takes effect in accordance with section 89 of this Act,
- (3) On an application under subsection (1) above the rent assessment committee shall, where subsections (1) and (2) above are complied with, cancel the registration, and shall make an entry in the register noting the cancellation and the date from which the cancellation takes effect.
- (4) The president of the panel set up under Schedule 5 to this Act may, if he thinks fit, direct that in considering applications made under subsection (1) above, the chairman sitting alone may exercise the functions of a rent assessment committee.

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(5) An application under this section shall be in the prescribed form and contain the prescribed particulars.

(6) The rent assessment committee shall notify the applicant of its decision to grant or to refuse any application under this section and, where it grants the application, of the date from which the cancellation takes effect.”.

## **52 Transfer of functions of rent tribunals to rent assessment committees**

(1) At the commencement of this section the rent tribunals provided for in section 84 of the 1971 Act shall cease to exist, and their functions shall be transferred to the rent assessment committees provided for in section 38 of that Act.

(2) Any reference in any enactment to a rent tribunal shall have effect as if it were a reference to a rent assessment committee within the meaning of section 38 of the 1971 Act.

## **53 Furnished lettings by certain bodies not to be Part VII contracts**

(1) After the commencement of this section, Part VII of the 1971 Act shall not apply to a contract where the landlord is a body mentioned in subsection (2) of section 10 of this Act, and accordingly in section 85(3) of the 1971 Act, after paragraph (a), there shall be added a new paragraph as follows—

“(aa) to a contract entered into after the commencement of section 53 of the Tenants' Rights, Etc. (Scotland) Act 1980, where the interest of the lessor belongs to a body mentioned in subsection (2) of section 10 of that Act; nor”.

(2) Section 16(3) of the 1972 Act shall be amended by adding, after " 85(3) ", " (aa) or ".

## **54 Apportionment of rateable values for Part VII contracts**

In section 86 of the 1971 Act (dwelling-houses to which Part VII applies), at the end there shall be added a new subsection as follows—

“(5) For the purposes of this section, in relation to a dwelling-house which is not separately rated, "rateable value " means such proportion of the rateable value of the premises of which the dwelling-house forms part as may be determined to reflect the relationship between the value of the dwelling-house and the value of the said premises—

(a) by agreement in writing between the lessor and lessee; or

(b) failing such agreement, by the sheriff, on a summary application by either party.”.

## **55 Notice to quit relating to Part VII contracts entered into after the commencement of Part IV**

The following section shall be inserted after section 95A of the 1971 Act—

**“95B Notice to quit relating to post 1980 Act Part VII contracts.**

- (1) This section applies to Part VII contracts entered into after the commencement of section 55 of the Tenants' Rights, Etc. (Scotland) Act 1980.
- (2) Where this section applies, sections 92 to 95A of this Act shall not apply, but in any proceedings for possession the sheriff may, if he thinks fit, postpone the date of possession for a period, which shall not exceed three months.
- (3) A postponement under subsection (2) above may be made subject to such conditions regarding payment of outstanding rent or other conditions as the sheriff thinks fit.”.

**56 Succession to statutory tenancy**

- (1) In Schedule 1 to the 1971 Act

- (a) for paragraph 2 there shall be substituted the following paragraph—

“2 The original tenant's spouse where the dwelling-house was his only or principal home at the time of the tenant's death shall be the statutory tenant so long as the said spouse retains possession of the dwelling-house without being entitled to do so under a contractual tenancy.

" 6. The first successor's spouse, where the dwelling-house was his only or principal home at the time of the tenant's death, shall be the statutory tenant so long as the said spouse retains possession of the dwelling-house without being entitled to do so under a contractual tenancy.".”; and

- (b) for paragraph 6 there shall be substituted the following paragraph—

“6 The first successor's spouse, where the dwelling-house was his only or principal home at the time of the tenant's death, shall be the statutory tenant so long as the said spouse retains possession of the dwelling-house without being entitled to do so under a contractual tenancy.”.

**57 Returnable deposits not premiums**

Section 109 of the 1971 Act (Interpretation of Part VIII) shall be amended by adding a new subsection as follows—

- “(3) For the avoidance of doubt, it is hereby declared that a deposit returnable at the termination of a tenancy or of a Part VII contract given as security for the tenant's obligations for accounts for supplies of gas, electricity, telephone or other domestic supplies and for damage to the dwelling-house or contents is not a premium for the purposes of this Part of this Act provided that it does not exceed the amount of two months' rent payable under the tenancy or under the Part VII contract, as the case may be.”.

**58 Extent of operation of section 119A of 1971 Act**

For the avoidance of doubt, it is hereby declared that a contract to which section 119A of the 1971 Act applies (a contract which would be a protected tenancy but for

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section 5A of the 1971 Act) shall be treated for all purposes as if it were a contract to which Part VII of the 1971 Act applies, and accordingly—

- (a) in the said section 119A, in subsection (1), for the words from " for the purposes " to " applies " there shall be substituted the words " for all purposes as a contract to which Part VII of this Act applies " ; and
- (b) in section 16(3) of the 1972 Act, in the parenthesis, at the end there shall be added the words " and a person who is a tenant under a contract which is to be treated as a Part VII contract under section 119A(1) of that Act " .

## 59 Consent of tenant to carrying out of works

Section 80 of the 1971 Act shall be amended as follows—

- (a) in subsection (2) the words " (whether a controlled or a regulated tenancy) " shall cease to have effect;
- (b) at the end there shall be added the following subsection—

“(5) For the purposes of this section a dwelling-house satisfies the qualifying conditions if it is provided with all the standard amenities, it is in good repair having regard to its age, character and locality and disregarding internal decorative repair, and it meets the tolerable standard.”.

## 60 Landlord's consent to work

The following section shall be inserted after section 121 of the 1971 Act—

*“Alterations etc. to dwelling-house*

### **121A Landlord's consent to work.**

- (1) It shall be a term of every protected or statutory tenancy (unless express provision is made to the contrary in the tenancy agreement) that the tenant shall not carry out work, other than interior decoration, in relation to the dwelling-house without the consent in writing of the landlord, which shall not be unreasonably withheld.
- (2) In this section and in Schedule 4 to the Tenants' Rights, Etc. (Scotland) Act 1980 as it applies to a protected or statutory tenancy " work " means—
  - (a) alteration, improvement or enlargement of the dwelling-house or of any fittings or fixtures;
  - (b) addition of new fittings Or fixtures (including wireless or television aerials);
  - (c) erection of a garage, shed or other structure,
 but does not include repairs or maintenance of any of these.
- (3) The provisions of Schedule 4 to the Tenants' Rights, Etc. (Scotland) Act 1980 shall have effect as terms of every protected or statutory tenancy as they have effect as terms of secure tenancies”.



## **61 Amendment of section 21(2)(b) of the 1971 Act**

Section 21(2)(b) of the 1971 Act shall be amended by substituting for the words "section 7 of the Housing Rents and Subsidies (Scotland) Act 1975" the words "section 37 of the Tenants' Rights, Etc. (Scotland) Act 1980" and by adding after the words "the date" the words "(which may be any date during a rental period)".

## **62 Publication by local authorities of information as to rights**

The powers of local authorities to publish information for the assistance of landlords and tenants as to their rights and duties shall be extended so as to include all such obligations under the Rent (Scotland) Acts 1971 to 1980; and accordingly, in section 125 of the 1971 Act, for the words "the provisions of this Act and Part V" there shall be substituted the words "the Rent (Scotland) Acts 1971 to 1980 and under".

## **63 Recovery of possession of dwelling-house subject to regulated tenancy**

(1) In Part II of Schedule 3 to the 1971 Act (cases in which court must order possession of dwelling-house subject to regulated tenancy)—

(a) in Case 11, in paragraph (a), after "Case", insert "(notwithstanding, in the case of a notice given under this paragraph before the commencement of section 63 of the Tenants' Rights, Etc. (Scotland) Act 1980, that the notice may not have referred to any of subparagraphs (ii) to (v) of paragraph (c))";

and in paragraph (c) after "that" insert "(i)", and at the end insert "or

(iA) the owner-occupier has died, and the dwelling-house is required as a residence for a member of his family who was residing with him at the time of his death; or

(ii) the owner-occupier has died, and the dwelling-house is required as a residence by a person inheriting the dwelling-house under the will of the owner-occupier or on his intestacy; or

(iii) the owner-occupier has died and his personal representatives wish to dispose of the dwelling-house with vacant possession; or

(iv) the dwelling-house is not reasonably suitable to the needs of the owner-occupier, having regard to his place of work, and he requires it for the purpose of disposing of it with vacant possession and of using the proceeds of that disposal in acquiring as his residence a dwelling-house which is more suitable to those needs; or

(v) the dwelling-house is subject to a heritable security, granted before the creation of the tenancy, and as the result of a default by the debtor the creditor is entitled to sell the dwelling-house and requires it for the purpose of disposing of it with vacant possession in exercise of that entitlement.";

(b) in Case 11A in paragraph (a), after "Case", insert "(notwithstanding, in the case of a notice given under this paragraph before the commencement of section 63 of the Tenants' Rights, Etc. (Scotland) Act 1980, that the notice may not have referred to any of subparagraphs (iii) to (v) of paragraph (c))";

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and in paragraph (c) leave out " either " and insert " (i) ", after " or " insert " (ii) " and at the end insert—

“or for a person inheriting the dwelling-house under the will of the owner or on his intestacy ; or

(iii) that the owner has died and his personal representatives wish to dispose of the dwelling-house with vacant possession ; or

(iv) that the dwelling-house is subject to a heritable security, granted before the creation of the tenancy, and as the result of a default by the debtor the creditor is entitled to sell the dwelling-house and requires it for the purpose of disposing of it with vacant possession in exercise of that entitlement; or

(v) that the dwelling-house is no longer reasonably suitable to the needs of the owner on his retirement, and he requires it for the purpose of disposing of it with vacant possession and of using the proceeds of that disposal in acquiring for his retirement a dwelling-house which is more suitable to those needs.”.

(2) The following Cases shall be inserted after Case 15 of the said Part II—

*“Case 16*

Where a dwelling-house has been designed or adapted for occupation by a person whose special needs require accommodation of the kind provided by the dwelling-house and—

- (a) there is no longer a person with such special needs occupying the dwelling-house; and
- (b) the court is satisfied that the landlord requires it for occupation (whether alone or with other members of his family) by a person who has such special needs.”.

*Case 17*

Where the dwelling-house is let by a person (in this Case referred to as " the owner ") at any time after the commencement of section 63 of the Tenants' Rights, Etc. (Scotland) Act 1980 and—

- (a) at the time when the owner acquired the dwelling-house he was a member of the regular armed forces of the Crown;
- (b) at the relevant date the owner was a member of the regular armed forces of the Crown ;
- (c) not later than the relevant date the owner gave notice in writing to the tenant that possession might be recovered under this Case ;
- (d) the dwelling-house has not, since the commencement of section 63 of the said Act of 1980, been let by the owner on a protected tenancy with respect to which the condition mentioned in paragraph (c) above was not satisfied; and
- (e) the court is of the opinion that—
  - (i) the dwelling-house is required as a residence for the owner ; or
  - (ii) of the conditions set out in paragraph (c) of Case 11 of this Schedule one of those in subparagraphs (ii) to (vi) would be

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satisfied if the owner of the dwelling-house concerned was the owner occupier.

Provided that if the court is of the opinion that, notwithstanding that the condition in paragraph (c) or paragraph (d) above is not complied with, it is just and equitable to make an order for possession of the dwelling-house, the court may dispense with the requirements of either or both of these paragraphs, as the case may require.

In this Case " regular armed forces of the Crown " has the same meaning as in section 1 of the House of Commons Disqualification Act 1975."

#### **64 Pensions etc. for Rent Assessment Panel**

- (1) The Secretary of State may pay or make provision for paying—
  - (a) to or in respect of any member of the panel set up by section 38 of the 1971 Act, such sums by way of pensions, superannuation allowances and gratuities; and
  - (b) to any member of the said panel who ceases to be a member other than on the expiry of his term of office, where it appears to the Secretary of State that there are special circumstances which make it unjust for the member not to receive compensation, such sum by way of compensation,as the Secretary of State may, with the approval of the Minister for the Civil Service, determine.
- (2) Schedule 5 to the 1971 Act shall be amended as follows—
  - (a) after paragraph 8 there shall be inserted—

“8A        There shall be paid to or in respect of members of a panel, such sums by way of pensions, superannuation allowances and gratuities as the Secretary of State may, with the approval of the Minister of the Civil Service, determine.

8B        There shall be paid to any member of a panel who ceases to be a member otherwise than on the expiry of his term of office where it appears to the Secretary of State that there are special circumstances such sum as the Secretary of State may, with approval of the Minister for the Civil Service, determine.”.
  - (b) for paragraph 10(a) there shall be substituted—

“10        (a) the remuneration and allowances of members of a panel; the pensions, superannuation allowances, and gratuities payable to or in respect of members of a panel; any compensation payable to a member of a panel.”.

#### **65 Increases in penalties for offences relating to houses in multiple occupation**

- (1) The Housing (Scotland) Act 1966 shall be amended as follows—
  - (a) in section 100(3) for " ten pounds" substitute " fifty pounds " ;
  - (b) in section 102(3) for " ten pounds" substitute " fifty pounds " ;
  - (c) in section 103(4) for paragraphs (a) and (b) substitute " to a fine not exceeding £200 " ;

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- (d) in section 110(1)(b) leave out the words from the second " or " to the end of the paragraph;
  - (e) in section 111(5) for paragraphs (a) and (b) substitute " to a fine not exceeding five hundred pounds " ;
  - (f) in section 112(5) for " twenty pounds " substitute " fifty pounds " ;
  - (g) in section 185(2) after "offence", insert " and shall be liable on summary conviction to a fine not exceeding £200 " .
- (2) Schedule 7C to the Criminal Procedure (Scotland) Act 1975 shall be amended by deleting from the first column of the entry relating to the Housing (Scotland) Act 1966 the words from " where " to the end of the column.