



Rent (Scotland) Act 1984

1984 CHAPTER 58

PART III

PROTECTION AGAINST HARASSMENT AND EVICTION WITHOUT DUE PROCESS OF LAW

22 Unlawful eviction and harassment of occupier.

- (1) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof or attempts to do so he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.
- (2) If any person with intent to cause the residential occupier of any premises—
 - (a) to give up the occupation of the premises or any part thereof; or
 - (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

[^{F1}(2A) Subject to subsection (2B) below the landlord of any premises or an agent of the landlord shall be guilty of an offence if—

- (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household; or
- (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

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- (2B) A person shall not be guilty of an offence under subsection (2A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.]
- (3) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or to both; and
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (4) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.
- (5) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

Textual Amendments

- F1** S. 22(2A)(2B) inserted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), **ss. 38(2)**, 52 (as amended by [Housing Act 1988 \(c. 50, SIF 61, 75:1\)](#), s. 140(1), **Sch. 17 para. 87**)

Modifications etc. (not altering text)

- C1** By [Housing \(Scotland\) Act 1988 \(c. 43, SIF 75:2\)](#), **s. 38** (as amended by [Housing Act 1988 \(c. 50, SIF 61, 75:1\)](#), s. 140(1), **Sch. 17 para. 87(a)**), it is provided that for “calculated” there is substituted “likely” as respects acts done after the commencement of the said s. 38 (2.1.1989)

23 Prohibition of eviction without due process of law.

- (1) Where any premises have been let as a dwelling under a tenancy which is not a statutorily protected tenancy within the meaning of this Part of this Act or a right of a kind to which Part VII of this Act applies to use a dwelling-house has been granted before or after the commencement of this Act and—
- (a) the tenancy or, as the case may be, the right to use (in this Part of this Act referred to as the former tenancy) has come to an end; but
 - (b) the occupier continues to reside in the premises or part of them;
- [^{F2}subject to section 23A,] it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises.
- (2) For the purposes of this Part of this Act a person who, under the terms of his employment, had exclusive possession of any premises otherwise than as a tenant shall be deemed to have been a tenant and the expressions “let”; and “tenancy” shall be construed accordingly.
- [^{F3}(2A) Subsections (1) and (2) above apply in relation to any premises occupied (whether exclusively or not) as a dwelling other than under a tenancy as they apply in relation to premises let as a dwelling under a tenancy, and in those subsections the expressions “let” and “tenancy” shall be construed accordingly.]

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- (3) In this Part of this Act “the owner”, in relation to any premises, means the person who, as against the occupier, is entitled to possession thereof; and in this section “the occupier”, in relation to any premises, means any person lawfully residing in the premises or part of them at the termination of the former tenancy.
- (4) The preceding provisions of this section shall, with the necessary modifications, apply where the owner’s right to recover possession arises on the death of the tenant under a statutory tenancy.
- (5) Nothing in this section shall be taken to affect any rule of law prohibiting the securing of possession otherwise than by due process of law.

Textual Amendments

- F2** Words inserted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), **ss. 39(1), 52**
- F3** [S. 23\(2A\)](#) inserted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), **ss. 39(2), 52**

[^{F4}23A Excluded tenancies and occupancy rights.

- (1) Nothing in section 23 or 24 of this Act applies to a tenancy or right of occupancy if—
 - (a) under its terms the occupier has the use of any accommodation in common with the owner or a member of his family (whether or not in common with other persons); and
 - (b) immediately before the tenancy or right was granted and at all times since then the owner occupied as his only or principal home premises of which the whole or part or the accommodation referred to in paragraph (a) above formed part.
- (2) In subsection (1) above—
 - (a) “accommodation” includes neither an area used for storage nor a staircase, passage, corridor or other means of access;
 - (b) “owner” means, in relation to a tenancy, the landlord and, in relation to a right to occupy, the person granting it, and in any case where there are joint landlords or grantors any one of them shall be regarded as the “owner”; and
 - (c) “occupier” means, in relation to a tenancy, the tenant and, in relation to a right to occupy, its grantee;and section 83 of the [Housing \(Scotland\) Act ^{M1}1987](#) shall apply to determine whether a person is for the purposes of subsection (1) above a member of another’s family as it applies for the purposes of that Act.
- (3) Nothing in section 23 or 24 of this Act applies to a tenancy or right of occupancy if it was granted as a temporary expedient to a person who entered the premises in question or any other premises without right or title (whether or not before the beginning of that tenancy or grant of that right another tenancy or right to occupy the premises or any other premises had been granted to him).
- (4) Nothing in section 23 or 24 of this Act applies to a tenancy or right of occupancy if it confers on the tenant or occupier the right to occupy the premises for a holiday only.

[Nothing in section 23 or 24 of this Act applies to a tenancy or right of occupancy if it ^{F5}(4A) was 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

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- 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.]]
- (5) Nothing in section 23 or 24 of this Act applies to a right of occupancy which confers rights of occupation in a hostel, within the meaning of the Housing (Scotland) Act 1987, which is provided by—
- (a) a local authority within the meaning of the Local Government (Scotland) Act ^{M2}1973 or a joint board or joint committee within the meaning of that Act;
- (b) a development corporation within the meaning of the New Towns (Scotland) Act ^{M3}1968;
- (c) an urban development corporation within the meaning of Part XVI of the Local Government, Planning and Land Act ^{M4}1980;
- (d) the Scottish Special Housing Association;
- ^{F6}(e)
- (f) a registered housing association, within the meaning of the Housing Associations Act ^{M5}1985; or
- (g) any other person who is, or who belongs to a class of person which is, specified in an order made by the Secretary of State.
- ^{F7}[(5A) Nothing in section 23 of this Act applies to a tenancy or right of occupancy if it is granted in order to provide accommodation [^{F8}under section 4 or Part VI of the Immigration and Asylum Act 1999] .]
- ^{F9}(5B) Nothing in section 23 of this Act applies to a tenancy or right of occupancy if it is granted in order to provide accommodation under the Displaced Persons (Temporary Protection) Regulations 2005.]
- (6) The power to make an order under subsection (5)(g) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

- F4** S. 23A inserted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), **ss. 40, 52**
- F5** S. 23A(4A) inserted (30.9.2002) by [2001 asp 10](#), s. 112, [Sch. 10 para. 9\(3\)\(a\)](#); [S.S.I. 2002/321](#), **art. 2**, [Sch.](#) (subject to transitional provisions and savings in [arts. 3-5](#))
- F6** S. 23A(5)(e) repealed (30.9.2002) by [2001 asp 10](#), s. 112, [Sch. 10 para. 9\(3\)\(b\)](#); [S.S.I. 2002/321](#), **art. 2**, [Sch.](#) (subject to transitional provisions and savings in [arts. 3-5](#))
- F7** S. 5A inserted (11.11.1999) by [1999 c. 33](#), **ss. 169(1), 170(3)(s)**, [Sch. 14 para. 79](#)
- F8** Words in s. 23A(5A) substituted (16.6.2006) by [Immigration, Asylum and Nationality Act 2006 \(c. 13\)](#), **ss. 43(4)(c), 62(1), (2)**; [S.I. 2006/1497](#), **art. 3**, [Sch.](#)
- F9** S. 23A(5B) inserted (15.6.2005) by [The Displaced Persons \(Temporary Protection\) Regulations 2005 \(S.I. 2005/1379\)](#), **reg. 1**, [Sch. para. 3](#)

Marginal Citations

- M1** [1987 c. 26\(61\)](#).
- M2** [1973 c. 65\(81:2\)](#).
- M3** [1968 c. 16\(123:4\)](#).
- M4** [1980 c. 65\(123:1, 2\)](#).

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M5 1985 c. 69(61).

24 Special provisions with respect to agricultural employees.

- (1) The following provisions of this section shall apply where the tenant under the former tenancy occupied the premises under the terms of his employment as a person employed in agriculture (as defined in section 17 of the ^{M6}Agricultural Wages (Scotland) Act 1949).
- (2) In this section “the occupier”, in relation to any premises, means—
 - (a) the tenant under the former tenancy; or
 - (b) the widow or widower of the tenant under the former tenancy residing with him at his death or, if the former tenant leaves no such widow or widower, any member of his family residing with him at his death.

[^{F10}(2A) In accordance with section 23(2A) above, any reference in subsections (1) and (2) above to the tenant under the former tenancy includes a reference to the person having a right to occupy premises as a dwelling otherwise than under a tenancy, being a right which has come to an end; and in the following provisions of this section the expressions “tenancy” and “rent” and any other expressions referable to a tenancy shall be construed accordingly.]

- (3) Without prejudice to any power of the court apart from this section to postpone the operation or suspend the execution of a decree of removing or warrant of ejection or other like order (in this section referred to as an “order for possession”), if in proceedings by the owner against the occupier the court makes an order for the possession of the premises the court may suspend the execution of the order on such terms and conditions, including conditions as to the payment by the occupier of arrears of rent, compensation to the owner for loss of possession and otherwise as the court thinks reasonable.
- (4) Where the order for possession is made within the period of six months beginning with the date when the former tenancy came to an end, then, without prejudice to any powers of the court under the preceding provisions of this section or apart from this section to postpone the operation or suspend the execution of the order for a longer period, the court shall suspend the execution of the order (on such terms and conditions, including conditions as to the payment by the occupier of arrears of rent, compensation to the owner for loss of possession and otherwise as the court thinks reasonable) for the remainder of the period of six months aforesaid unless the court—
 - (a) is satisfied either—
 - (i) that other suitable accommodation is, or will within that period be made, available to the occupier; or
 - (ii) that the efficient management of any agricultural land or the efficient carrying on of any agricultural operations would be seriously prejudiced unless the premises are available for occupation by a person employed or to be employed by the owner; or
 - (iii) that greater hardship (being hardship in respect of matters other than the carrying on of such a business as aforesaid) would be caused by the suspension of the order until the end of that period than by its execution within that period; or
 - (iv) that the occupier, or any person residing or lodging with the occupier, has been causing damage to the premises or has been guilty of

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conduct which is a nuisance or annoyance to persons occupying other premises; and

- (b) considers that it would be reasonable not to suspend the execution of the order for the remainder of that period;

but a decision of the court not to suspend the execution of the order under this subsection shall not prejudice any other power of the court to postpone the operation or suspend the execution of the order for the whole or part of the period of six months aforesaid.

- (5) Where the court has under the preceding provisions of this section suspended the execution of an order for possession it may from time to time vary the period of suspension or terminate it and may vary any terms or conditions imposed by virtue of this section.
- (6) In considering whether or how to exercise its powers under subsection (3) of this section the court shall have regard to all the circumstances and, in particular, to the following, that is to say—
- (a) whether other suitable accommodation is or can be made available to the occupier;
 - (b) whether the efficient management of any agricultural land or the efficient carrying on of any agricultural operations would be seriously prejudiced unless the premises were available for occupation by a person employed or to be employed by the owner; and
 - (c) whether greater hardship would be caused by the suspension of the execution of the order than by its execution without suspension or further suspension.
- (7) Where in proceedings for the recovery of possession of the premises the court makes an order for possession but suspends the execution of the order by virtue of this section, it shall make no order for expenses, unless it appears to the court, having regard to the conduct of the owner or of the occupier, that there are special reasons for making such an order.
- (8) Where, in the case of an order for possession of the premises to which subsection (4) of this section applies, the execution of the order is not suspended under that subsection or, the execution of the order having been so suspended, the suspension is terminated, then, if it is subsequently made to appear to the court that the failure to suspend the execution of the order or, as the case may be, the termination of the suspension was—
- (a) attributable to the provisions of paragraph (a)(ii) of that subsection, and
 - (b) due to misrepresentation or concealment of material facts by the owner of the premises,

the court may order the owner to pay the occupier such sum as appears sufficient as compensation for damage or loss sustained by the occupier as a result of that failure or termination.

Textual Amendments

F10 S. 24(2A) inserted by [Housing \(Scotland\) Act 1988 \(c. 43, SIF 61\)](#), **ss. 39(3)**, 52

Marginal Citations

M6 1949 c. 30.

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25 Interpretation.

(1) In this Part of this Act—

“the court”, subject to the provisions of this section, means the sheriff;
“statutorily protected tenancy” means a protected tenancy or a tenancy to which any of the following Act apply—

- (i) the Small Landholders (Scotland) Acts 1886 to 1931;
- (ii) the Tenancy of Shops (Scotland) ^{M7}Act 1949;
- (iii) ^{F11}[the Agricultural Holdings (Scotland) Act 1991]
- (iv) the Crofters (Scotland) ^{M8}Acts 1955 and ^{M9}1961. ^{F12},
or a limited duration tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)).]

(2) Nothing in this Part of this Act shall affect any jurisdiction of the Court of Session in relation to actions of removing.

(3) Nothing in this Part of this Act shall affect the operation of—

- (a) section 19 of the ^{M10}Defence Act 1842;
- (b) section 89 of the ^{M11}Lands Clauses Consolidation (Scotland) Act 1845;
- ^{F13}(c)

Textual Amendments

F11 S. 25(1)(iii) substituted by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), s. 88(1), [Sch. 11 para.41](#) (with s. 45(3)).

F12 Words in s. 25(1) added (27.11.2003) by virtue of [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#), s. 95(3)(4), [sch. para. 6](#) (with s. 95(2)); S.S.I. 2003/548, art. 2(i) (with sch.)

F13 S. 25(3)(c) repealed (5.11.1993) by [1993 c. 50, s.1\(1\)](#), [Sch. 1 Pt. X](#) Gp. 2.

Marginal Citations

M7 1949 c. 25.

M8 1955 c. 21.

M9 1961 c. 58.

M10 1842 c. 94.

M11 1845 c. 19

26 Application to Crown.

In so far as this Part of this Act requires the taking of proceedings in the court for the recovery of possession or confers any powers on the court, it shall be binding on the Crown.

27 Application to sheriff

Where an application is made to the sheriff for an order under this Part of this Act, it shall be made by way of summary cause within the meaning of the ^{M12}Sheriff Courts (Scotland) Act 1971.

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M12 [1971 c. 58](#).

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