



# Rent (Scotland) Act 1984

## 1984 CHAPTER 58

### PART VIII

#### PREMIUMS, ETC.

#### **82 Prohibition of premiums and loans on grant of protected tenancies**

- (1) Any person who, as a condition of the grant, renewal or continuance of a protected tenancy, requires, in addition to the rent, the payment of any premium or the making of any loan (whether secured or unsecured) shall be guilty of an offence under this section.
- (2) Any person who, in connection with the grant, renewal or continuance of a protected tenancy, receives any premium in addition to the rent shall be guilty of an offence under this section.
- (3) A person guilty of an offence under this section shall be liable to a fine not exceeding level 3 on the standard scale.
- (4) The court by which a person is convicted of an offence under this section relating to requiring or receiving any premium may order the amount of the premium to be repaid to the person by whom it was paid.

#### **83 Prohibition of premiums and loans on assignation of protected tenancies**

- (1) Subject to the following provisions of this section and to section 84 below, any person who, as a condition of the assignation of a protected tenancy, requires the payment of any premium or the making of any loan (whether secured or unsecured) shall be guilty of an offence under this section.
- (2) Subject to the following provisions of this section and to section 84 below, any person who, in connection with the assignation of a protected tenancy, receives any premium shall be guilty of an offence under this section.

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- (3) Notwithstanding anything in subsections (1) and (2) above, an assignor of a protected tenancy of a dwelling-house may, if apart from this section he would be entitled to do so, require the payment by the assignee or receive from the assignee a payment—
- (a) of so much of any outgoings discharged by the assignor as is referable to any period after the assignation takes effect;
  - (b) of a sum not exceeding the amount of any expenditure reasonably incurred by the assignor in carrying out any structural alteration of the dwelling-house or in providing or improving fixtures therein, being fixtures which, as against the landlord, he is not entitled to remove ;
  - (c) where the assignor became a tenant of the dwelling-house by virtue of an assignation of the protected tenancy, of a sum not exceeding any reasonable amount paid by him to his assignor in respect of expenditure incurred by that assignor, or by any previous assignor of the tenancy, in carrying out any such alteration or in providing or improving any such fixtures as are mentioned in paragraph (b) above ; or
  - (d) where part of the dwelling-house is used as a shop or office, or for business, trade or professional purposes, of a reasonable amount in respect of any goodwill of the business, trade or profession, being goodwill transferred to the assignee in connection with the assignation or accruing to him in consequence thereof.
- (4) Without prejudice to subsection (3) above, the assignor shall not be guilty of an offence under this section by reason only that—
- (a) any payment of outgoings required or received by him on the assignation was a payment of outgoings referable to a period before the assignation took effect; or
  - (b) any expenditure which he incurred in carrying out structural alterations of the dwelling-house or in providing or improving fixtures therein and in respect of which he required or received the payment of any sum on the assignation was not reasonably incurred ; or
  - (c) any amount paid by him as mentioned in subsection (3)(c) above was not a reasonable amount; or
  - (d) any amount which he required to be paid, or which he received, on the assignation in respect of goodwill was not a reasonable amount;
- but nothing in this subsection shall prejudice any right of recovery under section 88(1) below.
- (5) Notwithstanding anything in subsections (1) and (2) above, the provisions of Schedule 7 to this Act shall have effect in relation to the assignation of protected tenancies which are regulated tenancies in cases where a premium was lawfully required or received at the commencement of the tenancy.
- (6) A person guilty of an offence under this section shall be liable to a fine not exceeding level 3 on the standard scale.
- (7) The court by which a person is convicted of an offence under this section relating to requiring or receiving any premium may order the amount of the premium, or so much of it as cannot lawfully be required or received under this section (including any amount which, by virtue of subsection (4) above, does not give rise to an offence) to be repaid to the person by whom it was paid.

#### **84 Power to charge premium on assignation of tenancy where premium lawfully charged on earlier assignation**

- (1) Where before 2nd June 1949 a premium has been paid on the assignation of a protected tenancy, then subject as hereinafter provided section 83 above shall not prevent the requiring or receiving on an assignation of that tenancy after 29th August 1954 of a premium not exceeding the amount hereinafter specified.
- (2) The said amount is an amount which bears to the premium paid on the earlier assignation the same proportion as the period of the tenancy still to run at the time of the later assignation bears to the period of the tenancy still to run at the time of the earlier assignation, it being assumed that no power to determine the tenancy not yet exercised will be exercised either by the landlord or the tenant.
- (3) Where before 2nd June 1949 a premium has been paid on more than one occasion on the assignation of the same tenancy, any of those assignations except the last shall be disregarded for the purposes of this section.
- (4) In so far as any premium paid on the assignation of a protected tenancy before 2nd June 1949 has been recovered under the provisions of section 88(1) below, the premium shall be treated for the purposes of the foregoing provisions of this section as not having been paid.
- (5) Where apart from this subsection the requirement or receiving of a premium would be allowable both under the foregoing provisions of this section and under Schedule 7 to this Act, the foregoing provisions of this section shall have effect to the exclusion of the said Schedule 7.
- (6) Any reference in this section to a premium does not include a premium which consisted only of any such outgoings, sum or amount as fall within section 83(3) above and, in the case of a premium which included any such outgoings, sum or amount, so much only of the premium as does not consist of those outgoings, sum or amount shall be treated as the premium for the purposes of this section.

#### **85 Prohibition of premiums on grant, etc. of Part VII contracts**

- (1) The provisions of this section apply in relation to any dwelling-house if
  - (a) under Part VII of this Act, a rent is registered for that dwelling-house in the register kept in pursuance of section 67 above ; and
  - (b) in a case where the approval, reduction or increase of the rent by the rent assessment committee is limited to rent payable in respect of a particular period, that period has not expired.
- (2) Subject to subsection (3) below, any person who, as a condition of the grant, renewal, continuance or assignation of rights under a Part VII contract, requires the payment of any premium shall be guilty of an offence under this section.
- (3) Nothing in subsection (2) above shall prevent a person from requiring—
  - (a) that there shall be paid so much of any outgoings discharged by a grantor or assignor as is referable to any period after the grant or assignation takes effect; or
  - (b) that there shall be paid a reasonable amount in respect of goodwill of a business, trade, or profession, where the goodwill is transferred to a grantee or assignee in connection with the grant or assignation or accrues to him in consequence thereof.

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- (4) A person guilty of an offence under this section shall be liable to a fine not exceeding level 3 on the standard scale.
- (5) The court by which a person is convicted of an offence under this section may order the amount of the premium, or so much of it as cannot lawfully be required under this section, to be repaid to the person by whom it was paid.

## **86 Excessive price for furniture to be treated as premium**

Where the purchase of any furniture has been required as a condition of the grant, renewal, continuance or assignation—

- (a) of a protected tenancy, or
- (b) of rights under a Part VII contract which relates to a dwelling-house falling within section 85(1) above,

then, if the price exceeds the reasonable price of the furniture, the excess shall be treated, for the purposes of this Part of this Act, as if it were a premium required to be paid as a condition of the grant, renewal, continuance or assignation of the protected tenancy or, as the case may be, the rights under the Part VII contract.

## **87 Punishment of attempts to obtain from prospective tenants excessive prices for furniture**

- (1) Any person who, in connection with the proposed grant, renewal, continuance or assignation of a protected tenancy on terms which require the purchase of furniture,—
  - (a) offers the furniture at a price which he knows or ought to know is unreasonably high, or otherwise seeks to obtain such a price for the furniture, or
  - (b) fails to furnish, to any person seeking to obtain or retain accommodation whom he provides with particulars of the tenancy, a written inventory of the furniture, specifying the price sought for each item,shall be liable to a fine not exceeding level 3 on the standard scale.
- (2) Where a local authority have reasonable grounds for suspecting that an offence under subsection (1)(a) above has been committed with respect to a protected tenancy or proposed protected tenancy of a dwelling-house, they may give notice to the person entitled to possession of the dwelling-house or his agent that, on such date as may be specified in the notice, which shall not be earlier than 24 hours after the giving of the notice or, if the dwelling-house is unoccupied, than the expiry of such period after the giving of the notice as may be reasonable in the circumstances, facilities will be required for entry to the dwelling-house and inspection of the furniture therein.
- (3) A notice under this section may be given by post.
- (4) Where a notice is given under this section any person authorised by the local authority may avail himself of any facilities for such entry and inspection as are referred to in subsection (2) above which are provided on the specified date but shall, if so required, produce some duly authenticated document showing that he is authorised by the local authority.
- (5) If it is shown to the satisfaction of the sheriff or to a justice having jurisdiction in the place where the dwelling-house is situated, on a sworn statement in writing, that a person required to give facilities under this section has failed to give them, the sheriff or justice may, by warrant under his hand, empower the local authority, by any person

authorised by them, to enter the dwelling-house in question, if need be by force, and inspect the furniture therein.

- (6) A person empowered by or under the foregoing provisions of this section to enter a dwelling-house may take with him such other persons as may be necessary and, if the dwelling-house is unoccupied, shall leave it as effectively secured against trespassers as he found it.
- (7) Any person who wilfully obstructs a person acting in pursuance of a warrant issued under subsection (5) above shall be liable to a fine not exceeding level 3 on the standard scale.

## **88 Recovery of premiums and loans unlawfully required or received**

- (1) Where under any agreement (whether made before or after 12th August 1971) any premium is paid after 12th August 1971 and the whole or any part of that premium could not lawfully be required or received under the preceding provisions of this Part of this Act, the amount of the premium or, as the case may be, so much of it as could not lawfully be required or received, shall be recoverable by the person by whom it was paid.
- (2) Nothing in section 82 or 83 above shall invalidate any agreement for the making of a loan or any security issued in pursuance of such an agreement but, notwithstanding anything in the agreement for the loan, any sum lent in circumstances involving a contravention of either of those sections shall be repayable to the lender on demand.

## **89 Avoidance of requirements for advance payment of rent in certain cases**

- (1) Where a protected tenancy which is a regulated tenancy is granted, continued or renewed, any requirement that rent shall be payable—
  - (a) before the beginning of the rental period in respect of which it is payable, or
  - (b) earlier than six months before the end of the rental period in respect of which it is payable (if that period is more than six months),shall be void, whether the requirement is imposed as a condition of the grant, renewal or continuance of the tenancy or under the terms thereof; and any requirement avoided by this section is, in the following provisions of this section, referred to as a "prohibited requirement".
- (2) Rent for any rental period to which a prohibited requirement relates shall be irrecoverable from the tenant.
- (3) Any person who purports to impose any prohibited requirement shall be liable to a fine not exceeding level 3 on the standard scale, and the court by which he is convicted may order any amount of rent paid in compliance with the prohibited requirement to be repaid to the person by whom it was paid.
- (4) Where a tenant has paid on account of rent any amount which, by virtue of this section is irrecoverable by the landlord, then, subject to subsection (6) below, the tenant who paid it shall be entitled to recover that amount from the landlord who received it or his personal representatives.
- (5) Subject to subsection (6) below, any amount which a tenant is entitled to recover under subsection (4) above may, without prejudice to any other method of recovery, be deducted by the tenant from any rent payable by him to the landlord.

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- (6) No amount which a tenant is entitled to recover under subsection (4) above shall be recoverable at any time after the expiry of two years from the date of payment.
- (7) Any person who, in any rent book or similiar document, makes an entry showing or purporting to show any tenant as being in arrears in respect of any sum on account of rent which is irrecoverable by virtue of this section shall be liable to a fine not exceeding level 3 on the standard scale, unless he proves that, at the time of the making of the entry, the landlord had a bona fide claim that the sum was recoverable.
- (8) If, where any such entry has been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant to do so, refuses or neglects to cause the entry to be deleted within seven days, the landlord shall be liable to a fine not exceeding level 3 on the standard scale, unless he proves that, at the time of the neglect or refusal to cause the entry to be deleted, he had a bona fide claim that the sum was recoverable.

## **90 Interpretation of Part VIII**

- (1) In this Part of this Act, unless the context otherwise requires—
  - " furniture " includes fittings and other articles ;
  - " premium " includes any fine or other like sum and any other pecuniary consideration in addition to rent;
  - " registered rent" means the rent registered under Part V of this Act; and
  - " rental period " means a period in respect of which a payment of rent falls to be made.
- (2) For the avoidance of doubt it is hereby declared that nothing in this Part of this Act shall render any amount recoverable more than once.
- (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.