



# Housing (Scotland) Act 1987

## 1987 CHAPTER 26

### PART III

#### RIGHTS OF PUBLIC SECTOR TENANTS

##### *Security of tenure*

#### **44 Secure tenancies.**

- (1) Subject to subsection (4) and to section 45 and section 52(6), a tenancy (whenever created) of a house shall be a secure tenancy if—
  - (a) the house is let as a separate dwelling;
  - (b) the tenant is an individual and the house is his only or principal home; and
  - (c) the landlord is one of the bodies mentioned in subsection (2).
- (2) The bodies referred to in subsections (1)(c) and (7) are the bodies mentioned in section 61(2)(a) and any housing trust which was in existence on 13th November 1953.
- (3) Where a tenancy of a house is held jointly by two or more individuals, the requirements of subsection (1)(b) shall be deemed to be satisfied if all the joint tenants are individuals and at least one of the joint tenants occupies the house as his only or principal residence.
- (4) A tenancy shall not be a secure tenancy if it is a tenancy of a kind mentioned in Schedule 2.
- (5) Where the tenancy of a house is excluded from being a secure tenancy by reason only of the operation of paragraph 1 or 8 of Schedule 2, sections 53 to 60 shall nevertheless apply to that tenancy as if it were a secure tenancy.
- (6) A tenancy which has become a secure tenancy shall continue to be a secure tenancy notwithstanding that the requirements of subsection (1)(b) may have ceased to be fulfilled.

*Status: Point in time view as at 19/12/2001.*

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- (7) Where a tenant under a secure tenancy is accommodated temporarily in another house of which the landlord is a body mentioned in subsection (2), while the house which he normally occupies is not available for occupation, the other house shall be deemed for the purposes of this Part, except sections 46 and 47, to be the house which he normally occupies.

#### **45 Special provision for housing associations.**

- (1) A tenancy shall not be a secure tenancy at any time when the interest of the landlord belongs to a registered housing association which is a co-operative housing association.
- (2) Sections 44, 46 to 50, 51, 52, and 82 to 84 shall apply to a tenancy at any time when the interest of the landlord belongs to a housing association which is a co-operative housing association and is not registered.
- (3) If a registered housing association which is a registered co-operative housing association ceases to be registered, it shall notify those of its tenants who thereby become secure tenants.
- (4) Notice under subsection (3) shall be given in writing to each tenant concerned, within the period of 21 days beginning with the date on which the association ceases to be registered.
- (5) In this section—
- (a) references to registration in relation to a housing association are to registration under the Housing Associations Act 1985;
  - (b) “co-operative housing association” has the same meaning as in section 300(1)(b).

#### **46 Restriction on termination of secure tenancy.**

- (1) Notwithstanding any provision contained in the tenancy agreement, a secure tenancy may not be brought to an end except—
- (a) by the death of the tenant (or, where there is more than one, of any of them), where there is no qualified person within the meaning of section 52;
  - (b) by operation of section 52(4) or (5);
  - (c) by written agreement between the landlord and the tenant;
  - (d) by operation of section 50(2);
  - (e) by an order for recovery of possession under section 48(2); or
  - (f) by 4 weeks’ notice given by the tenant to the landlord.
- (2) If, while the house which the tenant under a secure tenancy normally occupies is not available for occupation, the tenant is accommodated temporarily in another house of which the landlord is a body mentioned in section 44(2), either—
- (a) by agreement; or
  - (b) following an order under section 48(2) (in a case where an order has also been made under subsection (5) of that section),
- the landlord shall not be entitled to bring the tenant’s occupation of the other house to an end before the house which he normally occupies is available for occupation unless the secure tenancy has been brought to an end.

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#### **47 Proceedings for possession.**

- (1) The landlord under a secure tenancy may raise proceedings for recovery of possession of the house by way of summary cause in the sheriff court of the district in which it is situated.
- (2) Proceedings for recovery of possession of a house subject to a secure tenancy may not be raised unless—
  - (a) the landlord has served on the tenant a notice complying with subsection (3);
  - (b) the proceedings are raised on or after the date specified in the said notice; and
  - (c) the notice is in force at the time when the proceedings are raised.
- (3) A notice under this section shall be in a form prescribed by the Secretary of State by statutory instrument, and shall specify—
  - (a) the ground, being a ground set out in Part I of Schedule 3, on which proceedings for recovery of possession are to be raised; and
  - (b) a date, not earlier than 4 weeks from the date of service of the notice or the date on which the tenancy could have been brought to an end by a notice to quit had it not been a secure tenancy, whichever is later, on or after which the landlord may raise proceedings for recovery of possession.
- (4) A notice under this section shall cease to be in force 6 months after the date specified in it in accordance with subsection (3)(b), or when it is withdrawn by the landlord, whichever is earlier.

#### **48 Powers of sheriff in proceedings.**

- (1) The court may, as it thinks fit, adjourn proceedings under section 47 on a ground set out in any of paragraphs 1 to 7 and 16 of Part I of Schedule 3 for a period or periods, with or without imposing conditions as to payment of outstanding rent or other conditions.
- (2) Subject to subsection (1), in proceedings under section 47 the court shall make an order for recovery of possession if it appears to the court that the landlord has a ground for recovery of possession, being—
  - (a) a ground set out in any of paragraphs 1 to 7 of that Part and specified in the notice required by section 47 and that it is reasonable to make the order; or
  - (b) a ground set out in any of paragraphs 8 to 15 of that Part and so specified and that other suitable accommodation will be available for the tenant when the order takes effect; or
  - (c) the ground set out in paragraph 16 of that Part and so specified and both that it is reasonable to make the order and that other suitable accommodation will be available as aforesaid.
- (3) Part II of Schedule 3 shall have effect to determine whether accommodation is suitable for the purposes of subsection (2)(b) or (c).
- (4) An order under subsection (2) shall appoint a date for recovery of possession and shall have the effect of—
  - (a) terminating the tenancy; and
  - (b) giving the landlord the right to recover possession of the house, at that date.

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- (5) Where, in proceedings under section 47 on the ground set out in paragraph 10 of Part I of Schedule 3, it appears to the court that it is the intention of the landlord—
- (a) that substantial work will be carried out on the building (or a part of the building) which comprises or includes the house; and
  - (b) that the tenant should return to the house after the work is completed,
- the court shall make an order that the tenant shall be entitled to return to the house after the work is completed; and subsection (4)(a) shall not apply in such a case.

#### **49 Rights of landlord where a secure tenancy appears to have been abandoned.**

- (1) This section shall have effect where a landlord who has let a house under a secure tenancy has reasonable grounds for believing that—
  - (a) the house is unoccupied; and
  - (b) the tenant does not intend to occupy it as his home.
- (2) The landlord shall be entitled to enter the house at any time for the purpose of securing the house and any fittings, fixtures or furniture against vandalism.
- (3) For the purposes of subsection (2), the landlord and its servants or agents may open, by force if necessary, doors and lockfast places.
- (4) The landlord may take possession of the house in accordance with section 50.

#### **50 Repossession.**

- (1) A landlord wishing to take possession of a house under section 49(4) shall serve on the tenant a notice—
  - (a) stating that the landlord has reason to believe that the house is unoccupied and that the tenant does not intend to occupy it as his home;
  - (b) requiring the tenant to inform the landlord in writing within 4 weeks of service of the notice if he intends to occupy the house as his home; and
  - (c) informing the tenant that, if it appears to the landlord at the end of the said period of 4 weeks that the tenant does not intend so to occupy the house, the secure tenancy will be terminated forthwith.
- (2) Where the landlord has—
  - (a) served on the tenant a notice which complies with subsection (1); and
  - (b) made such inquiries as may be necessary to satisfy the landlord that the house is unoccupied and that the tenant does not intend to occupy it as his home,
 and at the end of the period of 4 weeks mentioned in subsection (1)(c) is so satisfied, it may serve a further notice on the tenant bringing the tenancy to an end forthwith.
- (3) Where a tenancy has been terminated in accordance with this section the landlord shall be entitled to take possession of the house forthwith without any further proceedings.
- (4) The Secretary of State may by order made by statutory instrument make provision for the landlord to secure the safe custody and delivery to the tenant of any property which is found in a house to which this section applies, and in particular—
  - (a) for requiring charges to be paid in respect of such property before it is delivered to the tenant; and

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- (b) for authorising the disposal of such property, if the tenant has not arranged for its delivery to him before the expiry of such period as the order may specify, and the application of any proceeds towards any costs incurred by the landlord and any rent due but unpaid by the tenant to the landlord.

## **51 Tenant's right of recourse to sheriff.**

- (1) A tenant under a secure tenancy who is aggrieved by termination of the tenancy by the landlord under section 50(2) may raise proceedings by summary application within 6 months after the date of the termination in the sheriff court of the district in which the house is situated.
- (2) Where in proceedings under this section it appears to the sheriff that—
  - (a) the landlord has failed to comply with any provision of section 50; or
  - (b) the landlord did not have reasonable grounds for finding that the house was unoccupied, or did not have reasonable grounds for finding that the tenant did not intend to occupy it as his home; or
  - (c) the landlord was in error in finding that the tenant did not intend to occupy the house as his home, and the tenant had reasonable cause, by reason of illness or otherwise, for failing to notify the landlord of his intention so to occupy it,he shall—
  - (i) where the house has not been let to a new tenant, make an order that the secure tenancy shall continue; or
  - (ii) in any other case, direct the landlord to make other suitable accommodation available to the tenant.
- (3) Part II of Schedule 3 to this Act shall have effect to determine whether accommodation is suitable for the purposes of subsection (2)(ii).

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