



Housing (Scotland) Act 1988

1988 CHAPTER 43

PART II

RENTED ACCOMMODATION

Assured tenancies—security of tenure

16 Security of tenure

(1) After the termination of a contractual tenancy which was an assured tenancy the person who, immediately before that termination, was the tenant, so long as he retains possession of the house without being entitled to do so under a contractual tenancy shall, subject to section 12 above and sections 18 and 32 to 35 below—

- (a) continue to have the assured tenancy of the house; and
- (b) observe and be entitled to the benefits of all the terms and conditions of the original contract of tenancy so far as they are consistent with this Act but excluding any—
 - (i) which makes provision for the termination of the tenancy by the landlord or the tenant; or
 - (ii) which makes provision for an increase in rent (including provision whereby the rent for a particular period will or may be greater than that for an earlier period) otherwise than by an amount specified in [F¹ or fixed by reference to factors specified in] that contract or by a percentage there specified [F¹ or fixed by reference to factors there specified,] of an amount of rent payable under the tenancy,

and references in this Part of this Act to a “statutory assured tenancy” are references to an assured tenancy which a person is continuing to have by virtue of this subsection, subsection (1) of section 31 below, or section 3A of the ^{M1}Rent (Scotland) Act 1984.

[F²(1A) The factors referred to in subsection (1)(b)(ii) above must be—

- (a) factors which, once specified, are not wholly within the control of the landlord; and

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- (b) such as will enable the tenant at all material times to ascertain without undue difficulty any amount or percentage falling to be fixed by reference to them.]
- (2) A statutory assured tenancy cannot be brought to an end by the landlord except by obtaining an order of the sheriff in accordance with the following provisions of this Part of this Act.
- (3) Notwithstanding anything in the terms and conditions of tenancy of a house being a statutory assured tenancy, a landlord who obtains an order for possession of the house as against the tenant shall not be required to give him any notice to quit.

Textual Amendments

- F1** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 194(1), **Sch. 11 para. 99(a)**
- F2** S. 16(1A) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 61\)](#), s. 194(1), **Sch. 11 para. 99(b)**

Marginal Citations

- M1** 1984 c. 58.

17 Fixing of terms of statutory assured tenancy.

- (1) In this section, in relation to a statutory assured tenancy “the former tenancy” means the tenancy on the termination of which the statutory assured tenancy arises.
- (2) Not later than the first anniversary of the termination of the former tenancy, the landlord may serve on the tenant, or the tenant may serve on the landlord, a notice in the prescribed form—
- proposing terms of the statutory assured tenancy other than as to the amount of the rent different from those which have effect by virtue of section 16(1) (b) above; and
 - proposing, if appropriate, an adjustment of the rent to take account of the proposed terms.
- (3) Where a notice has been served under subsection (2) above—
- within the period of three months beginning on the date on which the notice was served on him, the landlord or the tenant, as the case may be, may refer the notice to a rent assessment committee under subsection (4) below in the prescribed form; and
 - if the notice is not so referred, then, with effect from such date, not falling within the period of three months referred to in paragraph (a) above, as may be specified in the notice, the terms proposed in the notice shall become terms of the tenancy in substitution for any other terms dealing with the same subject matter and the amount of the rent shall be varied in accordance with any adjustment so proposed.
- (4) Where a notice under subsection (2) above is referred to a rent assessment committee, the committee shall consider the terms proposed in the notice and shall determine whether those terms, or some other terms (dealing with the same subject matter as the proposed terms), are such as, in the committee’s opinion, might reasonably be expected to be found in a contractual assured tenancy of the house concerned, being a tenancy—

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- (a) which begins at the termination of the former tenancy; and
 - (b) which is granted by a willing landlord on terms which, except in so far as they relate to the subject matter of the proposed terms, are those of the statutory assured tenancy at the time of the committee's consideration.
- (5) Whether or not a notice under subsection (2) above proposes an adjustment of the amount of the rent under the statutory assured tenancy, where a rent assessment committee determine any terms under subsection (4) above, they shall, if they consider it appropriate, specify such an adjustment to take account of the terms so determined.
- (6) In making a determination under subsection (4) above, or specifying an adjustment of an amount of rent under subsection (5) above, there shall be disregarded any effect on the terms or the amount of the rent attributable to the granting of a tenancy to a sitting tenant.
- (7) Where a notice under subsection (2) above is referred to a rent assessment committee, then, unless the landlord and the tenant otherwise agree, with effect from such date as the committee may direct—
 - (a) the terms determined by the committee shall become terms of the statutory assured tenancy in substitution for any other terms dealing with the same subject matter; and
 - (b) the amount of the rent under the statutory assured tenancy shall be altered to accord with any adjustment specified by the committee,but for the purposes of paragraph (b) above, the committee shall not direct a date earlier than the date on which the notice in question was referred to them.
- (8) Nothing in this section requires a rent assessment committee to continue with a determination under subsection (4) above if the tenancy has been brought to an end by order of the sheriff under this Part of this Act or if the landlord and tenant give notice in writing that they no longer require such a determination.

18 Orders for possession.

- (1) The sheriff shall not make an order for possession of a house let on an assured tenancy except on one or more of the grounds set out in Schedule 5 to this Act.
- (2) The following provisions of this section have effect, subject to section 19 below, in relation to proceedings for the recovery of possession of a house let on an assured tenancy.
- (3) If the sheriff is satisfied that any of the grounds in Part I of Schedule 5 to this Act is established then, subject to subsection (6) below, he shall make an order for possession.
- (4) If the sheriff is satisfied that any of the grounds in Part II of Schedule 5 to this Act is established, he shall not make an order for possession unless he considers it reasonable to do so.
- (5) Part III of Schedule 5 to this Act shall have effect for supplementing Ground 9 in that Schedule and Part IV of that Schedule shall have effect in relation to notices given as mentioned in Grounds 1 to 5 of that Schedule.
- (6) The sheriff shall not make an order for possession of a house which is for the time being let on an assured tenancy, not being a statutory assured tenancy, unless—

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- (a) the ground for possession is Ground 2 or Ground 8 in Part I of Schedule 5 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9 or Ground 10 or Ground 17; and
 - (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question.
- (7) Subject to the preceding provisions of this section, the sheriff may make an order for possession of a house on grounds relating to a contractual tenancy which has been terminated; and where an order is made in such circumstances, any statutory assured tenancy which has arisen on that termination shall, without any notice, end on the day on which the order takes effect.

19 Notice of proceedings for possession.

- (1) The sheriff shall not entertain proceedings for possession of a house let on an assured tenancy unless—
- (a) the landlord (or, where there are joint landlords, any of them) has served on the tenant a notice in accordance with this section; or
 - (b) he considers it reasonable to dispense with the requirement of such a notice.
- (2) The sheriff shall not make an order for possession on any of the grounds in Schedule 5 to this Act unless that ground [^{F3}and particulars of it are] specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the sheriff.
- (3) A notice under this section is one [^{F4}in the prescribed form] informing the tenant that—
- (a) the landlord intends to raise proceedings for possession of the house on one or more of the grounds specified in the notice; and
 - (b) those proceedings will not be raised earlier than the expiry of the period of two weeks or two months (whichever is appropriate under subsection (4) below) from the date of service of the notice.
- (4) The minimum period to be specified in a notice as mentioned in subsection (3)(b) above is—
- (a) two months if the notice specifies any of Grounds 1, 2, 5, 6, 7, 9 and 17 in Schedule 5 to this Act (whether with or without other grounds); and
 - (b) in any other case, two weeks.
- (5) The sheriff may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground 8 in Schedule 5 to this Act.
- (6) Where a notice under this section relating to a contractual tenancy—
- (a) is served during the tenancy; or
 - (b) is served after the tenancy has been terminated but relates (in whole or in part) to events occurring during the tenancy,
- the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory assured tenancy arising on the termination of the contractual tenancy.
- (7) A notice under this section shall cease to have effect 6 months after the date on or after which the proceedings for possession to which it relates could have been raised.

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Textual Amendments

- F3** Words substituted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(1), [Sch. 17 Pt. I para. 85\(a\)](#)
F4 Words inserted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140(1), [Sch. 17 Pt. I para. 85\(b\)](#)

20 Extended discretion of court in possession claims.

- (1) Subject to subsection (6) below, the sheriff may adjourn for such period or periods as he thinks fit, proceedings for possession of a house let on an assured tenancy.
- (2) On the making of an order for possession of a house let on an assured tenancy or at any time before the execution of such an order, the sheriff, subject to subsection (6) below, may—
 - (a) sist or suspend execution of the order; or
 - (b) postpone the date of possession,for such period or periods as he thinks fit.
- (3) On any such adjournment as is referred to in subsection (1) above or on any such sist, suspension or postponement as is referred to in subsection (2) above, the sheriff, unless he considers that to do so would cause exceptional hardship to the tenant or would otherwise be unreasonable, shall impose conditions with regard to payment by the tenant of arrears of rent (if any) and rent or payments in respect of occupation after the termination of the tenancy and may impose such other conditions as he thinks fit.
- (4) If any such conditions as are referred to in subsection (3) above are complied with, the sheriff may, if he thinks fit, recall any such order as is referred to in subsection (2) above.
- (5) In any case where—
 - (a) at a time when proceedings are brought for possession of a house let on an assured tenancy, any person having occupancy rights under section 1 or 18 of the ^{M2}Matrimonial Homes (Family Protection) (Scotland) Act 1981 is in occupation of the house; and
 - (b) the assured tenancy is terminated as a result of those proceedings,that person, so long as he or she remains in occupation, shall have the same rights in relation to, or in connection with, any such adjournment as is referred to in subsection (1) above or any such sist, suspension or postponement as is referred to in subsection (2) above, as he or she would have if those occupancy rights were not affected by the termination of the tenancy.
- (6) This section does not apply if the sheriff is satisfied that the landlord is entitled to possession of the house on the ground specified in section 33(1) of this Act or on any of the grounds in Part I of Schedule 5 to this Act.

Marginal Citations

- M2** 1981 c. 59.

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21 Special provisions applicable to shared accommodation.

- (1) This section applies in a case falling within subsection (1) of section 14 above and expressions used in this section have the same meaning as in that section.
- (2) Without prejudice to the enforcement of any order made under subsection (3) below, while the tenant is in possession of the separate accommodation, no order shall be made for possession of any of the shared accommodation, whether on the application of the immediate landlord of the tenant or on the application of any person from whom that landlord derives title, unless a like order has been made, or is made at the same time, in respect of the separate accommodation; and the provisions of section 17 above shall have effect accordingly.
- (3) On the application of the landlord, the sheriff may make such order as he thinks just either—
 - (a) terminating the right of the tenant to use the whole or any part of the shared accommodation other than living accommodation; or
 - (b) modifying his right to use the whole or any part of the shared accommodation, whether by varying the persons or increasing the number of persons entitled to the use of that accommodation, or otherwise.
- (4) No order shall be made under subsection (3) above so as to effect any termination or modification of the rights of the tenant which, apart from section 14(2) above, could not be effected by or under the terms of the tenancy.

22 Payment of removal expenses in certain cases.

- (1) Where the sheriff makes an order for possession of a house let on an assured tenancy on Ground 6 or Ground 9 in Schedule 5 to this Act (but not on any other ground), the landlord shall pay to the tenant a sum equal to the reasonable expenses likely to be incurred by the tenant in removing from the house.
- (2) Any question as to the amount payable by the landlord to a tenant by virtue of subsection (1) above shall be determined by agreement between the landlord and the tenant or, in default of agreement, by the sheriff.

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