



# Housing (Scotland) Act 1988

## 1988 CHAPTER 43

### PART II

#### RENTED ACCOMMODATION

##### *Short assured tenancies*

### 32 Short assured tenancies.

- (1) A short assured tenancy is an assured tenancy—
  - (a) which is for a term of not less than six months; and
  - (b) in respect of which a notice is served as mentioned in subsection (2) below.
- (2) The notice referred to in subsection (1)(b) above is one which—
  - (a) is in such form as may be prescribed;
  - (b) is served before the creation of the assured tenancy;
  - (c) is served by the person who is to be the landlord under the assured tenancy (or, where there are to be joint landlords under the tenancy, is served by a person who is to be one of them) on the person who is to be the tenant under that tenancy; and
  - (d) states that the assured tenancy to which it relates is to be a short assured tenancy.
- (3) Subject to subsection (4) below, if, at the finish of a short assured tenancy—
  - (a) it continues by tacit relocation; <sup>F1</sup>...
  - <sup>F1</sup>(b) .....the continued tenancy <sup>F2</sup>... shall be a short assured tenancy, whether or not it fulfils the conditions in paragraphs (a) and (b) of subsection (1) above.
- (4) Subsection (3) above does not apply if, before the beginning of the continuation of the tenancy <sup>F3</sup>..., the landlord or, where there are joint landlords, any of them serves written notice in such form as may be prescribed on the tenant that the continued <sup>F4</sup>... tenancy is not to be a short assured tenancy.

*Status: Point in time view as at 27/09/2023.*

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- (5) Section 25 above shall apply in relation to a short assured tenancy as if in subsection (1) of that section the reference to an assured tenancy were a reference to a short assured tenancy.

#### Textual Amendments

- F1** S. 32(3)(b) and word repealed (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\)](#), s. 79(2), [sch. 5 para. 2\(2\)\(a\)\(i\)](#); S.S.I. 2017/346, reg. 2, sch. (with reg. 6)
- F2** Words in s. 32(3) repealed (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\)](#), s. 79(2), [sch. 5 para. 2\(2\)\(a\)\(ii\)](#); S.S.I. 2017/346, reg. 2, sch. (with reg. 6)
- F3** Words in s. 32(4) repealed (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\)](#), s. 79(2), [sch. 5 para. 2\(2\)\(b\)\(i\)](#); S.S.I. 2017/346, reg. 2, sch. (with reg. 6)
- F4** Words in s. 32(4) repealed (1.12.2017) by [Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(asp 19\)](#), s. 79(2), [sch. 5 para. 2\(2\)\(b\)\(ii\)](#); S.S.I. 2017/346, reg. 2, sch. (with reg. 6)

### 33 Recovery of possession on termination of a short assured tenancy.

- (1) Without prejudice to any right of the landlord under a short assured tenancy to recover possession of the house let on the tenancy in accordance with sections 12 to 31 of this Act, the [<sup>F5</sup>First-tier Tribunal][<sup>F6</sup>may] make an order for possession of the house if [<sup>F7</sup>the Tribunal] is satisfied—
- (a) that the short assured tenancy has reached its finish;
  - (b) that tacit relocation is not operating; <sup>F8</sup>...
  - <sup>F9</sup>(c) .....
  - (d) that the landlord (or, where there are joint landlords, any of them) has given to the tenant notice stating that he requires possession of the house [<sup>F10</sup>, and
  - (e) that it is reasonable to make an order for possession.]
- (2) The period of notice to be given under subsection (1)(d) above shall be—
- (i) if the terms of the tenancy provide, in relation to such notice, for a period of more than two months, that period;
  - (ii) in any other case, two months.
- (3) A notice under paragraph (d) of subsection (1) above may be served before, at or after the termination of the tenancy to which it relates.
- (4) Where the [<sup>F11</sup>First-tier Tribunal] makes an order for possession of a house by virtue of subsection (1) above, any statutory assured tenancy which has arisen as at that finish shall end (without further notice) on the day on which the order takes effect.
- [<sup>F12</sup>(5) For the avoidance of doubt, sections 18 and 19 do not apply for the purpose of a landlord seeking to recover possession of the house under this section.]

#### Textual Amendments

- F5** Words in s. 33(1) substituted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), s. 104(3), [sch. 1 para. 44\(a\)\(i\)](#); S.S.I. 2017/330, art. 3, sch.
- F6** Word in s. 33(1) substituted (1.10.2022) by [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022 \(asp 8\)](#), [ss. 44\(5\)\(a\)](#), 59(1)
- F7** Words in s. 33(1) substituted (1.12.2017) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), s. 104(3), [sch. 1 para. 44\(a\)\(ii\)](#); S.S.I. 2017/330, art. 3, sch.

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- F8** Word in s. 33(1) repealed (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 44(5)(b), 59(1)**
- F9** S. 33(1)(c) repealed (1.12.2017) by Private Housing (Tenancies) (Scotland) Act 2016 (asp 19), s. 79(2), **sch. 5 para. 2(3)(b)**; S.S.I. 2017/346, reg. 2, **sch.** (with reg. 6)
- F10** S. 33(1)(e) and word inserted (1.10.2022) by Coronavirus (Recovery and Reform) (Scotland) Act 2022 (asp 8), **ss. 44(5)(c), 59(1)**
- F11** Words in s. 33(4) substituted (1.12.2017) by Housing (Scotland) Act 2014 (asp 14), s. 104(3), **sch. 1 para. 44(b)**; S.S.I. 2017/330, art. 3, **sch.**
- F12** S. 33(5) inserted (31.8.2011) by Private Rented Housing (Scotland) Act 2011 (asp 14), **ss. 34, 41(3)**; S.S.I. 2011/270, art. 2, **Sch.**

### 34 <sup>F13</sup>Reference of rents under short assured tenancies to the First-tier Tribunal

- (1) Subject to subsection (2) and section 35 below, the tenant under a short assured tenancy may make an application in the prescribed form to <sup>F14</sup>the First-tier Tribunal for a determination of the rent which, in the <sup>F15</sup>First-tier Tribunal's opinion, the landlord might reasonably be expected to obtain under the short assured tenancy.
- (2) No application may be made under this section if the rent payable under the tenancy is a rent previously determined under this section or section 25 above.
- (3) Where an application is made to <sup>F16</sup>the First-tier Tribunal under subsection (1) above with respect to the rent under a short assured tenancy, the <sup>F17</sup>First-tier Tribunal shall not make such a determination as is referred to in that subsection unless <sup>F18</sup>it considers] —
  - (a) that there is a sufficient number of similar houses in the locality let on assured tenancies (whether short assured tenancies or not); and
  - (b) that the rent payable under the short assured tenancy in question is significantly higher than the rent which the landlord might reasonably be expected to be able to obtain under the tenancy, having regard to the level of rents payable under the tenancies referred to in paragraph (a) above.
- (4) Where, on an application under this section, <sup>F19</sup>the First-tier Tribunal make a determination of a rent for a short assured tenancy—
  - (a) the determination shall have effect from such date as the <sup>F20</sup>First-tier Tribunal may direct, not being earlier than the date of the application;
  - (b) if at or after the time when the determination takes effect, the rent which, apart from this paragraph, would be payable under the tenancy exceeds the rent so determined, the excess shall be irrecoverable from the tenant; and
  - (c) no further new rent for a tenancy of the house shall take effect under section 24(3) or 25 above until after the first anniversary of the date on which the determination takes effect.
- (5) Subsections (3), (4) and (7) of section 25 above apply in relation to a determination of rent under this section as they apply in relation to a determination under that section.

#### Textual Amendments

- F13** S. 34 heading substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Private Rented Housing Committees) Regulations 2016 (S.S.I. 2016/337), reg. 1(2), **Sch. 2 para. 2(10)** (with Sch. 1)

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- F14** Words in s. 34(1) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Private Rented Housing Committees\) Regulations 2016 \(S.S.I. 2016/337\)](#), reg. 1(2), **Sch. 2 para. 2(9)(a)(i)** (with Sch. 1)
- F15** Words in s. 34(1) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Private Rented Housing Committees\) Regulations 2016 \(S.S.I. 2016/337\)](#), reg. 1(2), **Sch. 2 para. 2(9)(a)(ii)** (with Sch. 1)
- F16** Words in s. 34(3) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Private Rented Housing Committees\) Regulations 2016 \(S.S.I. 2016/337\)](#), reg. 1(2), **Sch. 2 para. 2(9)(b)(i)** (with Sch. 1)
- F17** Words in s. 34(3) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Private Rented Housing Committees\) Regulations 2016 \(S.S.I. 2016/337\)](#), reg. 1(2), **Sch. 2 para. 2(9)(b)(ii)** (with Sch. 1)
- F18** Words in s. 34(3) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Private Rented Housing Committees\) Regulations 2016 \(S.S.I. 2016/337\)](#), reg. 1(2), **Sch. 2 para. 2(9)(b)(iii)** (with Sch. 1)
- F19** Words in s. 34(4) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Private Rented Housing Committees\) Regulations 2016 \(S.S.I. 2016/337\)](#), reg. 1(2), **Sch. 2 para. 2(9)(c)(i)** (with Sch. 1)
- F20** Words in s. 34(4)(a) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Private Rented Housing Committees\) Regulations 2016 \(S.S.I. 2016/337\)](#), reg. 1(2), **Sch. 2 para. 2(9)(c)(ii)** (with Sch. 1)

**Modifications etc. (not altering text)**

- C1** S. 34 modified (temp.) (28.10.2022) by virtue of [Cost of Living \(Tenant Protection\) \(Scotland\) Act 2022 \(asp 10\)](#), s. 13(1), **sch. 1 para. 2(1)(2)(7)** (with ss. 1(2), 6, 7, 8) (as amended (1.4.2023) by S.S.I. 2023/82, regs. 1(3), **2(2)**); and (27.9.2023) by S.S.I. 2023/275, regs. 1(2), **2(2)**

**35** [<sup>F21</sup>**Disapplication of the First-tier Tribunal's functions under section 34**]

- (1) If the Secretary of State by order so provides, section 34 above shall not apply in such cases or to tenancies of houses in such areas or in such other circumstances as may be specified in the order.
- (2) No order shall be made under this section unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

**Textual Amendments**

- F21** S. 35 heading substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Private Rented Housing Committees\) Regulations 2016 \(S.S.I. 2016/337\)](#), reg. 1(2), **Sch. 2 para. 2(11)** (with Sch. 1)

**Status:**

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