

Private Housing (Tenancies) (Scotland) Bill

[AS INTRODUCED]

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Private Housing (Tenancies) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about private rented housing; in particular to establish a new type of tenancy to be known as a private residential tenancy.

PART 1

PRIVATE RESIDENTIAL TENANCY

- 5 **1 Meaning of private residential tenancy**
- (1) A tenancy is a private residential tenancy where—
- (a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,
- (b) the tenant occupies the property (or any part of it) as the tenant’s only or principal
10 home, and
- (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.
- (2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.
- 15 **2 Interpretation of section 1**
- (1) This section makes provision about the interpretation of section 1.
- (2) A tenancy is to be regarded as one under which a property is let to an individual notwithstanding that it is let jointly to an individual, or individuals, and another person.
- (3) A tenancy is to be regarded as one under which a property is let as a separate dwelling, despite the let property including other land, where the main purpose for letting the
20 property is to provide the tenant with a home.
- (4) A tenancy is to be regarded as one under which a property is let as a separate dwelling if, despite the let property lacking certain features or facilities—
- (a) the terms of the tenancy entitle the tenant to use property in common with another
25 person (“shared accommodation”), and

(b) the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation.

- (5) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in section 1(1)(b) and in subsection (3) are to any one of those persons.

5 **3 Power to modify schedule 1**

- (1) The Scottish Ministers may by regulations modify schedule 1.
- (2) Before making regulations under subsection (1), the Scottish Ministers must consult such persons representing the interests of tenants and landlords under private residential tenancies as they think fit.

10 **4 Extended meaning of tenancy**

For the purposes of this Act—

- (a) if an agreement would give rise to a tenancy but for the fact that it does not specify an ish, it is to be regarded as giving rise to a tenancy,
- (b) once an agreement has given rise to a private residential tenancy, it is to continue to be regarded as giving rise to a tenancy despite the term of the agreement requiring the tenant to pay rent subsequently being removed from the agreement or otherwise ceasing to have effect.

PART 2

TENANCY TERMS

20 **5 Statutory terms of tenancy**

- (1) The Scottish Ministers may by regulations prescribe terms (referred to in this Act as “statutory terms”).
- (2) Statutory terms are terms of every private residential tenancy to which the regulations prescribing them apply, subject to any provision made under subsection (3).
- (3) The Scottish Ministers may by regulations provide that—
- (a) in some circumstances, a statutory term is not a term of a private residential tenancy,
- (b) in some or all circumstances, a statutory term applies as a term of a private residential tenancy subject to any modification of the term agreed between the landlord and tenant under the tenancy.

30 **6 Regulations under section 5**

- (1) Regulations may not be made under section 5(1) unless—
- (a) they prescribe, in relation to the tenancies to which the regulations are to apply, the terms set out in schedule 2, or
- (b) those terms are prescribed in relation to those tenancies already.
- (2) Regulations made under section 5 may not be revoked in exercise of the power conferred by that section to the extent that their revocation would result in terms set out in schedule 2 not applying in relation to some or all private residential tenancies.

- (3) Nothing in this section prevents provision being made under section 5(3) so that—
- (a) in some circumstances, a term set out in schedule 2 is not a term of a private residential tenancy,
 - (b) in some or all circumstances, a term set out in schedule 2 applies subject to modification.
- (4) Before making regulations under section 5, the Scottish Ministers must consult such persons representing the interests of tenants and landlords under private residential tenancies as they think fit.
- (5) Where regulations are made under section 5 before section 1 comes into force, the reference in subsection (4) to tenants and landlords under private residential tenancies is to be read as a reference to persons who are likely to be affected by the regulations.

7 Protection of terms allowing use of shared living accommodation

- (1) A term of a private residential tenancy which entitles the tenant to use shared living accommodation may not be terminated or modified so as to reduce the entitlement which the tenant had at the commencement of the private residential tenancy, unless the tenant agrees to the termination or modification of the term after the tenancy commences.
- (2) Subsection (1) does not affect the operation of any term of the tenancy which allows the identity or number of persons in common with whom the tenant is entitled to use the shared living accommodation to change.
- (3) In this section, “shared living accommodation” means property—
- (a) which the terms of the tenancy entitle the tenant to use in common with another person, and
 - (b) which is of such a nature that any let property must include it, or be treated as including it, in order to be regarded as a separate dwelling.

PART 3

TENANCY INFORMATION

Landlord’s duties to provide information

8 Duty to provide written terms of tenancy

- (1) Where the terms of a private residential tenancy are not set out in writing between the parties, the landlord must, before the end of the day specified in subsection (2) or (as the case may be) (3), provide the tenant with a document which sets out all of the terms of the tenancy.
- (2) The day referred to in subsection (1) is—
- (a) the day on which the tenancy commences, if the tenancy is a private residential tenancy on that day, or
 - (b) the day falling 28 days after the day on which the tenancy became a private residential tenancy, if it became one after the day on which the tenancy commenced.

- (3) If, as a result of a subsequent change to its terms, all of the terms of a private residential tenancy are no longer set out in writing—
- (a) subsection (2) does not apply, and
 - (b) the day referred to in subsection (1) is the day falling 28 days after the change to the tenancy's terms takes effect.

9 Duty to provide specified information

- (1) The Scottish Ministers may by regulations impose a duty on any person who is, or is to be, the landlord under a private residential tenancy to provide the person who is, or is to be, the tenant—
- (a) with information specified in the regulations,
 - (b) by a deadline specified in the regulations.
- (2) The power to specify information under subsection (1)(a) includes the power to specify the form in which the information is to be provided.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons representing the interests of tenants and landlords under private residential tenancies as they think fit.
- (4) But subsection (3) does not apply in any case in which consultation has been carried out by the Scottish Ministers more generally, without specific reference to such tenants and landlords.

10 Regulations about providing information

The Scottish Ministers may by regulations make provision about how a duty arising by virtue of section 8 or 9 is to be performed (including when the duty is to be deemed to have been performed).

11 Prohibition on charging for information

The person who is, or is to be, the tenant under a private residential tenancy may not be charged for being provided by the landlord with—

- (a) a document which sets out the terms, or any term, of the tenancy, or
- (b) information in performance of a duty arising by virtue of section 9.

First-tier Tribunal's powers

12 Application to First-tier Tribunal to draw up terms

- (1) The tenant under a private residential tenancy may (subject to subsection (3)) apply to the First-tier Tribunal asking it to draw up the terms of the tenancy under section 13 if the landlord—
- (a) has a duty under section 8 to provide the tenant with a document which sets out all of the terms of the tenancy, and
 - (b) the landlord has not provided that document to the tenant.

- (2) Either the tenant or the landlord under a private residential tenancy may apply to the First-tier Tribunal asking it to draw up the terms of the tenancy under section 13 if the tenant or landlord think that the written terms of the tenancy purport to displace a statutory term in an unlawful manner.
- 5 (3) The tenant may not make an application under subsection (1) unless the tenant has given the landlord notice of the tenant's intention to make the application and the notice period described in section 15 has expired.
- (4) For the purpose of subsection (2), written terms of a tenancy purport to displace a statutory term in an unlawful manner if—
- 10 (a) the statutory term is not included in the written terms of the tenancy but is a term of the tenancy because regulations under section 5(3)(a) do not provide otherwise, or
- (b) the statutory term, as expressed in the written terms of the tenancy, bears to be subject to a modification which is not permitted by regulations under section
- 15 5(3)(b).
- (5) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in this section are to any one of those persons.
- (6) In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in this section are to any one of those persons.

20 **13 First-tier Tribunal's power to draw up terms**

- (1) On an application under section 12, the First-tier Tribunal may—
- (a) draw up a document which accurately reflects all of the terms of the tenancy, or
- (b) if there are already written terms of the tenancy and the Tribunal is satisfied that they accurately reflect all of the terms of the tenancy, make a declaration to that
- 25 effect.
- (2) A document that is drawn up by the Tribunal under subsection (1)(a) or is the subject of a declaration under subsection (1)(b) is to be regarded as setting out all of the terms of the tenancy at that time.

14 First-tier Tribunal's power to sanction failure to provide information

- 30 (1) On an application by the tenant under a private residential tenancy, the First-tier Tribunal may make an order under subsection (2) where the landlord—
- (a) has failed to perform a duty arising by virtue of section 8 or 9 to provide the tenant with information,
- (b) at the time the First-tier Tribunal considers the application, the landlord has still
- 35 not provided the tenant with the information, and
- (c) the landlord does not have a reasonable excuse for failing to perform the duty.
- (2) An order under this subsection is one requiring the landlord to pay the person who made the application an amount not exceeding three months' rent.
- (3) An application under subsection (1)—
- 40 (a) may be made only during the course of the tenancy in question, and

(b) may not be made unless the tenant has given the landlord notice of the tenant's intention to make the application and the notice period described in section 15 has expired.

(4) Where two or more persons jointly are the landlord under the tenancy in question, an order by the First-tier Tribunal under subsection (2) may—

(a) be made against all, some or only one of the joint landlords,

(b) state that each person against whom the order is made is liable to pay a specified amount, but the cumulative total of each of the specified amounts must not exceed three months' rent,

(c) state that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.

(5) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in this section are to any one of those persons.

(6) In subsections (2) and (4)(b), "rent" means—

(a) the amount that was payable in rent under the tenancy at the time that notice of application was given to the landlord, and

(b) in a case where two or more persons jointly are the tenant under the tenancy, the amount mentioned in paragraph (a) divided by the number of those persons.

15 Meaning of notice period in sections 12 and 14

(1) For the purposes of sections 12(3) and 14(3)(b), a notice period—

(a) begins—

(i) on the day that the landlord receives notice from the tenant of the tenant's intention to make the application in question, or

(ii) if later, the day after the deadline by which the landlord should have performed the duty to which the application in question relates, and

(b) expires on the day falling 28 days after it begins.

(2) Where the application in question relates to a failure by the landlord to perform more than one duty, the reference to the duty in subsection (1)(a)(ii) is to be read as a reference to duty with the latest deadline for performance.

(3) A notice of a tenant's intention to make an application under section 12(1) or 14(1) must fulfil any requirements prescribed by the Scottish Ministers in regulations.

PART 4

RENT

CHAPTER 1

RESTRICTIONS IN RELATION TO RENT AND OTHER CHARGES

16 Method by which rent may be increased

The rent payable under a private residential tenancy may be increased only in accordance with Chapter 2.

17 Frequency with which rent may be increased

- (1) The rent payable under a private residential tenancy may not be increased more than once in a 12 month period.
- (2) For the purpose of subsection (1), where the tenant makes a referral to a rent officer under section 20, the 12 month period is to be regarded as commencing on the date specified in the rent-increase notice which prompted the referral.

18 No premiums or advance payments

- (1) Sections 82, 83 and 86 to 90 of the Rent (Scotland) Act 1984 apply in relation to a private residential tenancy as they apply in relation to a tenancy of the kind to which those sections refer.
- (2) But—
- (a) section 83(5) of that Act is to be ignored,
 - (b) the date mentioned in section 88(1) of that Act is to be read as if it were the date on which this section comes into force.

CHAPTER 2

RENT VARIATION INSTIGATED BY LANDLORD’S NOTICE

Process by which rent may be varied

19 Landlord’s power to increase rent

- (1) The landlord under a private residential tenancy may increase the rent payable under the tenancy by giving the tenant a notice in accordance with this section (“a rent-increase notice”).
- (2) The notice must—
- (a) specify—
 - (i) the rent that will be payable once the increase takes effect,
 - (ii) the day on which the increase is to take effect, and
 - (b) fulfil any other requirements prescribed by the Scottish Ministers in regulations.
- (3) The rent increase takes effect on the day specified in the notice (“the effective day”) unless—
- (a) that would result in an increased rent payment becoming payable on or before the day on which the minimum notice period ends, or
 - (b) before the effective day—
 - (i) the landlord intimates to the tenant that the notice is rescinded, or
 - (ii) the tenant makes a referral to a rent officer under section 20.
- (4) In subsection (3)(a), “the minimum notice period” means a period which—
- (a) begins on the day the notice is received by the tenant, and
 - (b) ends on the day falling—

- (i) three months after it began, or
- (ii) whatever longer period after it began as the landlord and tenant have agreed between them.

(5) The landlord and tenant—

- (a) may by agreement modify what has been specified in the notice in accordance with subsection (2)(a), but
- (b) may not modify the notice so that it would result in an increased rent payment becoming payable—
 - (i) on the day which falls three months after the day on which the tenant received the notice, or
 - (ii) before the day mentioned in sub-paragraph (i).

20 Tenant's right to refer increase to rent officer

- (1) On receiving a rent-increase notice, a tenant may make a referral to a rent officer for the area in which the let property is situated seeking an order under section 21.
- (2) But, a tenant may not make a referral under subsection (1) if the let property is in a rent pressure zone.
- (3) Where, despite having entered into an agreement of the type mentioned in section 19(5), a tenant makes a referral under subsection (1), the referral is to proceed as if no such agreement had been entered into.
- (4) A referral to a rent officer under subsection (1) must be—
 - (a) in the prescribed form,
 - (b) accompanied by the prescribed fee (if any),
 - (c) intimated by the tenant to the landlord in the prescribed manner, and
 - (d) made before the end of the day falling 21 days after the tenant receives the notice.
- (5) In subsection (4), “prescribed” means prescribed by the Scottish Ministers by regulations.

21 Rent officer's power to set rent

- (1) Where a rent officer receives a referral under section 20(1), the rent officer must make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the rent officer in accordance with section 27.
- (2) For the purpose of subsection (1), the effective date is—
 - (a) where the date specified in the rent-increase notice falls at least 14 days after the day on which the rent officer makes the order, the date specified in the rent-increase notice,
 - (b) otherwise, the first payment date falling at least 14 days after the day on which the rent officer makes the order.
- (3) In an order made under subsection (1), the rent officer must record the amount of the rent that is fairly attributable to the provision of services, unless the amount is negligible or no amount is so attributable.

- (4) In subsection (2)—

“rent-increase notice” means the rent-increase notice which prompted the referral,
and

“payment date” means a date on which a rent payment falls to be made in
accordance with the terms of the tenancy.

22 Rent officer’s duty to issue provisional order

- (1) Before making an order under section 21(1), a rent officer must issue a provisional order stating—

(a) the rent which the rent officer proposes to specify under that section, and

(b) the amount which the rent officer proposes to record for the purpose of subsection (3) of that section.

- (2) Where a rent officer has issued a provisional order under subsection (1), the landlord or the tenant may ask the rent officer to reconsider the proposed amounts.

- (3) A request under subsection (2) may not be made more than 14 days after the provisional order is issued.

- (4) If a request is made under subsection (2), the rent officer must reconsider the proposed amounts prior to making an order under section 21(1).

23 Right of appeal to First-tier Tribunal

- (1) Where a rent officer has made an order under section 21(1) in relation to the rent payable under a private residential tenancy, the landlord or the tenant may appeal against the order to the First-tier Tribunal.

- (2) An order under section 21(1) may not be appealed against—

(a) more than 14 days after the order is made, or

(b) where the order is made by virtue of section 28(2).

- (3) Making an appeal under subsection (1) renders the order being appealed against of no effect.

24 First-tier Tribunal’s power to set rent

- (1) Where an appeal is made to the First-tier Tribunal under section 23(1), the First-tier Tribunal must make an order stating that from the effective date the rent payable under the tenancy is the rent determined by the First-tier Tribunal in accordance with section 27.

- (2) For the purpose of subsection (1), the effective date is—

(a) where the First-tier Tribunal makes its order on or before the date specified in the rent-increase notice, the date specified in the rent-increase notice,

(b) otherwise, the first payment date falling on or after the day on which the First-tier Tribunal makes its order.

- (3) In an order made under subsection (1), the First-tier Tribunal must record the amount of the rent that is fairly attributable to the provision of services, unless the amount is negligible or no amount is so attributable.

- (4) In subsection (2)—

“rent-increase notice” means the rent-increase notice which prompted the referral to the rent officer that led to the making of the order against which an appeal is being made, and

“payment date” means a date on which a rent payment falls to be made in accordance with the terms of the tenancy.

25 Finality of First-tier Tribunal's decision

- (1) An order under section 24(1) may be reviewed in accordance with this section only.
- (2) Accordingly (and without prejudice to the generality of subsection (1)), a decision of the First-tier Tribunal to make an order under section 24(1) may be neither—

(a) reviewed under section 43 of the Tribunals (Scotland) Act 2014, nor

(b) appealed against under section 46 of that Act.

- (3) The First-tier Tribunal may review an order under section 24(1)—

(a) at its own instance, or

(b) at the request of the landlord or the tenant under the tenancy to which the order relates.

- (4) In a review under subsection (3), the First-tier Tribunal may—

(a) take no action, or

(b) correct a minor error contained in the order.

26 Liability for over or under paid rent

- (1) This section applies where—

(a) the rent payable under a private residential tenancy has been changed by an order made under section 21(1) or 24(1),

(b) the effective date stated in the order falls later than the date specified in the rent-increase notice (“the specified date”), and

(c) the rent payable from the effective date (“the new rent”) differs from the rent payable immediately before the effective date (“the old rent”).

- (2) If the new rent is less than the old rent, on the date the order is made the landlord becomes liable under this subsection to pay the tenant the difference between—

(a) the amount actually paid in rent between the specified date and the effective date, and

(b) the amount that would have been payable in rent during the same period had the new rent been the rent payable from the specified date.

- (3) If the new rent is more than the old rent, on the date the order is made the tenant becomes liable under this subsection to pay the landlord the difference between—

(a) the amount that would have been payable in rent between the specified date and the effective date had the new rent been the rent payable from the specified date, and

(b) the amount that should have been paid in rent during the same period (whether or not it was actually paid).

(4) Subsection (5) applies where a tenant has an outstanding liability under subsection (3) more than 28 days after the liability arose.

(5) For the purposes of paragraph 11 of schedule 3, the tenant is to be regarded as having underpaid each rent payment that fell to be made between the specified date and the effective date by the quotient of the tenant’s liability under subsection (3) divided by the number of payments that fell to be made in that period.

(6) In this section—

(a) “rent-increase notice” means the rent-increase notice which prompted the referral or (as the case may be) led to the appeal that resulted in the making of the order mentioned in subsection (1)(a), and

(b) a reference to a period between two dates includes both of those dates.

27 Determination of open market rent

(1) Where an order maker is to determine the rent under section 21(1) or (as the case may be) 24(1), the determination is to be made on the basis that the property in question would be let by a willing landlord under a tenancy which would—

(a) be a private residential tenancy,

(b) begin on the date specified in accordance with section 19(2)(a)(ii) in the rent-increase notice which prompted the referral or (as the case may be) led to the appeal,

(c) have the same terms as the tenancy to which the referral or (as the case may be) appeal relates,

(d) be liable to be brought to an end on an eviction ground mentioned in subsection (2) if the tenancy to which the referral or (as the case may be) appeal relates is liable to be brought to an end on that ground.

(2) The eviction grounds referred to in subsection (1)(d) are—

(a) that a lender intends to sell the property, or

(b) that the property is required for use in connection with the purposes of a religion.

(3) In making the determination, the order maker is to disregard any effect on the rent attributable to—

(a) the granting of a tenancy to a sitting tenant,

(b) any improvements carried out by the tenant, or a predecessor of the tenant to the tenancy, otherwise than in pursuance of the terms of the tenancy, or

(c) any failure by the tenant to comply with the terms of the tenancy, except to the extent that the failure has a direct effect on the open market rent of the property as calculated under subsection (1).

28 Withdrawal of referral or appeal

- (1) This section applies—
- (a) where a referral made under section 20(1) is withdrawn by the tenant, or
 - (b) where—
 - 5 (i) an appeal made under section 23(1) is withdrawn by one party, and
 - (ii) the other party has not made an appeal in respect of the tenancy in question, or any appeal made by the other party has been withdrawn.
- (2) The order maker must make an order under section 21(1) or (as the case may be) 24(1) stating that from the effective date the rent payable under the tenancy is—
- 10 (a) the rent specified in the rent-increase notice, or
 - (b) an amount which the parties have asked the order maker to state in the order.
- (3) Where the order maker is the First-tier Tribunal, an order may not be made by virtue of subsection (2) until the earlier of—
- 15 (a) the expiry of the period within which an appeal under section 23(1) may be made, or
 - (b) the date on which both parties become ineligible to make an appeal (whether by withdrawing an appeal or by waiving the right to appeal).
- (4) An order made by virtue of subsection (2) does not require an amount to be recorded in accordance with section 21(3) or (as the case may be) 24(3).
- 20 (5) In subsection (2), “the rent-increase notice” means the rent-increase notice which prompted the referral or (as the case may be) led to the appeal.

Information about open market rent determinations

29 Duty to make information available

- 25 (1) Rent officers and the First-tier Tribunal collectively must make publicly available information about—
- (a) the rents they have taken into account in determining the open market rents for let properties under section 27, and
 - (b) what rents they have determined to be payable in accordance with that section.
- (2) The Scottish Ministers may by regulations—
- 30 (a) specify—
 - (i) the information that is to be made available under subsection (1),
 - (ii) the manner in which it is to be made available,
 - (b) prescribe the fees (if any) which may be charged for supplying the information.

CHAPTER 3

RENT PRESSURE ZONES

30 Power to designate a zone

- 5 (1) A local authority may make an application to the Scottish Ministers asking that all or part of the authority's area be designated as a rent pressure zone.
- (2) After receiving an application under subsection (1), the Scottish Ministers may by regulations—
- 10 (a) designate an area as a rent pressure zone, and
- (b) prescribe in relation to that zone a number of percentage points as the value of N for the purposes of section 31(1).
- (3) In subsection (2)(b), “a number”—
- (a) includes zero and fractional parts of a whole number, but
- (b) does not include negative numbers.

31 Restriction on rent increases within a zone

- 15 (1) A rent-increase notice may not increase the rent payable under a private residential tenancy where the let property is in a rent pressure zone by a percentage greater than—
- CPI + 1 percentage point + N

where—

CPI is the percentage increase in the consumer prices index over the period—

- 20 (a) from—
- (i) the day of the last increase in the rent payable under the tenancy, or
- (ii) if the rent payable under the tenancy has not previously been increased, the day on which the tenancy was granted,
- (b) to the day that the rent-increase notice in question is given to the tenant,

25 N is the number of percentage points prescribed in relation to the rent pressure zone under section 30(2)(b).

- (2) Nothing in subsection (1) affects any right the landlord under a tenancy has to charge the tenant for improvements reasonably made to the let property.
- 30 (3) In subsection (1), “the consumer prices index” means the all consumer prices index published by the Office of National Statistics.

32 Limits on power to designate a zone

- (1) An area may not be designated as a rent pressure zone unless it is an area which the Scottish Ministers have been asked to designate as a rent pressure zone in an application under section 30.
- 35 (2) An area may not be designated as a rent pressure zone more than once on the basis of the same application under section 30.

- (3) Regulations designating a rent pressure zone cease to have effect 5 years after they come into force, unless—
- (a) they provide, or another enactment provides, that they cease to have effect sooner, or
 - (b) they are revoked.

33 Procedure for designating a zone: consultation and information

- (1) Before laying a draft of a Scottish statutory instrument containing regulations under section 30 before the Scottish Parliament, the Scottish Ministers must consult—
- (a) persons appearing to the Ministers to represent the interests of persons who offer residential property for let within the proposed rent pressure zone, and
 - (b) persons appearing to the Ministers to represent the interests of persons who are tenants of residential property within the proposed rent pressure zone.
- (2) Along with a draft of a Scottish statutory instrument containing regulations under section 30, the Scottish Ministers must also lay before the Scottish Parliament a document which—
- (a) sets out the evidence which leads them to believe that—
 - (i) rents payable within the proposed rent pressure zone are rising by too much,
 - (ii) the rent rises within the proposed zone are causing undue hardship to tenants, and
 - (iii) the local authority within whose area the proposed zone lies is coming under increasing pressure to provide housing or subsidise the cost of housing as a consequence of the rent rises within the proposed zone,
 - (b) summarises the responses they received to the consultation carried out in accordance with subsection (1).

34 Power to change inflation index

The Scottish Ministers may by regulations amend section 31 to replace references in that section to one prices index with references to another.

PART 5

TERMINATION

CHAPTER 1

SECURITY OF TENURE

35 No termination by parties except in accordance with this Part

A tenancy which is a private residential tenancy may not be brought to an end by the landlord, the tenant, nor by any agreement between them, except in accordance with this Part.

36 Protection for sub-tenants

- (1) Subsection (2) applies (subject to section 37) where—
- (a) a lawfully granted sub-tenancy is terminated by the termination of the tenancy of the person who was the landlord under the sub-tenancy, and
 - (b) immediately before it terminated, the sub-tenancy was a private residential tenancy.
- (2) On the termination of the sub-tenancy, the person who was the tenant under the sub-tenancy becomes the tenant under a new tenancy which—
- (a) has the same terms as the sub-tenancy had immediately before it was terminated, and
 - (b) is deemed to have been granted at the time that the sub-tenancy terminated by whoever was entitled to grant a tenancy in those terms at that time.
- (3) A sub-tenancy is not lawfully granted for the purpose of subsection (1) if the person who granted it (“the mid-landlord”) is a tenant in relation to the let property and—
- (a) sub-letting is precluded by a term of the mid-landlord’s tenancy, or
 - (b) the mid-landlord’s tenancy is held (directly or indirectly) from a tenant in relation to the let property and a term of that person’s tenancy precludes sub-letting.
- (4) For the purpose of subsection (3), a person is a tenant in relation to a let property if the person—
- (a) is the tenant of the let property, or
 - (b) is the tenant of a larger property which includes the let property.

37 Qualification of sub-tenant protection

- (1) Section 36(2) does not apply where the tenancy of the person who was the landlord under the sub-tenancy was brought to an end by an eviction order and either—
- (a) the order was issued (exclusively or not) on the basis of an eviction ground mentioned in subsection (2), or
 - (b) the order states that section 36(2) does not apply.
- (2) The eviction grounds referred to in subsection (1)(a) are—
- (a) that the landlord intends to sell the property,
 - (b) that a lender intends to sell the property,
 - (c) that the landlord intends to carry out significantly disruptive works to, or in relation to, the property,
 - (d) that the landlord or a member of the landlord’s family intends to live in the property,
 - (e) that the landlord intends to use the property for a purpose other than housing,
 - (f) that the property is required for use in connection with the purposes of religion,
 - (g) that the tenancy was entered into to provide an employee with a home and the tenant is not a qualifying employee,
 - (h) that the property is student accommodation and the tenant is not a student,

- (i) that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004,
- (j) that the property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006,
- 5 (k) that an overcrowding statutory notice has been served on the landlord.

CHAPTER 2

TERMINATION BY TENANT

38 Tenant’s ability to bring tenancy to an end

- 10 (1) A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 39.
- (2) A tenancy comes to an end in accordance with subsection (1) on the day which the notice states (in whatever terms) that it is to come to an end.
- (3) But a tenancy does not come to an end in accordance with subsection (1) if—
 - 15 (a) before the day mentioned in subsection (2), the tenant makes a request to the landlord to continue the tenancy after that day, and
 - (b) the landlord agrees to the request.
- (4) In subsections (1) and (3), in a case where two or more persons jointly are the landlord under the tenancy, references to the landlord are to any of those persons.

39 Requirements for notice to be given by tenant

- 20 (1) A notice fulfils the requirements referred to in section 38(1) if—
 - (a) it is in writing, and
 - (b) it states as the day on which the tenancy is to end a day that is after the last day of both—
 - 25 (i) the initial period of the tenancy, and
 - (ii) the minimum notice period.
- (2) A notice is to be regarded as fulfilling the requirements referred to in section 38(1), despite its not complying with the requirement described by subsection (1)(b), if the landlord agrees in writing to the tenancy ending on the day stated in the notice.
- (3) In subsection (1)(b)(ii), “the minimum notice period” means a period which—
 - 30 (a) begins on the day the notice is received by the landlord, and
 - (b) ends on the day falling—
 - (i) such number of days after it begins as the landlord and tenant have validly agreed between them, or
 - 35 (ii) if there is no such valid agreement, the number of days after it begins which is specified in subsection (4).
- (4) For the purpose of subsection (3)(b)(ii), the number of days is—

(a) 28, in a case where the landlord receives the notice six months or less after the tenant became entitled to occupy the let property, or

(b) 56, in a case where the landlord receives the notice more than six months after the tenant became entitled to occupy the let property.

5 (5) An agreement as to the number of days after which a minimum notice period ends is invalid for the purpose of subsection (3)(b)(i) if the agreement—

(a) is not in writing, or

(b) was entered into before the tenancy became a private residential tenancy.

10 (6) In a case where two or more persons jointly are the landlord under the tenancy, references in this section to the landlord are to any one of those persons.

CHAPTER 3

TERMINATION AT LANDLORD’S INSTIGATION

Consensual termination

40 Termination by notice to leave and tenant leaving

15 (1) A tenancy which is a private residential tenancy comes to an end if—

(a) the tenant has received a notice to leave from the landlord, and

(b) the tenant has ceased to occupy the let property.

(2) A tenancy comes to an end under subsection (1) on the later of—

(a) the day specified in the notice to leave in accordance with section 52(1)(b), or

20 (b) the day on which the tenant ceases to occupy the let property.

Eviction order

41 First-tier Tribunal’s power to issue an eviction order

25 (1) The First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

(2) In a case where two or more persons jointly are the landlord under a tenancy, an application for an eviction order may be made by any one of those persons.

(3) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

30 (a) subsection (4), or

(b) any of sections 43 to 46 (but see subsection (5)).

(4) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

35 (5) Despite subsection (3)(b), the Tribunal may entertain an application made in breach of section 44 if the Tribunal considers that it is reasonable to do so.

(6) The Tribunal may not consider whether an eviction ground applies unless it is a ground which—

- (a) is stated in the notice to leave accompanying the landlord’s application in accordance with subsection (4), or
- (b) has been included with the Tribunal’s permission in the landlord’s application as a stated basis on which an eviction order is sought.

- 5 (7) The provisions of schedule 3 stating the circumstances in which the Tribunal may or must find that an eviction ground applies are exhaustive of the circumstances in which the Tribunal is entitled to find that the ground in question applies.
- (8) The Tribunal must state in an eviction order the eviction ground, or grounds, on the basis of which it is issuing the order.
- 10 (9) An eviction order brings a tenancy which is a private residential tenancy to an end on the day specified by the Tribunal in the order.

42 First-tier Tribunal’s power to disapply protection for sub-tenants

- 15 (1) This section applies in a case where a sub-tenant would become a tenant by virtue of section 36(2) were the First-tier Tribunal to issue an eviction order against the sub-tenant’s landlord.
- (2) If the First-tier Tribunal considers it is reasonable to do so, it may state in an eviction order that section 36(2) is not to apply when the tenancy of the sub-tenant’s landlord is brought to an end by the order.
- 20 (3) The First-tier Tribunal may not include in an eviction order the statement mentioned in subsection (2) unless it has afforded the sub-tenant an opportunity to make representations.

Restrictions on applying for eviction order

43 Restriction on applying during the initial period

- 25 (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant during the initial period of the tenancy unless subsection (2) applies.
- (2) This subsection applies where the only eviction ground, or grounds, stated in the relevant notice to leave is, or are, one or more of the following—
- (a) that a lender intends to sell the let property,
 - (b) that the tenant has failed to comply with an obligation under the tenancy,
 - 30 (c) that the tenant has been in rent arrears for three or more consecutive months,
 - (d) that the tenant has a relevant conviction,
 - (e) that the tenant has engaged in relevant anti-social behaviour.
- (3) For the purpose of subsection (2), a notice to leave is a relevant notice to leave in relation to an application to the Tribunal if a copy of it is being used to satisfy the requirement under section 41(4).
- 35

44 Restriction on applying during the notice period

- (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

- (2) The relevant period in relation to a notice to leave—
- (a) begins on the day the tenant receives the notice to leave from the landlord, and
 - (b) expires on the day falling—
 - (i) 28 days after it begins if subsection (3) applies,
 - (ii) 84 days after it begins if subsection (3) does not apply.
- (3) This subsection applies if—
- (a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or
 - (b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—
 - (i) that the tenant is not occupying the let property as the tenant’s home,
 - (ii) that the tenant has failed to comply with an obligation under the tenancy,
 - (iii) that the tenant has been in rent arrears for three or more consecutive months,
 - (iv) that the tenant has a relevant conviction,
 - (v) that the tenant has engaged in relevant anti-social behaviour.
- (4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 41(4).

45 Restriction on applying 6 months after the notice period expires

- (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.
- (2) In subsection (1), “the relevant period” has the meaning given in section 44(2).
- (3) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 41(4).

46 Restriction on applying without notifying local authority

- (1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant unless the landlord has given notice of the landlord’s intention to do so to the local authority in whose area the let property is situated.
- (2) Notice under subsection (1) is to be given in the manner and form prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003.
- (3) In a case where two or more persons jointly are the landlord under a tenancy, references in subsection (1) to the landlord are to any one of those persons.

Wrongful termination

47 Wrongful termination by eviction order

- (1) This section applies where a private residential tenancy has been brought to an end by an eviction order.

- (2) An application for a wrongful-termination order may be made to the First-tier Tribunal by a person who was, immediately before the tenancy ended, either the tenant or a joint tenant under the tenancy.
- (3) The Tribunal may make a wrongful-termination order if it finds that it was misled into issuing the eviction order by the person who was, immediately before the tenancy ended, the landlord under the tenancy.
- (4) In a case where two or more persons jointly were the landlord under the tenancy immediately it ended, the reference to the landlord in subsection (3) is to any one of those persons.

48 Wrongful termination without eviction order

- (1) This section applies where a private residential tenancy has been brought to an end in accordance with section 40.
- (2) An application for a wrongful-termination order may be made to the First-tier Tribunal by a person who was immediately before the tenancy ended either the tenant or a joint tenant under the tenancy (“the former tenant”).
- (3) The Tribunal may make a wrongful-termination order if it finds that the former tenant was misled into ceasing to occupy the let property by the person who was the landlord under the tenancy immediately before it was brought to an end.
- (4) In a case where two or more persons jointly were the landlord under the tenancy immediately before it ended, the reference to the landlord in subsection (3) is to any one of those persons.

49 Wrongful-termination order

- (1) In this section and in sections 47 and 48, “a wrongful-termination order” means an order requiring the person who was the landlord under the tenancy immediately before it ended to pay the person who made the application for the wrongful-termination order an amount not exceeding three months’ rent.
- (2) Subsection (3) applies where—
- (a) the First-tier Tribunal intends to make a wrongful-termination order under section 47 or 48, and
 - (b) two or more persons jointly were the landlord under the tenancy in question immediately before it was brought to an end.
- (3) The Tribunal may make a wrongful-termination order—
- (a) against all, some, or only one of the former joint landlords,
 - (b) stating that each person against whom the order is made is liable to pay a specified amount, but the cumulative total of each of the specified amounts must not exceed three months’ rent,
 - (c) stating that each person against whom the order is made is jointly and severally liable for the whole amount to be paid.
- (4) In subsections (1) and (3)(b), “rent” means—
- (a) the amount that was payable in rent under the tenancy immediately before it ended, or

- (b) in a case where two or more persons jointly were the tenant under the tenancy immediately before it ended, the amount mentioned in paragraph (a) divided by the number of persons who were at that time joint tenants under the tenancy.

Sub-tenancies

50 Sub-tenancy notice to leave

- (1) In addition to giving a tenant a notice to leave, a landlord (“the superior landlord”) may give to anyone who holds a tenancy directly or indirectly from the superior landlord’s tenant a sub-tenancy notice to leave.
- (2) In the event that a person to whom a sub-tenancy notice to leave has been given becomes a tenant of the superior landlord by virtue of section 36(2), references in this Part to a notice to leave are to be read as references to the copy of the notice to leave which, in accordance with subsection (3), forms part of the sub-tenancy notice to leave.
- (3) A sub-tenancy notice to leave is a notice which—
- (a) incorporates the notice to leave given to the superior landlord’s tenant, and
- (b) fulfils any other requirements prescribed by the Scottish Ministers in regulations.
- (4) In a case where two or more persons jointly are the landlord under a tenancy, a sub-tenancy notice to leave may be given by any one of those persons.

CHAPTER 4

INTERPRETATION OF PART

51 Meaning of initial period

- (1) For the purposes of sections 39, 43 and 52, the initial period of a tenancy—
- (a) begins on the day the tenant becomes entitled to occupy the let property under the terms of the tenancy, and
- (b) ends on whatever date the landlord and tenant have agreed is its end date.
- (2) If the landlord and tenant have not agreed an end date for the initial period, it ends on the day which falls six months after it began.
- (3) The Scottish Ministers may by regulations make provision governing how an agreement between a landlord and tenant as to the end date of an initial period may be validly made.
- (4) Any agreement between a landlord and tenant as to the end date of an initial period is of no effect if it is made otherwise than in accordance with any regulations made under subsection (3).

52 Meaning of notice to leave and stated eviction ground

- (1) References in this Part to a notice to leave are to a notice which—
- (a) is in writing,
- (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,

(c) states the eviction ground on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b), and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

5 (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

10 (4) The day to be specified in accordance with subsection (1)(b) is the day falling after the later of—

(a) the day on which the initial period of the tenancy expires, or

(b) the day on which the notice period defined in section 44(2) will expire.

15 (5) For the purpose of subsection (4)(b), it is to be assumed that the tenant will receive the notice to leave 48 hours after it is sent.

53 Six month periods

A reference in this Part to a period of six months (however expressed) is to a period which ends in the month which falls six months after the month in which it began, either—

20 (a) on the same day of the month as it began, or

(b) if the month in which the period ends has no such day, on the final day of that month.

PART 6

DEATH OF THE TENANT

25 54 Tenancy continues after tenant's death

A private residential tenancy is not terminated by the death of the sole tenant.

55 Partner's entitlement to inherit tenancy

(1) Subsection (2) applies where—

(a) the sole tenant under a private residential tenancy has died,

30 (b) the tenant's interest under the tenancy was not inherited by the tenant,

(c) prior to the tenant's death, the landlord was informed that a person in a qualifying relationship with the tenant occupied the let property as that person's only or principal home,

35 (d) that person ("the bereaved partner") was in a qualifying relationship with the tenant immediately before the tenant's death, and

(e) the let property is occupied as the bereaved partner's only or principal home.

(2) The tenant is to be deemed to have made a bequest of the tenant's interest in the tenancy to the bereaved partner.

- (3) A bequest deemed to have been made by virtue of subsection (2) is valid despite any term of the tenancy which prohibits assignment.
- (4) In subsection (1), “qualifying relationship” means—
- (a) marriage,
 - (b) civil partnership, or
 - (c) cohabiting relationship.
- (5) Two people are in a cohabiting relationship for the purpose of subsection (4) if they live together as though married.

56 Executor’s duty to terminate tenancy

- (1) Subsection (2) applies where—
- (a) the sole tenant under a private residential tenancy has died, and
 - (b) either—
 - (i) section 55(2) does not apply, or
 - (ii) the bequest deemed to have been made by virtue of that section is not accepted by the legatee.
- (2) The tenant’s executor must—
- (a) bring the tenancy to an end by giving the landlord a notice under section 38, and
 - (b) seek to bring the tenancy to an end on the earliest date possible.
- (3) For the avoidance of doubt, any bequest of the interest of a tenant under a private residential tenancy (other than a bequest deemed to have been made by virtue of section 55(2)) is invalid.

PART 7

CONSEQUENTIAL AND TRANSITIONAL PROVISION

57 Consequential modifications

Schedule 4 modifies other enactments in consequence of this Act.

58 Transitional provision

Schedule 5 makes provision about tenancies which are assured tenancies within the meaning of the Housing (Scotland) Act 1988 on the day that section 1 comes into force.

PART 8

FINAL PROVISIONS

59 Ancillary regulations

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with, or for giving full effect to this Act or any provision made under it.

- (2) Regulations under this section—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act),
 - (b) otherwise, are subject to the negative procedure.

5 **60 Regulation-making powers**

- (1) A power to make regulations conferred by this Act includes the power to make different provision for different purposes.
- (2) Regulations under section 15(3), 19(2)(b), 50(3)(b) or 52(1)(d) prescribing requirements which must be fulfilled by a notice may in particular require that a notice—
 - 10 (a) contain information specified in the regulations,
 - (b) be in a form specified in the regulations,
 - (c) be given in a manner specified in the regulations.
- (3) Regulations under sections 3, 5, 9, 10, 30 and 34 are subject to the affirmative procedure.
- 15 (4) Regulations under sections 15, 19, 20, 29, 50, 51 and 52 are subject to the negative procedure.

61 Interpretation

- (1) In this Act—
 - 20 “eviction ground” means a ground named in schedule 3 on the basis of which an eviction order may be issued,
 - “eviction order” means an order issued under section 41,
 - “private residential tenancy” means a tenancy which is a private residential tenancy by virtue of section 1,
 - “rent” means any sums payable by the tenant to the landlord in connection with the tenancy,
 - 25 “rent-increase notice” has the meaning given by section 19(1),
 - “rent officer” has the meaning given by section 43 of the Rent (Scotland) Act 1984,
 - “statutory term” has the meaning given by section 5(1),
 - 30 “tenancy” (the meaning of which is extended by section 4) includes sub-tenancy,
 - “tenant” includes sub-tenant.
- (2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Act to the landlord are to all of those persons unless stated otherwise.
- (3) In a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise.
- 35

62 Commencement

- (1) This Part comes into force on the day after Royal Assent.

- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may include transitional, transitory or saving provision.

5

63 Short title

The short title of this Act is the Private Housing (Tenancies) (Scotland) Act 2016.

SCHEDULE 1
(introduced by section 1)

TENANCIES WHICH CANNOT BE PRIVATE RESIDENTIAL TENANCIES

Low rent

- 5 1 (1) A tenancy cannot be a private residential tenancy if—
- (a) it is a tenancy under which rent of, or equivalent to, less than £6 a week is payable, and
 - (b) it has not previously acquired the status of a private residential tenancy or been an assured tenancy (including a statutory assured tenancy) within the meaning of the
- 10 Housing (Scotland) Act 1988.
- (2) In determining the rent payable for the purpose of sub-paragraph (1), no account is to be taken of any amount paid by the tenant in respect of services, repairs, maintenance or insurance.

Shop

- 15 2 A tenancy cannot be a private residential tenancy if it is one to which the Tenancy of Shops (Scotland) Act 1949 is capable of applying.

Licensed premises

- 3 3 A tenancy cannot be a private residential tenancy if it is one under which the let property consists of or comprises premises licensed for the sale of alcohol for consumption on the
- 20 premises.

Agricultural land

- 4 (1) A tenancy cannot be a private residential tenancy if sub-paragraph (2) or (3) applies to it.
- (2) This sub-paragraph applies to a tenancy if the let property includes two acres or more of
- 25 agricultural land.
- (3) This sub-paragraph applies to a tenancy if—
- (a) the tenancy is a relevant agricultural tenancy, and
 - (b) the let property is occupied by the person responsible for the control (whether as tenant or as the tenant's agent or employee) of the farming of the let property.
- 30 (4) For the purposes of this paragraph—
- (a) “agricultural land” has the meaning given in section 115(1) of the Rent (Scotland) Act 1984,
 - (b) “relevant agricultural tenancy” means a tenancy which falls within the definition given in the Agricultural Holdings (Scotland) Act 2003 of—
- 35 (i) a 1991 Act tenancy,
- (ii) a short limited duration tenancy, or
 - (iii) a limited duration tenancy.

Student let

- 5 (1) A tenancy cannot be a private residential tenancy if—
- (a) the purpose of it is to confer on the tenant the right to occupy the let property while the tenant is pursuing a course of study provided by a relevant person, and
 - 5 (b) the landlord is a relevant person.
- (2) For the purposes of sub-paragraph (1), the following are relevant persons—
- (a) any university and any constituent college, school or hall of a university,
 - (b) any central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980,
 - 10 (c) any designated institution within the meaning of section 44(2) of the Further and Higher Education (Scotland) Act 1992,
 - (d) any institution for the provision of further education within the meaning of section 135(1) of the 1980 Act which is administered by an education authority,
 - (e) any college of further education which is managed by a board of management in terms of Part 1 of the Further and Higher Education (Scotland) Act 1992,
 - 15 (f) any association approved under regulation 8 of the Further Education (Scotland) Regulations 1959 (S.I. 1959/477),
 - (g) the Royal College of Surgeons of Edinburgh.

Holiday let

- 20 6 A tenancy cannot be a private residential tenancy if the purpose of it is to confer on the tenant the right to occupy the let property for a holiday.

Resident landlord

- 7 (1) A tenancy cannot be a private residential tenancy if sub-paragraphs (2) and (3) apply to it.
- 25 (2) This sub-paragraph applies to a tenancy if, from the time it was granted, a dwelling within the same building as the let property has been occupied as the only or principal home of a person who, at the time of occupying it, has the interest of the landlord under the tenancy.
- 30 (3) This sub-paragraph applies to a tenancy if, at the time it was granted, there was an ordinary means of access—
- (a) through the let property to the dwelling occupied by the person who is, or is to be, the landlord, or
 - (b) through the dwelling occupied by the person who is, or is to be, the landlord to the let property (whether or not that access was available to the tenant as of right).
- 35 8 If, at any time, the landlord is a trustee under a trust, a reference in paragraph 7 to a landlord or the person having the interest of the landlord includes a person who is entitled under the trust to—
- (a) the liferent of the landlord's interest,
 - (b) the fee (or a share of the fee) of the landlord's interest, or

(c) occupy the dwelling.

9 For the purpose of paragraph 7, in determining whether a dwelling is occupied as the only or principal home of the person having the interest of the landlord, no account is to be taken of—

5 (a) any period beginning with the date on which the interest of the landlord is transferred (other than on death) and ending—

(i) 28 days later, or

10 (ii) 6 months later if, within the period mentioned in sub-paragraph (a)(i), the person to whom the interest is transferred notifies the tenant of the person's intention to occupy a dwelling within the same building as the let property,

(b) any period of up to 24 months beginning with the date of the person's death and ending with the person's interest in the tenancy being vested in another person (not being the person's executor).

15 10 In a case where two or more persons jointly are the landlord under a tenancy, references to the landlord in paragraphs 7, 8 and 9 are to any one of those persons.

Social housing

11 A tenancy cannot be a private residential tenancy if the landlord is—

(a) a local authority landlord within the definition given in section 11 of the Housing (Scotland) Act 2001,

20 (b) a registered social landlord within the definition given in section 165 of the Housing (Scotland) Act 2010,

(c) a co-operative housing association within the definition given in section 1 of the Housing Associations Act 1985, or

(d) Scottish Water.

25 *Homeless persons*

12 A tenancy cannot be a private residential tenancy if it is granted on a temporary basis and the purpose of it is the fulfilment of a duty imposed on a local authority by Part II of the Housing (Scotland) Act 1987.

Persons on probation or released from prison etc.

30 13 A tenancy cannot be a private residential tenancy if it is granted for a term of less than 6 months to a tenant who—

(a) is under the supervision provided by a local authority under paragraph (b)(i), (ii) or (vi) of section 27(1) of the Social Work (Scotland) Act 1968, or

35 (b) has requested advice, guidance or assistance from a local authority in fulfilment of its functions under paragraph (c) of that section.

Asylum seekers

- 14 A tenancy cannot be a private residential tenancy if the purpose of it is to provide accommodation for asylum-seekers or their dependants in accordance with section 4 or Part VI of the Immigration and Asylum Act 1999.

5 *Displaced persons*

- 15 A tenancy cannot be a private residential tenancy if the purpose of it is to provide accommodation under the Displaced Persons (Temporary Protection) Regulations 2005 (S.I. 2005/1379).

Shared ownership

- 10 16 A tenancy cannot be a private residential tenancy if it is a tenancy under a shared ownership agreement within the meaning of section 83(3) of the Housing (Scotland) Act 2001.

Tenancies under previous legislation

- 17 A tenancy cannot be a private residential tenancy if it is—
15 (a) a protected tenancy within the meaning of the Rent (Scotland) Act 1984,
(b) a tenancy to which Part VI of that Act applies,
(c) a Part VII contract under that Act, or
(d) an assured tenancy (including a statutory assured tenancy) within the meaning of the Housing (Scotland) Act 1988.

20 **SCHEDULE 2**
(introduced by section 6)

STATUTORY TERMS REQUIRED BY SECTION 6

Rent receipts

- 1 Where any payment of rent is made in cash, the landlord must provide the tenant with a
25 written receipt for the payment stating—
(a) the amount paid, and
(b) either (as the case may be)—
(i) the amount which remains outstanding, or
(ii) confirmation that no further amount remains outstanding.

30 *Rent increases*

- 2 The rent may be increased in accordance with Chapter 2 of Part 4.

Notification about other residents

- 3 If a person aged 16 or over (who is not a joint tenant) is residing in the let property with the tenant, the tenant must tell the landlord—

- (a) that person's name, and
- (b) the person's relationship to the tenant.

Subletting etc.

4 The tenant may not, without the written agreement of the landlord—

- (a) sublet the let property (or any part of it),
- (b) take in a lodger,
- (c) assign the tenant's interest in the let property (or any part of it), or
- (d) otherwise part with, or give up to another person, possession of the let property (or any part of it).

10 *Access for repairs or other work*

5 The tenant is to allow the landlord, or any person authorised by the landlord, reasonable access to the let property for the purpose of—

- (a) carrying out any work on the let property which the landlord is entitled, or obliged, to carry out under or by virtue of—

- (i) an enactment,
- (ii) the terms of the tenancy, or
- (iii) another agreement between the landlord and the tenant, or

- (b) inspecting the let property in order to determine what (if any) work to carry out.

6 Except where access is required urgently, the landlord will give the tenant at least 48 hours' notice that the landlord requires access for the purpose of carrying out work on the let property or inspecting the let property in order to determine what work (if any) to carry out.

7 The tenant is to allow the landlord, or any person authorised by the landlord, reasonable use of facilities within the let property in connection with anything done or to be done under the term specified in paragraph 5.

SCHEDULE 3
(introduced by section 41)

EVICION GROUNDS

PART 1

LET PROPERTY REQUIRED FOR ANOTHER PURPOSE

Landlord intends to sell

- 1 (1) It is an eviction ground that the landlord intends to sell the let property.
- (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord—

- (a) is entitled to sell the let property, and

- (b) intends to sell it, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it.

Property to be sold by lender

2 (1) It is an eviction ground that a lender intends to sell the let property.

5 (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

- (a) the let property is subject to a heritable security,
- (b) the creditor under that security is entitled to sell the property,
- (c) the creditor requires the tenant to leave the property for the purpose of disposing of it with vacant possession, and
- (d) the tenant was given notice in writing before the tenancy began that the tenancy might be ended on the ground named by sub-paragraph (1).

10 (3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

- (a) the conditions described in sub-paragraphs (2)(a) to (c) are met, and
- (b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact, despite the tenant not having been given the notice described in sub-paragraph (2)(c).

Landlord intends to refurbish

20 3 (1) It is an eviction ground that the landlord intends to carry out significantly disruptive works to, or in relation to, the let property.

(2) The First-tier Tribunal must find that the eviction ground named by sub-paragraph (1) applies if—

- (a) the landlord intends to refurbish the let property (or any premises of which the let property forms part),
- (b) the landlord is entitled to do so, and
- (c) it would be impracticable for the tenant to continue to occupy the property given the nature of the refurbishment intended by the landlord.

Landlord or family member intends to live in property

30 4 (1) It is an eviction ground that the landlord or a member of the landlord's family intends to live in the let property.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

- (a) the landlord, or
 - (b) a family member of the landlord,
- intends to occupy the let property as that person's only or principal home for at least 3 months.

- (3) For the purposes of this paragraph, a person is a family member of the landlord if the person is—
- (a) married to or in a civil partnership with the landlord,
 - (b) living together with the landlord as though they were married,
 - 5 (c) a qualifying relative of the landlord,
 - (d) a qualifying relative of a person who is—
 - (i) married to or in a civil partnership with the landlord, or
 - (ii) living together with the landlord as though they were married,
 - (e) married to or in a civil partnership with a qualifying relative of the landlord, or
 - 10 (f) living together with a qualifying relative of the landlord as though they were married.
- (4) In sub-paragraph (3), “a qualifying relative” means a parent, grandparent, child, grandchild, brother or sister.
- (5) For the purposes of this paragraph—
- 15 (a) a relationship of the half blood is to be regarded as a relationship of the whole blood,
 - (b) a person’s stepchild is to be regarded as the person’s child,
 - (c) a person (“A”) is to be regarded as the child of another person (“B”), if A is being or has been treated by B as B’s child,
 - 20 (d) references to the landlord, in a case where there are joint landlords, are to any one of them.

Landlord intends to use for non-residential purpose

- 5 (1) It is an eviction ground that the landlord intends to use the let property for a purpose other than housing.
- 25 (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if the landlord intends to use the let property for a purpose other than providing a person with a home.

Property required for religious purpose

- 6 (1) It is an eviction ground that the let property is required for use in connection with the
 30 purposes of a religion.
- (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—
- 35 (a) the let property is held for the purpose of being available for occupation by a person engaged in the work of a religious denomination as a residence from which the duties of such a person are to be performed,
 - (b) the property is required for that purpose, and
 - (c) the tenant was given notice in writing before the tenancy began that the tenancy might be ended on the ground named by sub-paragraph (1).

- (3) In sub-paragraph (2)(a), the reference to a person engaged in the work of a religious denomination includes an imam, a lay missionary, minister, monk, nun, priest and rabbi.

PART 2

TENANT’S STATUS

5 *Not an employee*

7 (1) It is an eviction ground that the tenancy was entered into to provide an employee with a home and the tenant is not a qualifying employee.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

10 (a) the tenancy was granted to the tenant—

(i) in consequence of the tenant being an employee of the landlord, or

(ii) in the expectation that the tenant would become an employee of the landlord, and

(b) the tenant is not employed by the landlord.

15 (3) In sub-paragraph (2), “landlord” includes any person who has been a landlord under the tenancy.

Not a student

8 (1) It is an eviction ground that the let property is student accommodation and the tenant is not a student.

20 (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

(a) planning permission for the construction or conversion of the let property or any building of which it forms part was given on the basis that it would be used exclusively for the purpose of housing students,

25 (b) it was part of the basis on which the tenancy was granted that the tenant was pursuing, or intended to pursue, a course of study provided by a relevant person, and

(c) the tenant is neither pursuing nor intending to pursue a course of study provided by a relevant person within the next three months.

30 (3) For the purposes of sub-paragraph (2), “a relevant person” means a person specified or described in paragraph 5(2) of schedule 1.

PART 3

TENANT’S CONDUCT

Not occupying let property

35 9 (1) It is an eviction ground that the tenant is not occupying the let property as the tenant’s home.

- (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—
- (a) the tenant is not occupying the let property as the tenant’s only or principal home, and
 - 5 (b) the tenant’s not doing so is not attributable to a breach of the landlord’s duties under Chapter 4 of Part 1 of the Housing (Scotland) Act 2006.

Breach of tenancy agreement

10 (1) It is an eviction ground that the tenant has failed to comply with an obligation under the tenancy.

10 (2) The First-tier Tribunal—

- (a) must find that the ground named by sub-paragraph (1) applies if the tenant has materially failed to comply with a statutory term of the tenancy,
- (b) may find that the ground named by sub-paragraph (1) applies if—
 - 15 (i) the tenant has failed to comply with any other term of the tenancy, and
 - (ii) the Tribunal considers it to be reasonable to issue an eviction order on account of that fact.

(3) References in sub-paragraph (2) to a term of the tenancy do not include the term under which the tenant is required to pay rent.

Rent arrears

20 11 (1) It is an eviction ground that the tenant has been in rent arrears for three or more consecutive months.

(2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

- 25 (a) for three or more consecutive months the tenant has continuously been in arrears of rent,
- (b) at any point in time during that period, the tenant has been in arrears of rent by an amount equal to or greater than the amount which was payable as one month’s rent at that point in time, and
- 30 (c) the Tribunal is satisfied that the tenant’s being in arrears of rent over that period is not wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

(3) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

- 35 (a) for three or more consecutive months the tenant has been in arrears of rent, and
- (b) the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order.

(4) In deciding under sub-paragraph (3) whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant’s being in arrears of rent over the period in question is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit.

40

(5) For the purposes of this paragraph—

(a) references to a relevant benefit are to—

(i) a rent allowance or rent rebate under the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971),

5 (ii) a payment on account awarded under regulation 91 of those Regulations,

(iii) universal credit, where the payment in question included (or ought to have included) an amount under section 11 of the Welfare Reform Act 2012 in respect of rent,

(iv) sums payable by virtue of section 73 of the Education (Scotland) Act 1980,

10 (b) references to delay or failure in the payment of a relevant benefit do not include any delay or failure so far as it is referable to an act or omission of the tenant.

Criminal behaviour

12 (1) It is an eviction ground that the tenant has a relevant conviction.

15 (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if after the tenancy begins the tenant is convicted of an offence—

(a) which was committed by using, or allowing the use of, the let property for an immoral or illegal purpose, or

(b) which—

(i) was committed within or in the locality of the let property, and

20 (ii) is punishable by imprisonment.

(3) In a case where two or more persons jointly are the tenant under a tenancy, the reference in sub-paragraph (2) to the tenant is to any one of those persons.

Anti-social behaviour

25 13 (1) It is an eviction ground that the tenant has engaged in relevant anti-social behaviour.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the tenant has acted in an anti-social manner in relation to—

(a) a person who resides in the let property, or

(b) any other person while that person is—

(i) visiting the let property, or

30 (ii) otherwise engaged in lawful activity while in the locality of the let property.

(3) In a case where two or more persons jointly are the tenant under a tenancy, the reference in sub-paragraph (2) to the tenant is to any one of those persons.

35 (4) For the purposes of this paragraph, a person is to be regarded as acting in an anti-social manner in relation to another person by—

(a) doing something which causes or is likely to cause the other person alarm, distress, nuisance or annoyance,

- (b) pursuing in relation to the other person a course of conduct which—
- (i) causes or is likely to cause the other person alarm, distress, nuisance or annoyance, or
 - (ii) amounts to harassment of the other person.

- 5 (5) In sub-paragraph (4)—
- “conduct” includes speech,
 - “course of conduct” means conduct on two or more occasions,
 - “harassment” is to be construed in accordance with section 8 of the Protection from Harassment Act 1997.

10 **PART 4**

LEGAL IMPEDIMENT TO LET CONTINUING

Landlord has ceased to be registered

14 (1) It is an eviction ground that the landlord is not registered by the relevant local authority under the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”).

15 (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if—

- (a) the landlord is not entered in the register prepared and maintained for the purposes of Part 8 of the 2004 Act by the local authority within whose area the let property is situated because either—

- (i) the local authority has refused to enter the landlord in the register, or
- (ii) the local authority has removed the landlord from the register in accordance with section 88(8) or 89 of the 2004 Act, and

- (b) by continuing to let the property to the tenant the landlord—

- (i) is committing an offence under subsection (1) of section 93 of the 2004 Act, or
- (ii) would be doing so but for subsection (6) of that section.

HMO licence has been revoked

15 (1) It is an eviction ground that the let property or associated living accommodation is in multiple occupation and not licensed under Part 5 of the Housing (Scotland) Act 2006 (“the 2006 Act”).

30 (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if, under section 139(1) or 157(2) of the 2006 Act, the HMO licence for the let property has been revoked.

Overcrowding statutory notice

35 16 (1) It is an eviction ground that an overcrowding statutory notice has been served on the landlord.

- (2) The First-tier Tribunal must find that the ground named by sub-paragraph (1) applies if an overcrowding statutory notice in respect of the let property has been served on the landlord under section 17(3) of the Private Rented Housing (Scotland) Act 2011.

SCHEDULE 4
(introduced by section 57)

CONSEQUENTIAL MODIFICATIONS

Succession (Scotland) Act 1964

1 (1) The Succession (Scotland) Act 1964 is amended as follows.

(2) In paragraph (d) of section 8(6)—

10 (a) the words “a tenancy to which the Rent and Mortgage Interest Restrictions Acts 1920 to 1939 apply” become sub-paragraph (i) of that paragraph, and

(b) at the end of that sub-paragraph there is inserted “; or

(ii) a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016.”.

15 (3) In section 16(9), in the definition of “lease”, after the word “tenancy” there is inserted “but does not include a lease constituting a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016”.

Rent (Scotland) Act 1984

2 (1) The Rent (Scotland) Act 1984 is amended as follows.

20 (2) In section 43A(2) and (7), for the words “section 70 of the Housing (Scotland) Act 1988” there is substituted “Chapter 2 of Part 4 of the Private Housing (Tenancies) (Scotland) Act 2016”.

(3) In section 53(1)(b), for the words “or the Housing (Scotland) Act 1988” there is substituted “, the Housing (Scotland) Act 1988 or Chapter 2 of Part 4 of the Private Housing (Tenancies) (Scotland) Act 2016”.

Requirements of Writing (Scotland) Act 1995

3 After section 1(7) of the Requirements of Writing (Scotland) Act 1995, there is inserted—

30 “(7A) A private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016 is not a “real right in land” for the purposes of this section.”.

Homelessness etc. (Scotland) Act 2003

4 In section 11(5) of the Homelessness etc. (Scotland) Act 2003, after paragraph (g) there is inserted—

35 “(h) section 46 of the Private Housing (Tenancies) (Scotland) Act 2016.”.

Family Law (Scotland) Act 2006

5 (1) Section 29 of the Family Law (Scotland) Act 2006 is amended as follows.

(2) In subsection (2), after “(4)” there is inserted “and (4A)”.

(3) After subsection (4) there is inserted—

5 “(4A) An order or interim order under subsection (2) shall not have the effect of awarding to the survivor the deceased’s interest as a tenant under a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016.”.

SCHEDULE 5

(introduced by section 58)

TRANSITION FROM REGIMES UNDER EARLIER ENACTMENTS

PART 1

NO NEW ASSURED TENANCIES

No new assured tenancies

15 1 (1) Section 12 of the Housing (Scotland) Act 1988 is amended as follows.

(2) In subsection (1), after the word “subsection” there is inserted “(1A) or”.

(3) After subsection (1) there is inserted—

20 “(1A) A tenancy cannot be an assured tenancy if it is granted on or after the day that section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 comes into force.”.

(4) In schedule 4, after paragraph 13(3) there is inserted—

“(4) A tenancy which is a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016.”.

No new short assured tenancies

25 2 (1) The Housing (Scotland) Act 1988 is amended as follows.

(2) In section 32—

(a) in subsection (3)—

(i) paragraph (b) and the word “or” immediately preceding it are repealed,

(ii) the words “or, as the case may be, the new contractual tenancy” are repealed,

(b) in subsection (4)—

(i) the words “or, as the case may be, before the beginning of the new tenancy” are repealed,

(ii) the words “or new” are repealed.

35 (3) In section 33(1)—

(a) the word “and” is inserted at the end of paragraph (b),

- (b) paragraph (c), including the word “and” at the end of it, is repealed.

PART 2

CONVERSION OF TENANCIES UNDER PREVIOUS REGIMES

Change of tenancy status by agreement

5 3 (1) The Housing (Scotland) Act 1988 is amended as follows.

(2) After section 12(2) there is inserted—

“(3) Subsection (1) is subject to section 46A.”.

(3) After section 46 there is inserted—

“Phasing out of assured tenancies

10 **46A Change to private residential tenancy by agreement**

(1) The landlord and the tenant under an assured tenancy may agree that on a day specified by them, the tenancy will cease to be an assured tenancy.

(2) On the day specified by the landlord and the tenant under subsection (1), the tenancy—

15 (a) ceases to be an assured tenancy, and

(b) becomes a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”).

20 (3) But an agreement under subsection (1) is of no effect if, for a reason other than the tenancy being an assured tenancy, it is one which schedule 1 of the 2016 Act states cannot be a private residential tenancy.”.

Change of tenancy status on succession

4 After section 3A of the Rent (Scotland) Act 1984 there is inserted—

“3B Succession after the Private Housing (Tenancies) (Scotland) Act 2016 comes into force

25 (1) Subsection (2) applies where—

(a) the sole tenant of a dwelling-house under a protected tenancy or a statutory tenancy dies on or after the day that section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 comes into force, and

30 (b) as a result of that death, an individual becomes the tenant of the dwelling-house by virtue of section 3(1)(b) or 3A above.

(2) As soon as the individual becomes the tenant, the individual’s tenancy of the dwelling-house—

(a) ceases to be a statutory tenancy or a statutory assured tenancy (as the case may be), and

35 (b) becomes a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016.”.

5 After section 31 of the Housing (Scotland) Act 1988 there is inserted—

“31A Succession after the Private Housing (Tenancies) (Scotland) Act 2016 comes into force

(1) Subsection (2) applies where—

5 (a) a sole tenant under an assured tenancy dies on or after the day that section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) comes into force, and

(b) an individual succeeds to the tenancy.

(2) As soon as the individual becomes the tenant, the tenancy—

10 (a) ceases to be an assured tenancy (if, but for this section, it would have been one), and

(b) becomes a private residential tenancy as defined in the Private Housing (Tenancies) (Scotland) Act 2016.”.

Private Housing (Tenancies) (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about private rented housing; in particular to establish a new type of tenancy to be known as a private residential tenancy.

Introduced by: Alex Neil
On: 7 October 2015
Bill type: Government Bill

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