



The Housing (Scotland) Act 2014

A guide for tenants

February 2015



Jargon

Assignment

Assignment is where a tenant formally hands over the tenancy to another person.

Joint tenancies

A tenant is entitled to a joint tenancy with one or more individuals, so long as the house is, the only or principal home of all the tenants and permission from the landlord has been given. A joint tenancy means that all tenants have exactly the same rights and obligations as each other.

Reasonable preference

This is giving 'due weight' to households within the reasonable preference categories

Subletting

Subletting is where a tenant, who is renting from a landlord, rents their home to someone else – the subtenant.

Succession

Succession is the transfer of a tenancy from the tenant to someone else when the tenant dies.

Tenancy agreements

A tenancy agreement is a contract between a tenant and landlord. It sets out the rights and responsibilities of both the tenant and landlord.

For more information on terms and phrases related to housing please look at:

http://scotland.shelter.org.uk/get_advice/downloads_and_tools/jargonbuster/jargonbuster

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Note - Part 8 is General provisions which allows for the implementation of the legislation and are not detailed.



About this Guide

TIS and TPAS Scotland have jointly produced this guide to the Housing (Scotland) Act 2014 (funded by Scottish Government) to help tenants understand what is in the Act and how it affects them. At the end of the guide there is a 'Jargon buster' for those terms you may not be sure about.

The Act covers a wide range of issues including;

- The end of right to buy
- How social housing is allocated
- Changes to tenancies in the social rented sector
- Improving standards in the private rented sector and regulation of letting agents
- Licensing of sites for mobile homes'
- New powers for the Scottish Housing Regulator (SHR).

This guide does not cover every aspect of the Act. If you want more information please go to: <http://www.scotland.gov.uk/Topics/Built-Environment/Housing>

TIS
Suite 128, Baltic Chambers
Glasgow G2 6HJ
0141 248 1242
info@tis.org.uk
www.tis.org.uk

TPAS Scotland
74 – 78 Saltmarket
Glasgow G1 5LD
0141 552 3633
enquiries@tpasscotland.org.uk
www.tpasscotland.org.uk

Guide to the Housing (Scotland) Act 2014

Introduction

The Housing (Scotland) Act received Royal Assent on 1 August 2014. A range of amendments were made to the original Housing (Scotland) Bill during the parliamentary process, many of them were suggested by tenants.

The Act has the objectives of “...*safeguarding the interests of consumers, supporting improved quality and delivering better outcomes for communities.*” The Scottish Government sees the Act as contributing to their vision that all people in Scotland live in high-quality, sustainable homes that they can afford and that meet their needs.

Parts of the Act require secondary legislation or further guidance. The exact timetable for implementation of some of the parts is not yet known, although some are known, for example, the tenant ballot provisions of the Act commenced November 2014 and the date for changes to the Right to Buy will be 1 August 2016. Further guidance and consultation from Scottish Government is expected over the coming months, for example, on

- Regulations the allocation of housing
- Guidance on the minimum period for an application for housing to remain in force
- Guidance on the creation, extension and termination of Short Scottish Secure Tenancies based on anti-social behaviour
- Guidance on eviction from a Scottish Secure Tenancy on antisocial behaviour grounds
- Regulations on Enhanced Enforcement Areas in private rented housing
- Regulations on a Letting Agent Code of Practice.

The Act is in eight parts covering the following:

- Part 1 – Abolition of the Right to Buy
- Part 2 – Social housing allocations and changes to tenancies in the social rented sector
- Part 3 – Private rented housing, including the introduction of a new Housing Tribunal and changes to the repairing standard
- Part 4 – Regulation of letting agents
- Part 5 – Licensing of mobile home sites with permanent residents
- Part 6 – New powers for local authorities to improve the condition of homes in the private sector
- Part 7 – Miscellaneous including greater powers for the Scottish Housing Regulator (SHR) to transfer the assets of registered social landlords under certain circumstances.
- Part 8 – General provisions – Sets out various supplementary provisions

Part 1

Right to Buy

Part 1 of the Act abolishes the Right to Buy – although this won't take effect until 1 August 2016. This will mean that if you are a social housing tenant you won't have the right to buy your home after 31 July 2016. It also means that the current legislation is still in place until that date and therefore if you are currently a social housing tenant you may be able to buy your home up until the 31 July 2016.

The Scottish Government has produced guidance for tenants which will provide you with further information and your landlord also should be able to provide you with information on this.

Part 2

Part 2 of the Act makes changes to the allocation of social housing and some changes to tenancy agreements (both the Scottish secure tenancy [SST] and the short Scottish secure tenancy [SSST]).

Allocations

Reasonable preference

When allocating housing, social landlords (local authorities, housing associations and co-operatives) have had to give 'reasonable preference' to people with particular needs. This has been amended and social landlords now have to give reasonable preference to:

- People who are homeless or are threatened with homelessness and who have unmet housing needs
- People who live in unsatisfactory housing conditions and who have unmet housing needs
- Social housing tenants who are considered to be under-occupying their home.

Social landlords will still be able to decide whether other groups of applicants will also be given priority in response to local circumstances.

Those applying for social housing have unmet housing needs where the landlord considers their needs cannot be met by any housing options which are available.

Consultation

If social landlords want to make any changes to their allocation policy, the 2014 Act now requires them to consult tenants, applicants, Registered Tenant Organisations (RTOs) and anyone else they want. Landlords must then publish a report on the outcome of the consultation – there is no set format for the way it has to be produced and it's possible for a number of landlords to produce a joint report.

In making changes to their allocation policy, social landlords must also take account of:

- The local housing strategy for the area
- Any guidance from Scottish Government on allocations.

Ownership of property

When deciding on an applicant's priority for housing, the Act allows social landlords to take the ownership or value of property owned by the applicant into account. This applies to the applicant, anyone who normally lives with the applicant or who plans to live with them.

However the Act makes it clear that property ownership cannot be taken into account if:

- The owner cannot secure entry to their property, for example it may be uninhabitable
- Occupation of the property will lead to abuse from someone else living in that property or who previously lived with the applicant
- Living in the property threatens the health of any occupants and the applicant has done all they could to prevent that danger.

Eligibility for housing

Section 6 allows social landlords to set a minimum period before any applicant is eligible for the allocation of housing – depending on circumstances (a minimum period cannot be placed on homeless applicants by local authorities with a legal duty to secure accommodation for the applicant). This is sometimes known as a suspension from receiving an offer of housing.

Social landlords can decide that an applicant is not eligible for social housing if the applicant:

- Has engaged in anti-social behaviour, including in the vicinity of the house; harassment of others; anti-social behaviour towards a social landlord's employees when applying for housing
- Has a conviction for using their home for immoral or illegal activity or any other offence punishable by imprisonment committed in the locality of their home (also applies to someone who has resided with the applicant)
- Previously abandoned a property and the tenancy was terminated
- A court had granted an eviction notice against the applicant
- Has or had rent arrears with a tenancy and certain specified steps had not been taken to pay back the debt
- Made a false statement in any application for housing to a social landlord
- Has already refused offers of housing and the landlord considers the refusal of that number of offers to be unreasonable.

Short Scottish secure tenancy

Creation of short Scottish secure tenancies

The Act makes changes to when short Scottish secure tenancies can be used.

Anti-social behaviour

Social landlords will be able to convert an existing Scottish secure tenancy (SST) to a short Scottish secure tenancy (SSST), or can grant an SSST to new tenants, where the tenant, a household member or a visitor, has been involved in anti-social behaviour in or near social housing within the last three years – an eviction order because of antisocial behaviour or an anti-social behaviour order (ASBO) is no longer required.

Homeowners

The Act allows social landlords to grant an SSST for a temporary let to a homeowner who cannot live in their own home. This is to allow the homeowner to make arrangements around the property they own, for example, this could be while they get adaptations carried out to it, or whilst they are trying to sell it.

Duration of SSST

At present the minimum period for all SSSTs is six months. Where the SSST has been given to a tenant because of antisocial behaviour or eviction for antisocial behaviour, the 2014 Act extends the minimum period to 12 months. This is to allow sufficient time for support services to help address the antisocial behaviour such as alcohol or drug counselling to have effect.

Extension of period of SSST

The Act allows social landlords to extend an SSST for antisocial behaviour by an additional six months. This means that SSSTs due to antisocial behaviour could last up to 18 months.

The landlord can however still take eviction action against the tenant during this period if it becomes necessary.

Where a landlord is considering extending the duration of an SSST for an additional six months, the tenant has to be given two months' notice and informed of the reasons for the extension. The tenant will have to be in receipt of housing support services before a landlord can use this extension.

Recovery of possession

If a landlord intends bringing an SSST (created due to antisocial behaviour or eviction for antisocial behaviour) to an end and repossess the property, the Act now requires the landlord to provide clear reason why it is doing so and to set out which requirement(s) of the tenancy agreement have been broken. The landlord will also have to provide at least four weeks' notice before eviction proceedings can be raised. The Act gives tenants the right to request a review by the landlord before the case goes to court.

Scottish secure tenancy

Assignment, subletting, joint tenancies and succession

The Act makes a number of changes in situations where the tenant wants to assign or sublet a tenancy, where the tenant wants to establish a joint tenancy, and to succession to a secure tenancy.

If a tenant wants to assign their tenancy or create a joint tenancy, the Act now requires that both the tenant and the other person should have been living in that home as their only or main residence for 12 months. Before a tenant can apply to the landlord for permission to sublet their home, the tenant will have to have been living at the property as their only or main home for the 12 months prior to the application.

Assignment of a tenancy may be refused where:

- The applicant would not have been given reasonable preference (priority) under the landlord's allocation policy
- Assignment would result in under occupancy of the property.

The Act has changed the qualifying period for succession by a co-habiting partner from six months to 12 months. The co-habiting partner will have to have lived in the property as their only or main residence for the 12 months immediately before the tenant's death before they will be able to succeed to the tenancy. The 12 month qualifying period will also apply to other family members and carers.

In all cases of assignment, the creation of a joint tenancy and succession, the 12 month period starts at the point when the landlord has been informed that the individual is living in the property as their only or main home.

Grounds for eviction

Where the tenant or member of the household or a visitor to the house has been convicted of serious criminal or antisocial behaviour in or around social housing and the landlord decides eviction action is necessary as a result of the impact of the behaviour on neighbours and others in the community, the Act simplifies the eviction process and the court must grant an eviction order where it is satisfied that the landlord has followed the correct procedures— the court no longer has to consider whether it is reasonable to grant an eviction order. The landlord has to serve notice that it is seeking possession within 12 months of the conviction or dismissal of an appeal against the conviction. The tenant has a right to challenge the court action.

The Act allows landlords to repossess a property which has been adapted and which has been allocated to a tenant who does not need the adaptations. This would only apply where the landlord now requires the property for a person who requires these adaptations. Landlords will have to find suitable alternative accommodation for those affected in such cases.



Part 3

Private rented housing

Private Rented Housing Tribunal

The Act transfers civil private rented sector cases from the Scottish Courts to a new tribunal. This is linked to broader reform of devolved tribunals in Scotland. These cases will form part of a new 'First-tier Tribunal' late in 2016. The First-tier Tribunal will also include the existing Private Rented Housing Panel (PRHP) and Homeowner Housing Panel (HOHP).

Repairing standard for private rented housing

The Act provides further provisions to the Repairing Standard, which will require private landlords to make improvements to the standard of the properties by:

- Providing carbon monoxide detectors
- Arranging electrical safety inspections every five years

The Act gives Scottish Ministers powers to amend the repairing standard and the landlord a duty to ensure their property (ies) meet the standard.

The Act also enables local authorities to apply to the Private Rented Housing Panel to ensure any private landlord meets the repairing standard.

The Act also enables local authorities to apply to the Private Rented Housing Panel directly to ensure any private landlord meets the repairing standard. This also includes a new power of inspection for local authorities, to inspect privately rented properties, to enable them to gather evidence in support of a Repairing Standard application.

Enhanced Enforcement Areas

The Act requires Scottish Ministers to lay regulations in Parliament by 1 April 2015. Those regulations are to allow local authorities to apply for additional discretionary powers to that they can target enforcement action at a particular area. The Act specifies that the area must have the combination of a concentration of private rented housing which is of a poor environmental standard, overcrowding and a prevalence of anti-social behaviour. Where an application is approved by Scottish Ministers such an area will be called an Enhanced Enforcement Area.

Part 4

Letting Agents

In order to improve the levels of service and professionalism across the letting agent industry, the Act introduces a system of regulating letting agents in Scotland. A mandatory register of letting agents in Scotland will be created, with agents having to demonstrate that they have adequate training and be assessed as 'fit and proper' to act in that role. In addition a Code of Practice will be developed, which all letting agents must comply with. Tenants, landlords or Scottish Government will also be able to apply to the new Housing Tribunal where the letting agent has failed to comply with the Code of Practice.

Part 5

Mobile home sites with permanent residents

The Act strengthens the licensing system for mobile home sites which have permanent residents and introduces measures to provide further protection for those living permanently on such sites.

Site owners will have to apply for a site licence. Local authorities will be able to charge a fee for the granting of a licence, which will last for a maximum of five years. The fee can be set at a level the authority thinks reasonable – but cannot exceed the maximum set by Scottish Ministers.

Site owners, or their managers, will now be required to pass a fit and proper person test (the legislation sets out the detail of what this involves).

Local authorities are given new enforcement powers including:

- Issuing improvement notices
- Issuing penalty notices
- Applying to a sheriff to appoint an interim manager for a site.

Part 6

Private housing conditions

Part 6 provides additional powers to local authorities to enforce repairs and maintenance in private homes.

Tenement management scheme – missing shares

The Act amends the Tenements (Scotland) Act 2004 and allows local authorities to pay a missing share where the majority of owners in a block have agreed to repair or maintain their property but one or more owners has not paid their share of the cost of the work – because they are unable, unwilling or cannot be identified or found. The local authority can then recover the costs, and any administrative expenses, directly from the owner who has not paid their share.

The Act also proposes (subject to regulations and consultation) to give Registered Social Landlords (RSLs) similar powers to recover the cost of missing shares through repayment charges where they have carried out repair and maintenance work on behalf of private home owners in a tenement.

Maintenance orders and plans

The Act amends the 2006 Act and provides powers for local authorities to require owners to produce a maintenance plan for their property in order to ensure the maintenance is to

a reasonable standard. This will allow local authorities to issue an order where they have already issued a work notice and no certificate has been produced to confirm the work has been carried out. Local authorities can revoke a maintenance order where they are satisfied that a property factor has been appointed to manage or maintain the property. The Act also makes changes to the way local authorities have to register documents associated with maintenance orders.

Repayment Charges

The Act amends the powers of local authorities to use repayment charges to recover costs of enforcement (from work notices, maintenance orders, payment of missing shares, or enforcing the repairing standard). A repayment charge is a charge against the future sale of the property. The Act allows repayment charges to apply to commercial property as well as living accommodation, such as a ground floor shop in a tenement. The Act also gives the local authority discretion to set a repayment period of between 5 and 30 years for a repayment charge.

Part 7

Miscellaneous

20-year rule

The Act introduces the power for Scottish Ministers to make exemptions from the 20-year security rule contained in the Land Tenure Reform (Scotland) Act 1974. This is intended to ensure that the Scottish Government can offer schemes such as Help to Buy and shared equity schemes without being exposed to the financial risks associated with the 20 year security rule because of homeowners having the right to redeem their equity loan at its original value rather than to the current value after the security has been in force for 20 years.

Scottish Housing Regulator – transfer of assets

The Scottish Housing Regulator (SHR) has the power under the 2010 Act to transfer the assets of an RSL (including tenants' homes) to another RSL, following consultation with tenants and lenders. The 2014 Act creates an exception to the requirement for consultation, where:

- The RSL is in financial jeopardy
- Urgent action is required
- It is heading towards insolvency
- There is no time for any consultation.

The Act also removes the requirement for the SHR to get an independent valuation of the assets being transferred.

Registered Social Landlords becoming a subsidiary of another body

Where one RSL wants to become part of another organisation's structure the Act now requires that tenants be balloted on the proposal (except in limited circumstances where a waiver is granted by the SHR). The consent of the SHR is dependent on the ballot of tenants being carried out.

The provisions on group structures came in to place from 20 November and at the same time the SHR published interim guidance on how it would use these powers. It will use that guidance as the basis for further consultation early 2015.

Repeal of Defective Designation Provisions

Previous legislation allowed some owners who had bought their home through the Right to Buy to get financial assistance. These were owners who lived in certain types of properties (such as precast reinforced concrete) which were designated as defective. As the original power has not been used for some time, the 2014 Act repeals the previous legislation.

