

Housing(Scotland)Act 2001

Scottish Secure & Short Scottish Secure Tenancy



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INTRODUCTION

1. The purpose of this guidance is to explain the details of the new tenancy, the Scottish secure tenancy (SST), and the short Scottish secure tenancy (short SST), which are provided for in the Housing (Scotland) Act 2001 ("the Act"). The new tenancy is intended primarily for tenants of local authorities and registered social landlords (RSLs) and will in virtually all cases (exceptions are described below) replace the existing secure and assured tenancies of such tenants. The SST and short SST will take effect in all parts of Scotland from 30 September 2002. Landlords should revise their policies and procedures to take account of the new provisions and this guidance.
2. Separate guidance is available on the right to buy and on the tenant participation provisions set out in Chapter 3 of Part 2 of the Act.
3. These notes do not provide guidance on tenancies in the private-sector – normally assured or short assured tenancies.

Equal Opportunities

4. Landlords should bear in mind the requirements under section 106 of the Act that:
 - (1) Scottish Ministers and local authorities must exercise their functions under the Act in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunity requirements.
 - (2) In providing housing accommodation and related services, registered social landlords must act in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunity requirements.
5. Landlords must ensure that all tenants are treated equally irrespective of their sex, marital status, age, race, ethnic origin, sexual orientation, disability or religion. In implementing the SST landlords will need to make arrangements to ensure that they can, as appropriate, give information in different languages, Braille, large print, etc. All existing tenants should have access to information which tells them of the changes to their statutory rights and responsibilities.
6. This does not necessarily mean the production of lots of information in different formats, but it does mean that landlords should build in some assessment of the needs of different tenants and how the landlord can make information available to them e.g. through translation services, etc. It also means that where landlords assess that they do not need to make available information in different formats they should at least establish how they would go about doing so, if required. Landlords with significant numbers of tenants from a particular ethnic minority or disabled group should consider producing information in different formats.

Model Tenancy Agreements and Common Law

7. The 2001 Act gives Scottish Ministers a power to issue guidance as to the form and content of a tenancy agreement including, in particular, a model tenancy agreement. A model SST agreement was issued to all social landlords under cover of the Scottish Executive Development Department's letter of 26 October 2001. This model sets out the statutory rights for tenants in terms of the 2001 Act and embodies suggestions for additional contractual rights to be agreed between landlord and tenant. The model also sets out the position with regard to common law applicable to social sector tenancies in Scotland. We believe this model represents the basis for a sound tenancy agreement which will form a common standard for all Scottish secure tenancies and a baseline against which Communities Scotland can measure good practice. A model short SST Agreement has also been made available to all social landlords and both models can be found on the Scottish Executive web site: <http://www.scotland.gov.uk/library3/housing/msst-00.asp>. Whilst there is no statutory obligation on landlords to use the model tenancy agreements, we would encourage its use as the basis for all tenancy agreements. At the very least, we would expect landlords to reflect the spirit and substance of the legislation in any tenancy agreements. To allow landlords to draw up the tenancy agreements most suitable to local circumstances and to allow additional contractual elements to be added, where appropriate, to the mandatory statutory provisions set out in the Act, the models come complete with a disk version of the agreement.

Secondary Legislation

8. Secondary legislation is required to fully implement some of the provisions of the Act relating to the SST and short SST. This is contained in Orders and Regulations which have been confirmed by the Scottish Parliament and are as follows:

The Housing (Scotland) Act 2001 (Commencement No. 5, Transitional Provisions and Savings) Order 2002

The Housing (Scotland) Act 2001 (Scottish Secure Tenancy etc.) Order 2002

The Scottish Secure Tenancies (Exceptions) Regulations 2002

The Scottish Secure Tenants (Proceedings for Possession) Regulations 2002

The Scottish Secure Tenants (Abandoned Property) Order 2002

The Scottish Secure Tenants (Compensation for Improvements) Regulations 2002

The Scottish Secure Tenants (Right to Repair) Regulations 2002

The Short Scottish Secure Tenancies (Proceeding for Possession) Regulations 2002

The Short Scottish Secure Tenancies (Notices) Regulations 2002.

The Scottish Secure Tenancy (SST)

9. A tenancy will only be an SST if:
- the house is let as a separate dwelling;
 - the tenant is an individual and the house is the tenant's only or principal home;
 - the landlord is a local authority landlord, a registered social landlord, or a water or sewerage authority;
 - where the landlord is a RSL which is a co-operative housing association, the tenant is a member of the association; and
 - the tenancy was created on or after such date as specified by order or before that date if of a description specified by order.

These basic criteria are discussed in paragraph 14.

N.B. Tenants of Scottish Homes will continue to be secure tenants in terms of the Housing (Scotland) Act 1987.

10. If a tenancy meets the above criteria then it is an SST and has all the rights, protections and obligations of the SST set out in the Act, regardless of what the tenancy agreement may say or be called by the landlord or tenant. Equally, any tenancy let as an SST by one of the bodies eligible to offer an SST must meet these criteria.
11. All existing secure and assured tenants of local authorities, RSLs, and water or sewerage authorities will convert to the SST with effect from 30 September 2002, by virtue of an order under section 11 of the 2001 Act. The interpretation of the terms of the Act is a legal matter which is ultimately for the courts. It is, however, the Executive's view that an existing tenancy does not end at the date of conversion to the SST, it simply changes its status at that date from a secure or assured tenancy to an SST; conversion is not a new tenancy.

Rent Arrears or Outstanding Debt on Conversion to the SST

12. As explained above, the interpretation of the terms of the Act is a legal matter which is ultimately for the courts. Further, the question of recoverability of rent arrears in any case will depend very much on the facts and circumstances of that

case. However, given the Executive's view that the conversion of a tenancy to a Scottish secure tenancy does not end the previous tenancy, but merely alters the status of that tenancy, then it follows that if a secure or assured tenant is in arrears of rent or otherwise in breach of their tenancy agreement at the time of conversion to the SST, that tenant will continue to be liable for those arrears or for that breach of the tenancy agreement under the new SST.

13. Some tenancies may meet the general criteria for an SST set out at paragraph 14 but will nonetheless not be SSTs because of the exemptions set out in Schedule 1 of the Act. These exemptions are set out and discussed in paragraph 26.

14. **Basic Criteria for an SST (section 11 of the Housing (Scotland) Act 2001)**

14.1: the house must be let as a separate dwelling (section 11(1)(a))

"House" in this section includes a flat or any other part of a building which is occupied or intended to be occupied as a separate dwelling. "House" and "flat" are defined under section 111 of the Act. "Separate dwelling" is not defined in the Act or elsewhere in housing legislation but is generally taken to include accommodation which is reasonably self contained. The reference to "separate dwelling" mirrors section 44(1) (a) of the Housing (Scotland) Act 1987. There has been a considerable amount of case law in which the meaning of this provision of the 1987 Act has been examined. Basically, it means that, where the tenant shares an essential part of the living accommodation (e.g. livingroom or kitchen), the tenancy is excluded from the secure (and now Scottish secure tenancy regime).

14.2: the landlord must be either a local authority or a registered social landlord or a water or sewerage authority (section 11(1)(b))

Any house let by one of these bodies, which also meets the other criteria in this section, will be let under an SST unless there is a specific exemption in Schedule 1 to the Act or it is a short SST as defined in section 34 of the Act.

Local authority landlords include joint boards or committees and trusts controlled by a local authority (see section 11(3) of the Act).

This means that no other type of landlord can offer the SST. Private-sector landlords will continue to be able to offer assured or short assured tenancies under the terms of the Housing (Scotland) Act 1988 ("the 1988 Act").

14.3: the tenant must be an individual and the house must be the tenant's only or principal home (section 11(1)(c))

An SST can only be offered to an individual and cannot be offered to a company or organisation. This does not prevent a house being let to more than one individual – indeed, the Act provides a right to a joint tenancy (section 11(5) of the Act) so long as each tenant is an individual and the house is to be their only or

principal home (section 11(7)). If a tenant breaks this condition, the landlord will be entitled to instigate proceedings for recovery of the property. If a joint tenant breaks this condition, the landlord will be entitled to instigate proceedings to bring that joint tenant's interest in the tenancy to an end under section 20 of the Act (see paragraph 57 below).

A house will still be a tenant's "only or principal home" where a tenant has to live away from home for periods of time, for example for employment or study reasons or because they are in hospital or in custody. The principal home would be the place the tenant returned to – what is, in effect, the "family home".

14.4: where the landlord is an RSL which is a co-operative housing association, the tenant must be a member of the association (section 11(1)(d))

The Act brings fully-mutual co-operative housing associations within the scope of the new Scottish secure tenancy. They, like other RSLs, must offer their tenants an SST, but any tenant must also be a member of the association. If a tenant gives up or is expelled from membership, this will be a breach of the tenancy agreement and the co-op will be entitled to instigate proceedings to recover possession of the property. Good practice would suggest, however, that landlords should have in place internal mechanisms for appeal in such cases.

14.5: the tenancy must either have been created after a date specified by Ministers or have been created before that date but be of a description specified by Ministers (section 11(1)(e))

An Order by Scottish Ministers introduces the SST and specifies for each landlord or description of landlord a date after which all new tenancies offered by those landlords must be SSTs (unless they are covered by one of the exemptions). This date is 30 September 2002. At that date, any existing tenancies of those landlords will convert to SSTs through the Order.

Protecting Existing Rights Under the SST (section 11 (2))

15. The above Order includes provisions to protect the rights of the tenant in relation to a tenancy which is converted to an SST. The "Scottish Secure Tenancy etc." Order 2002 protects the right to buy entitlement of those secure and assured tenants who have the right to buy before the introduction of the SST and further details on this are provided in the associated guidance on the modernised right to buy. Apart from protecting right to buy entitlement, the Order also protects the following rights:

15.1 The right of existing secure tenants of housing associations (now RSLs) to have a fair rent determined by the Rent Officer; and

15.2 The right of existing tenants of housing associations with statutory assured tenancies to refer their rent to the Rent Assessment Committee.

16. The Commencement Order associated with the above Order, which commences sections 11 to 51 of the Act and the repeal of earlier legislation, provides that the Secure Tenancies Compensation for Improvements (Scotland) Regulations 1994 will continue to apply in relation to claims for improvements by Scottish secure tenants where the qualifying improvement work was begun prior to the introduction of the Scottish secure tenancy. New Regulations under the 2001 Act will apply only in relation to improvements begun on or after 30 September 2002.
17. The Commencement Order also makes it clear that existing tenants subject to an anti-social behaviour order (ASBO) taken out before the introduction of the SST, cannot have their SST converted to a short SST (under the provisions of section 35 of the Act – see paragraph) by virtue of that ASBO.
18. Actions for recovery of possession by social landlords begun under former legislation, prior to the commencement date for the new SST, will continue to be valid and enforceable.
19. In any determination of succession rights begun under former legislation, prior to the commencement date for the new SST, the former legislation will apply.

Right to a Joint Tenancy (section 11(5))

20. As well as a right to a sole tenancy under an SST, any tenant is entitled to a joint tenancy with one or more individuals, so long as the house is, at the commencement of the joint tenancy, to be the only or principal home of all the tenants (section 11(5)). The tenant and prospective tenant(s) must apply in writing and where an application for a joint tenancy is made, the landlord must grant the joint tenancy unless it has reasonable grounds for not doing so. The Act does not seek to define what might count as “reasonable grounds” and landlords will need to decide for themselves where the particular circumstances are likely to justify what is clearly intended to be an exceptional course of action.
21. There is no limit to the number of occasions on which a joint tenancy can be created. Nor is there any limit to the number of joint tenants, subject to the maximum of tenancy limits for the property. The Act does not allow for a right of appeal for the tenant or prospective joint tenant in cases where the landlord has refused to grant the joint tenancy. Good practice would, however, suggest that landlords should have in place clear and well-publicised internal mechanisms for appeal in such cases.

Continuation of Tenancy (section 11(8))

22. Once a tenancy is an SST it will continue to be one even if it subsequently fails to meet some of the basic criteria: where (a) the landlord is no longer a local authority, a RSL or a water or sewerage authority, or (b) the house is no longer the only or principal home of the tenant, or (c) where the landlord is a RSL which is a co-operative housing association and the tenant is no longer a member of the

association. This is without prejudice to the landlords powers under the Act to repossess the house.

23. These circumstances are unlikely to arise often in practice, but could occur through the de-registration of an RSL, or on exceptional transfer of local authority houses to a landlord outside of the social rented sector. Even if such a change takes place, the tenancy will continue to be an SST with all the associated rights, protections and obligations but any new tenancy would not be an SST.
24. This right does not cut across the right of the landlord to seek recovery of possession if one of the terms of the tenancy agreement is broken by the tenant and the provision is without prejudice to sections 14 and 16, and Schedule 2 to the Act. In practice, this means that if the house is no longer the only or principal home of one of the joint tenants, then the appropriate remedy is to recover possession of that joint tenant's interest in the tenancy under the abandonment by joint tenant procedures in section 20 of the Act. If a tenant of a fully mutual co-operative housing association gives up his or her membership, then the appropriate remedy is to recover possession of the tenancy.

Houses Under Temporary Occupation (section 11(9))

25. The tenancy rights of SST tenants who have been temporarily housed elsewhere are protected by section 11(9) of the Act. Where the house that the tenant normally occupies under an SST is not available for occupation and the tenant has been temporarily accommodated in another house, section 11 (9) provides that the other house is to be taken for the purposes of Chapter 1 of Part 2 of the Act except sections 12 - 16 and paragraph 4 of Schedule 1 to be the house which the tenant normally occupies. This means, in effect, that if tenants are moved on a temporary basis from their usual house they will continue to have the full rights of an SST in the temporary house except for the RTB. In this situation, landlords can simply recover possession of the alternative house as necessary and they are not required to use the normal procedures as set out in sections 12 to 16 (see next page).

Tenancies Which Are Not SSTs

26. Section 11(4) of the Act says that a tenancy is not an SST if it is of a kind mentioned in Schedule 1 to the Act. (This does not mean that it is a short SST as short SSTs cannot be offered unless under section 34 and Schedule 6 of the 2001 Act.) The exceptions, where a tenancy is not an SST or a short SST, will apply to new tenancies and to existing tenancies which would otherwise become Scottish secure tenancies under section 11 of the 2001 Act. These exemptions are:
 - premises occupied under contract of employment – i.e. tied houses;
 - tied properties of police and fire authorities;

- lettings to students by specified educational institutions of a type specified by regulations made by Scottish Ministers;
- temporary accommodation for occupation by a tenant while work is being carried out on the tenant's only or principal home and to which home the tenant is entitled to return after the work is completed (often referred to as "decant housing");
- temporary accommodation for homeless persons*;
- temporary accommodation granted for less than 6 months for the rehabilitation of ex-offenders* – this is accommodation let for up to 6 months which is designed to support the care and supervision by a local authority of persons subject to supervision by an order of court or, following release from prison, a license of Scottish Ministers;

(* This applies where the intention is that temporary accommodation should last for less than 6 months although this arrangement could be extended. Where temporary accommodation is being offered expressly for a period of 6 months or more a short SST would be appropriate.)

- tenancies under a shared ownership agreement;
- agricultural and business premises – where the house is let together with agricultural land of more than 2 acres; consists of or includes premises which are used as a shop or office for business, trade or professional purposes; consists of or includes premises licensed for the sale of excisable liquor or is let in conjunction with any of these;
- if the house forms part of, or is within the curtilage of, a building which is let by the landlord for purposes other than the provision of housing accommodation, and mainly consists of accommodation other than housing accommodation. *An example would be a janitor's house lying within the boundaries of a school or college;* and
- if the house is leased by the landlord from another body and the terms of the lease preclude the landlord from letting the house under an SST.

Restriction on Termination of Tenancy (section 12)

27. Section 12(1) of the Act provides that an SST can only be ended in one of the following 6 ways:

- by an order giving the landlord the right to recover possession following court action linked to the specified grounds for recovery set out in Schedule 2 of the Act;

- by action by the landlord as a result of abandonment of the house by the tenant;
- the death of the tenant where the statutory requirements for succession are not met;
- where the tenant or a member of the tenant's household is the subject of an Anti-Social Behaviour Order (ASBO), and the landlord takes action to convert it to a short SST under section 35 of the 2001 Act (see paragraph 127);
- by written agreement between the landlord and the tenant;
- by 4 weeks' notice by the tenant – N.B. *Under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, the consent of any "non-entitled spouse" is also required.*

28. Section 12(2) and section 12(3) provide that where a tenant is temporarily in another house where the landlord is a social landlord, either by agreement or by an order of the court under section 16(2) of the Act, the landlord cannot bring the tenant's occupation of that other house to an end before the house the tenant normally occupies is available for occupation unless the SST has been brought to an end.

Termination of Joint Tenant's Interest in Tenancy (section 13)

29. Section 13 of the Act provides that a joint tenant may terminate his or her interest in the tenancy by giving 4 weeks' notice in writing to the landlord and each of the other joint tenants. Under the Matrimonial Homes (Family Protection) (Scotland) Act 1981, the consent of the "non-entitled spouse" of any joint tenant relinquishing a tenancy would also be required. This would apply where the non-entitled spouse was not a joint tenant. *An example might be where two brothers were joint tenants but one brother had a partner who was not a joint tenant. On receiving notification from a joint tenant that he or she wishes to terminate his or her interest in the tenancy, the landlord should seek verification that proper notice has also been served by that joint tenant on the other joint tenant(s).*

30. There are procedures for terminating one or more of the joint tenants' interests in the tenancy if the landlord has reasonable grounds for believing that the joint tenant is not occupying the house and does not intend to (see section 20 of the Act and paragraph 56 below).

Proceedings for Possession (section 14)

31. Section 14(1) of the Act entitles a landlord under an SST to seek a court order for recovery of possession of a house. Subsections (2) to (5) set out the procedures which the landlord must follow in such circumstances, and include a power for Scottish Ministers to prescribe the form of notice to tenants. These proceedings

will already be familiar to local authorities under the secure tenancy regime but will be new to RSLs. RSLs should note that Notice of Proceedings, served by the landlord, is the mechanism to be used in all cases and that Notice to Quit will not be required. Landlords should also note that any proceedings for possession, begun under sections 48 and 51 and Schedule 3 of the Housing (Scotland) Act 1987 or section 18 and Schedule 5 of the Housing (Scotland) Act 1988, before 30 September 2002 and any Notices served in relation to those proceedings will continue to be considered under those sections of the 1987 and 1988 Acts by virtue of transitional arrangements made by Order of the Scottish Parliament.

32. Subsection (2) precludes the landlord from raising proceedings for recovery of possession of the house unless the landlord has:
 - served on the tenant and any qualifying occupier a notice in a form prescribed by Scottish Ministers (the notice to be served on the qualifying occupier is exactly the same as that to be served on the tenant);
 - the proceedings are raised on or after the date specified in the notice; and
 - the notice is in force at the time when the proceedings are raised.
33. Where there are joint tenants, the names of all the joint tenants should appear on the notice as joint tenants are jointly and severally liable. Only one notice is required to be served on the joint tenants provided it is addressed to all of them. Should a landlord consider that it is more appropriate to serve a copy of the same notice on all of the individuals, there is nothing in the legislation to prevent this course of action. It is entirely at the discretion of the landlord.
34. Subsection (3) requires that before serving the notice, the landlord must make all reasonable enquiries to establish whether there are any qualifying occupiers of the house and, if so, their identities. Such reasonable enquiries would generally be by letter to the tenant and/or visits to the tenant's home. Landlords should, in any event, make sure that they have an audit trail which clearly establishes attempts made to identify and notify any qualifying occupiers.
35. Landlords should, so far as is possible, send out the Notices to the tenant and the qualifying occupier(s) on the same date. While there is no provision saying that the notices to qualifying occupiers require to have the same date of serving as the notice to the tenant, the notice has to specify that the landlord may raise proceedings in terms of section 14 only after a certain period of time. Clearly, the time limits would have to be the same in the notices and this would not be possible if the notice(s) to the qualifying occupier(s) were served a considerable period of time later than the notice to the tenant.
36. Where people join the household after the notice for possession is served e.g. a family member, it will be a matter of fact whether or not that person is or is not a qualifying occupier, in line with subsection (6) and described in paragraph 39. If there is a child under the age of 16 years prior to the notice of proceedings being

served, they should be served with a notice if they attain the age of 16 years by the time the case is heard. These are matters which may be discussed by the sheriff when the case calls in court.

37. While there is a general obligation on the tenant to make the landlord aware of any qualifying occupiers, landlords will need to make sure that tenants are aware that they require this information and that the information is kept up to date. It is suggested that the process of signing tenants up to the new SST could be used to establish whether there are any qualifying occupiers in the household.
38. Subsection 4 (a) and (b) requires that the notice to be served on the tenant and any qualifying occupier(s) must include the ground(s) on which the court order will be sought, which must be one of the 15 grounds set out in Part1 of Schedule 2 to the Act. The notice must be served at least 4 weeks before the court order is sought.
39. Subsection (6) defines “qualifying occupier” for the purposes of this section and section 15 of the Act as a person who occupies the house as that person’s only or principal home and who is:
 - a member of the tenant’s family aged at least 16 years;
 - a person to whom the tenant has, with the consent of the landlord, assigned (for the purposes of the Act, assignees are treated as qualifying occupiers),sublet or otherwise given up possession of the house or any part of it;
 - a person who, with the landlord’s consent, has been taken in as a lodger.

Rights of Qualifying Occupiers in Possession Proceedings (section 15)

40. This section enables a qualifying occupier to play a part in possession proceedings, so that their rights as well as the tenant’s rights may be considered by the court. When a qualifying occupier(s) applies to the court to be a party to the proceedings, the court must grant the application. This will allow qualifying occupiers, if they so wish, to put their point of view to the court, for example to explain the consequences of the repossession action for themselves. It will be for the sheriff to decide what weight to give to the views of the qualifying occupier(s) in determining whether it is reasonable to grant an order to possess the house.

Rights of Qualifying Occupiers and Data Protection

41. The rights of qualifying occupiers supersede the Data Protection Act provisions. Personal data may be disclosed when required by legislative enactment or order of the court when the disclosure is necessary in connection with legal proceedings, in obtaining legal advice and in establishing or defending legal rights. Qualifying occupiers need this information to defend their legal rights and, in terms of the legislation, must be served with a notice under the 2001 Act.

Powers of Court in Possession Proceedings (section 16)

42. Section 16(1) sets out the powers of the court in proceedings for recovery of possession of a house let under an SST to adjourn proceedings as it thinks fit for a period or periods, with or without conditions as to payment of outstanding rent or otherwise.
43. Subsection (2) sets out the circumstances in which the court will make an order for terminating an SST and giving the landlord the right to recover possession of the house on a ground set out in Part 1 of Schedule 2 of the Act. Broadly, these grounds are divided into “conduct” and “management” grounds, and are summarised below:

Conduct Grounds

Ground 1	The tenant owes the landlord rent or has broken some other condition of the tenancy agreement.
Ground 2	The tenant, or someone residing in or visiting the tenant’s house, has been convicted of using the house or allowing it to be used for illegal or immoral purposes or a criminal offence, punishable by imprisonment, which was committed in the house or the locality.
Ground 3	The condition of the house or common parts has deteriorated because of the fault of the tenant or somebody in the tenant’s household.
Ground 4	The condition of any furniture the landlord has supplied has deteriorated because of the fault of the tenant or somebody in the tenant’s household.
Ground 5	The tenant, and the tenant’s spouse or co-habitee, have been absent from the house for more than 6 months without good reason or have stopped living in it as their principal home.
Ground 6	The tenancy was granted as a result of false information given by the tenant in the application for the tenancy. <i>Landlords should make sure that questions posed on any application for a tenancy are sufficiently comprehensive and explicit to ensure that all necessary information is elicited at the time of application and there is no opportunity for a prospective tenant simply to omit relevant information.</i>
Ground 7	The tenant or someone residing in or visiting the tenant’s house has been anti-social to anyone else in the locality or has pursued a course of conduct amounting to harassment of such a person and it is not reasonable for the landlord to transfer the tenant to another house.

Paragraph 7(2) of Part 1 of Schedule 2 to the Act defines "anti-social", "conduct" and "harassment". In summary these are:

"Anti-social" means causing or likely to cause alarm, distress, nuisance or annoyance to any person or causing damage to anyone's property.

"Conduct" includes speech, and a course of conduct must involve conduct on at least two occasions.

"Harassment" is as defined in section 8 of the Protection of Harassment Act 1997 and includes causing the person alarm or distress.

Management Grounds

Ground 8 The tenant, or someone residing in the tenant's house, has been guilty of harassment, nuisance or annoyance in or in the neighbourhood of the house, or has continued to cause alarm or distress to someone in the locality and it is appropriate, in the landlord's opinion, to transfer the tenant to another house.

Ground 9 The house is overcrowded as defined in section 135 of the Housing (Scotland) Act 1987.

Ground 10 The landlord intends to demolish or carry out substantial work to the house (or the building in which it is located) within a reasonable time and that work cannot be done if the tenant is still living there.

Ground 11 The house has been designed or adapted for people with special needs and no one in the tenant's household has such special needs but the landlord requires the house for someone who has.

Ground 12 The house is part of a larger group of houses which have been designed or adapted or located near facilities for people with special needs and no-one in the tenant's household has those needs but the landlord requires the house for someone who has.

Ground 13 The landlord has leased the tenant's house from somebody else and that lease has ended or will end in 6 months.

Ground 14 The landlord is an islands council, the house is held for education purposes, it is occupied by someone who used to be employed by the council for education purposes and now it is needed for someone else for those purposes.

Ground 15 The landlord wants to transfer the house to the tenant's husband or wife (or ex-husband or ex-wife) or co-habitee, where one of them no longer wishes to live with the other. In this case, the landlord will offer a suitable alternative house as defined by Schedule 2 Part 2 of the Housing (Scotland) Act 2001. The sheriff must also be satisfied that it is reasonable to grant the order.

N.B. Please note that there are no mandatory grounds for repossession. All grounds are subject to the test of reasonableness.

44. In relation to grounds 1 to 7 (“conduct grounds”) the court must make the order where it considers it reasonable to do so. In relation to grounds 8 to 14 (“management grounds”), the court must make the order if it considers other suitable accommodation will be available for the tenant. In relation to ground 15, the court must make the order where it considers that it is reasonable to do so and that other suitable accommodation will be available.
45. Suitability of alternative accommodation is determined by reference to Part 2 of Schedule 2. The accommodation is suitable if it consists of premises which are to be let as a separate dwelling under an SST or an assured tenancy and must be reasonably suitable to the needs of the tenant and the tenant’s family. Part 2 sets out a number of criteria for determining whether the accommodation is likely to be reasonably suitable for the tenant and the tenant’s family. These criteria are as follows:
- the proximity of the accommodation to the place of work (including school or college) of the tenant and of members of the tenant’s family, compared with the tenant’s existing house;
 - the extent of the accommodation required by the tenant and the tenant’s family;
 - the character of the accommodation compared with the tenant’s existing house;
 - the terms on which the accommodation is offered compared with the terms of the tenant’s existing tenancy, if any furniture was provided by the landlord under the existing tenancy;
 - whether furniture is to be provided under the new tenancy which is comparable in relation to the needs of the tenant and the tenant’s family; and
 - any special needs of the tenant or the tenant’s family.
46. Part 2 also provides that, where a landlord has made an offer of alternative accommodation, the burden of proof that it is not suitable rests on the tenant.
47. Section 16 (6) provides that, in relation to ground 10, if the house is being modernised and refurbished and it appears to the court that the landlord intends that the tenant should return to the house after completion of the work, the court must make an order entitling the tenant to return to the house when the work has been completed.
48. In deciding whether it is reasonable to make an order for the termination of the tenancy, the court must take into account all the circumstances of the case. The 2001 Act also sets out specific criteria which courts must take into account, although they are also at liberty to take account of any other relevant considerations. The aim is to achieve greater consistency in the interpretation of “reasonableness” by courts. The specific criteria are set out in section 16 (3) of the Act and are broadly as follows:

- the nature, frequency and duration of the conduct leading to the eviction proceedings;
- how far the tenant was personally responsible for the conduct or whether it was the consequence of acts or omissions by others, for example if the recovery action results from rent arrears, whether any housing benefit entitlement has been paid timeously or in full;
- the effect of the tenant's conduct on others, for example whether there are serious adverse consequences for other local residents; and
- whether the landlord has considered and, if appropriate, progressed other possible courses of action before raising eviction proceedings.

49. In all cases the word "conduct" here refers to the action by the tenant which has had recovery action under the specified grounds set out in paragraphs 1 to 7 of Schedule 2.

50. It will be important for landlords to keep good records and present the necessary evidence to satisfy the court that the recovery action does indeed meet these tests of reasonableness.

Abandoned Tenancies (section 17)

51. This section enables a landlord under an SST to take action to secure and take possession of a house which appears to have been abandoned by the tenant. The procedures to be followed before taking possession are set out in section 18 of the Act,

Repossession (section 18)

52. This section sets out the procedures which must be followed by a landlord wishing to take possession of an abandoned house, in the circumstances defined in section 17 of the Act. The landlord must:

- serve on the tenant a notice under subsection (1) requiring the tenant to give 4 weeks' notice in writing if the tenant intends to occupy the house as the tenant's home (subsection (1));
- make sufficient inquiries to satisfy itself that the house is unoccupied and that the tenant has no intention of re-occupying it (subsection (2)); and
- serve a further notice on the tenant (subsection (2)), which brings the tenancy to an immediate end and allows the landlord to take possession of the house without further proceedings.

There is no statutory abandonment notice. Landlords simply have to write to a tenant following the process described above.

53. By “sufficient inquiries”, what is intended is that landlords should make reasonable inquiries of family, neighbours, employers, Health Board, police, schools, etc. to satisfy themselves, in so far as they can, that the house has been abandoned. There could be valid reasons why a tenant would need to leave the house empty for some time, e.g. employment or family reasons, stay in hospital or in prison. While there is a duty on tenants to let the landlord know if they are to be absent from the house for a period of time, failure on the part of the tenant to do so should not in itself constitute proof of abandonment. Every reasonable attempt should be made by the landlord to satisfy itself that the house is unoccupied and that the tenant has no intention of re-occupying it.
54. Subsection (4) gives an order making power to Scottish Ministers to outline arrangements for the securing of tenants’ belongings in their absence and arrangements for their return or disposal. The order provides for:
- the landlord to take the property into safe custody;
 - delivery of the property to the tenant who has abandoned the house, including charges for delivery;
 - the disposal of the property, if the tenant has not arranged for delivery within a specified period; and
 - the use of the proceeds of any disposal of property towards any costs incurred by the landlord or any outstanding rent or other debt related to the tenancy.

Tenant’s recourse to court (section 19)

55. This section gives a Scottish secure tenant whose house has been repossessed in accordance with the abandonment procedures in sections 17 and 18 of the Act a right of appeal to the court within 6 months of the repossession. Where the court finds that the landlord acted wrongly or unreasonably it must order the tenancy to continue or direct the landlord to provide other suitable accommodation (as defined in Part 2 of Schedule 2). Subsection (4) enables the court to make further orders in relation to cases where a tenant has successfully challenged an abandonment order, for example to instruct a landlord to forego rent due for the period of apparent abandonment.

Abandonment by joint tenant (section 20)

56. This section enables a landlord under an SST to take action to bring to an end the interest of a joint tenant where that joint tenant appears to have abandoned the joint tenancy. This is a new provision, which complements the new right to a joint tenancy and provides an important safeguard for landlords and tenants who, for example, may have been left in the house. The procedures to be followed before taking possession are set out in subsections (2) and (3) of the Act.

The landlord must:

- give 4 weeks' notice in writing (subsection (2));
- make sufficient inquiries to satisfy itself that the abandoning tenant is not occupying the house and does not intend to occupy it as the tenant's home (subsection (3)); and
- serve a further notice on the abandoning tenant (subsection (3)), bringing the abandoning tenant's interest in the tenancy to an end with effect from a date specified in the notice which must be not earlier than 8 weeks after the date of service of the notice.

57. By "sufficient inquiries", what is intended is that landlords should make reasonable inquiries of other joint tenants as well as of those others listed in paragraph 53 above. Abandonment by a joint tenant may require more rigorous enquiries to guard against false claims of abandonment by the remaining joint tenant(s).

Joint Tenancies: Abandoning Tenant's Recourse to Court (section 21)

58. This section gives a joint tenant a right of recourse to the court where the tenant is aggrieved by a landlord bringing to an end his interest in the property under the abandonment procedures in section 20 of the Act. Where the court finds in favour of the tenant it can effectively reinstate the joint tenant or direct the landlord to make other suitable accommodation available. The court can also make a further order providing, for example, for compensation to be paid.

Succession to SST (section 22 and Schedule 3)

59. This section and Schedule 3 make provision for succession to an SST on the death of the tenant. The section includes a right to a second round of succession (subsection (2)). This is an enhancement of the current statutory succession rights for both secure and assured tenants. Schedule 3 defines who is a person qualified to succeed to a tenancy and the circumstances in which they can do so.

60. For each separate round of succession there are 3 levels of priority:

- first priority goes to the surviving spouse, co-habitee of either sex (providing the house has been their only or principal home for at least 6 months before the tenant's death) or joint tenant;
- second priority (if nobody qualifies or chooses to succeed from the first priority group) goes to other members of the tenant's family providing they are aged at least 16 years and that the house was their only or principal home at the time of the tenant's death;
- third priority (if nobody in any of the above categories qualifies or chooses to succeed) goes to carers aged at least 16 years where the house was their only or principal home at the time of the tenant's death and where they have

given up their only or principal home to care for the tenant or a member of the tenant's family.

In the case of a fully mutual co-operative housing association, qualifying persons must also apply for membership and be accepted as members of the co-operative. Where this is not already the case, the co-operative should process the successor's membership application as quickly and as sympathetically as possible. Such co-operatives are required by the regulator to have a clear and non-discriminatory membership policy.

61. In all cases the house of the deceased tenant must have been the only or principal home of the qualifying person. In the case of carers, no definition of carer has been included in the Act. This is intentional to allow for a wide spectrum of care from formal to informal caring arrangements. The principal test for the landlord is not the level of care provided but that the individual has given up their only or principal home for the purpose of caring. The intention is to ensure that individuals who give up their homes to care for a tenant, or a member of the tenant's family, is not left homeless by the death of the tenant or other qualifying persons. Where a house has been designed or substantially adapted for the use of persons with special needs, then paragraph 5 of Schedule 3 specifies that only spouses, co-habitees, joint tenants or persons with special needs can succeed to that tenancy. Other persons who would otherwise be qualified to succeed have a right to alternative suitable accommodation by virtue of subsections (6) and (7).
62. Normally, the death of a tenant who had succeeded under a second round of succession, would lead to the termination of the tenancy. Subsection (8), however, clarifies that in the case of joint tenancies, tenancies are not terminated on the death of a joint tenant if the remaining tenant or tenants continue to live in the house. Neither is there any limit to the number of occasions on which a joint tenancy can be created.
63. Subsection (9) makes provision for a person who would have succeeded to the tenancy, but who cannot because the second round of succession has passed, to continue as a tenant for a period not exceeding 6 months but not under an SST or short SST. This is to provide time for the person concerned to find alternative suitable accommodation and landlords will, in any case, wish to consider if it is reasonable to allocate a new tenancy to the person concerned in the normal way.
64. Subsection (10) makes provision for an SST to continue (for the purposes of succession) where a tenant has to move to alternative accommodation.
65. Paragraph 9 of Schedule 3 provides that where there is more than one qualified person at any level in the hierarchy of succession rights e.g. if there were both a spouse and a joint tenant at level one in the hierarchy, then it is open to the qualifying persons to come to an agreement about which one of them should succeed. Failing agreement within 4 weeks of the death of the tenant, or of the date of notification of right to succeed to the tenancy in terms of paragraph 10 of Schedule 3, the landlord will decide who is to succeed.

66. An SST comes to an end on the death of the tenant unless there is a qualified person who can succeed to that tenancy. If succession is possible, the new tenant succeeds directly to the tenancy and there is no gap from a legal point of view. This, of course, does not accord with real life when it often takes a period of time for the landlord to be advised that the original tenant has died. Most social landlords will have policies to deal with this already. Normally, the practice will be to leave the house in the name of the deceased or his executors for record purposes until a successor is identified and agreed. At that point a new tenancy is offered to the successor, backdated to the day after the tenant's death with the new tenant responsible for the rent from that date.
67. How any rent paid by the deceased or his estate is dealt with would depend on individual circumstances. The deceased may have been in receipt of benefits and in many cases the new tenant will be the person succeeding to the deceased's estate as well as the tenancy. Where a tenant dies and there is no successor, there may be a small element of pre-paid rent outstanding. It would be normal practice for a landlord to retain any prepaid rent until a house is cleared and the keys handed back. Again, this is a matter of housing management policy for individual landlords. Landlords can accept rent where someone declines the tenancy but remains in the house for a period of up to 3 months. Similarly, after a death, a person living in a house can offer rent for the period of occupation but until a new tenancy is offered the landlord will make it clear in writing that no protected tenancy is created by acceptance of these payments. Landlords have to be careful that they do not create a form of contractual tenancy by accepting rent and are advised to take their own legal advice on this point.
68. The Act does not allow for a right of appeal against decisions made on succession and, indeed, paragraph 9 of Schedule 3 to the Act gives landlords power to make a final decision on issues of succession. Good practice would, however, suggest that landlords should have in place clear and well-publicised internal mechanisms for appeal in such cases.

Tenant's Right to Written Tenancy Agreement and to Information (section 23)

69. This section gives tenants a right to a written tenancy agreement and to information about the landlord's policies and procedures. The landlord is required to:
- draw up a tenancy agreement stating (expressly or by reference) the terms of the tenancy;
 - ensure that it is, before the commencement of the tenancy, subscribed by the landlord and the tenant in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7); and
 - supply a copy to the tenant.

70. The Requirements of Writing (Scotland) Act 1995 requires that the agreement must be a “self-proving” document. This means that each signature must be witnessed. The same witness can witness all signatures. Any other document which is to form a part of the agreement (for example in relation to service charges) should also be signed and witnessed and reference made within it to the tenancy agreement.
71. Subsection (2) of the Act makes clear that the tenant is not liable for any fees in connection with the preparation of the tenancy agreement.
72. Subsection (3) permits Scottish Ministers to issue guidance as to the form of the tenancy in a model agreement. A model SST agreement has been issued to all social landlords. This model sets out the statutory rights for tenants in terms of the 2001 Act and embodies suggestions for additional contractual rights to be agreed between landlord and tenant. The model also sets out the position with regard to common law applicable to social sector tenancies in Scotland. The model includes a disk to enable landlords to draw up local tenancy agreements using the model as a base, to ensure consistency and common standards throughout the social rented sector in Scotland, but tailored to meet local conditions and expectations with regard to e.g. keeping of pets, gardening schemes, etc.
73. Subsection (4) requires landlords to provide a prospective tenant with information, prior to the taking up of the tenancy, about the right to buy (this could include, for example, whether or not there are any relevant exemptions), and the obligations which the tenant is likely to incur if the right to buy is exercised (including responsibility for maintenance of parts of the building and areas owned in common).
74. The Scottish Executive will be providing a general leaflet on the modernised RTB in due course. In the meantime, an information booklet is available which describes the current RTB and, more recently, two booklets have been issued containing advice on home ownership generally, entitled “Thinking about Buying: A Guide to House Purchase in Scotland” and “We are all Responsible: An owner’s guide to the management and maintenance of common property”. Copies of these are available from the Scottish Executive, Housing 2-3, Area 1-G, Victoria Quay, Edinburgh EH6 6QQ. Tel: 0131 244 2105.
75. Subsection (5) requires the landlord to notify the tenant of any changes to legislation, including subordinate legislation, governing the RTB which might affect the tenant’s right to purchase.
76. Subsection (6) requires the landlord to provide the tenant with information about its complaints procedure. It also lists other information that the landlord must supply on request, on the following:
- the terms of the tenancy;
 - the landlord’s policy and procedures in relation to setting of rents and charges;

- the landlord's policy and rules in relation to admission to any housing list, priority of allocation of houses, transfers and exchanges and repairs and maintenance;
- how the RTB provisions apply in relation to the tenant, the tenancy and the house;
- the obligations the tenant is likely to incur if the tenant exercises his right to buy the house, including any obligation to maintain any building of which the house forms part and any common areas;
- where the landlord is a local authority or a RSL, the landlord's tenant participation strategy; and
- the landlord's arrangements for taking decisions in the exercise of its functions in relation to the management of housing accommodation and the provision of related services by it. This might include information on the landlord's committee structures, consultation procedures, time scales, etc.

77. The categories set out above are the statutory minimum, but landlords may wish to identify other information which would also be helpful to have on hand to supply on the same basis. For example, the Model Scottish Secure Tenancy Agreement recommends that at signing up the tenant should receive a Tenant's Handbook which will provide extra detail in relation to local matters. Landlords will need to take steps to ensure that all this relevant information is available in an accessible form for tenants by the time the SST is introduced.

Restriction on Variation of Tenancy (section 24)

78. This section limits the way in which changes to an SST can be made. Rents and other charges can be varied in accordance with section 25 of the Act and terms and conditions can be varied by court order under section 26, but otherwise the terms of the tenancy can only be changed by written agreement between the landlord and tenant, in line with the Requirements of Writing (Scotland) Act 1995 (c.7) which sets out provisions relating to the signing of contracts. This relates to contractual changes to the tenancy only.

Increase in Rent or Charges (section 25)

79. This section requires landlords to give each tenant not less than 4 weeks' notice, in writing, before increasing rents or other charges. Where a landlord proposes to increase rents generally, it must first consult those tenants who would be affected. While the landlord should take account of the views of tenants, the final decision rests with the landlord.

80. Good practice would suggest that landlords should involve tenants from the start of the process when setting rent, although the precise arrangements for doing this will be a matter for the landlord and will be likely to vary according to local arrangements for consultation. It is especially important to involve tenants at an

early stage where an unusually large increase is proposed. Landlords should take account of the statutory rights to consultation for tenants and registered tenants organisations and the guidance on tenant participation elements of the 2001 Act. In taking account of tenants' views it is important to also let tenants know, perhaps in the context of the 4 weeks' rental increase notice, why decisions were taken.

81. Where landlords and tenants have an existing contractual rent increase formula covering a period of years, annual consultation during the period covered by the existing agreement may not be necessary, unless both parties wish to dispense with the contractual agreement.
82. As explained in paragraph 15 above, the "Scottish Secure Tenancy etc" Order 2002 will protect certain rights which are available to secure and assured tenants which are not carried forward into the SST. These rights are as follows:
 - The right of certain secure tenants of housing associations under Part VI of the Rent (Scotland) Act 1984 to apply to have a fair rent to be determined by a rent officer which, once fixed, applies for 3 years and is subject to registration thereafter; and
 - The right of statutory assured tenants of housing associations to refer a proposed increase in rent to a rent assessment committee under section 24 of the Housing (Scotland) Act 1988.

Variation of Tenancy by Court Order (section 26)

83. This section allows either a landlord (on any ground) or a tenant to apply for a court order to change a term of the SST where there is a dispute on a variation in terms. The grounds on which a tenant can seek a change are set out in subsection (2) of the Act.
84. The court has power to make any change in a term of a tenancy, apart from the level of rent or charge, that it considers reasonable having particular regard to safety considerations or likelihood of damage to the house. The court can require the tenant to pay compensation to the landlord for any financial loss arising from the variation, and to consult anyone who might be affected by the proposed change.

Repairs and improvements (sections 27 to 31 and Schedules 4 and 5)

85. Taken together, these provisions set out the rights and responsibilities of the landlord and tenant under an SST with respect to repairs and improvements to the house.

Repairs (section 27)

86. This section, with Schedule 4, puts the landlord under an obligation to ensure that the house is kept wind and watertight and reasonably fit for human habitation. This section also enables the tenant to have essential repairs done within a maximum time-scale, in line with regulations made by Scottish Ministers.

87. Under these Regulations, landlords should carry out small urgent repairs within a specified time. If the landlord's primary contractor fails to start the repair on time, the tenant may instruct another listed contractor to carry out the repair instead. In such circumstances, the tenant is also entitled to a compensation payment from the landlord. When a tenant reports a repair the landlord will confirm whether the repair is their responsibility and whether it is a qualifying repair under the Right to Repair scheme. The landlord is required to advise the tenant of the maximum time allowed to complete the repair, the rights of the tenant under the scheme, the name, address and telephone number of another contractor from a list and to make arrangements to get into the tenant's home to inspect the repair and to carry it out. All repairs under the scheme have to be paid for by the landlord.
88. Certain repairs up to the value of £350, called qualifying repairs, are covered by the Regulations. They include:
- blocked flue to open fire or boiler;
 - blocked or leaking foul drains, soil stacks or toilet pans where there is no other toilet in the house;
 - blocked sink, bath or drain;
 - electric power–
 - loss of electric power;
 - partial loss of electric power;
 - insecure external window, door or lock;
 - unsafe access path/step;
 - leaks or flooding from water or heating pipes, tanks, cisterns;
 - loss or partial loss of gas supply;
 - loss or partial loss of space or water heating where no alternative heating is available;
 - toilet not flushing where there is no other toilet in the house;
 - unsafe power or lighting socket, or electrical fitting;
 - water supply–
 - loss of water supply;
 - partial loss of water supply;

- loose or detached bannister or hand rail;
 - unsafe timber flooring or stair treads;
 - mechanical extractor fan in internal kitchen or bathroom not working.
89. Repair times vary depending on the type of repair and are set by law. Most repairs have to be completed within 1 working day, although a landlord has 3 working days in the case of partial loss of electrical power, partial loss of water supply, loose or detached banister or handrail and unsafe timber flooring or stair treads. There are 7 working days to effect this where the repair is to a mechanical extractor in an internal kitchen or bathroom. There may occasionally be circumstances under which it is not possible for the landlord or the contractor to do the repair within the maximum period, such as severe weather conditions. In such cases, temporary arrangements may be necessary to extend the maximum time and the landlord must notify the tenant of this.
90. If the landlord's primary contractor fails to start the qualifying repair within the set time limit, the tenant may instruct another contractor from the landlord's list to carry out the repair. The other contractor will then advise the landlord of this and the landlord will pay £15 compensation to the tenant for the inconvenience caused. If the landlord's primary contractor has started, but not completed, the repair within the maximum time, the tenant will also be entitled to £15 compensation. If a tenant is in arrears of rent, the landlord may offset the compensation against arrears.
91. The other contractor has the same length of time to carry out the repair as the landlord's primary contractor. If they fail to carry out the repair within the time limit set, the tenant is entitled to a further £3 compensation for each working day until the repair has been completed, up to a maximum of £100 for any one repair.

Duty to Inspect and Right of Access (section 27 and Schedule 4)

92. Schedule 4 also requires the landlord, before the tenancy begins, to inspect the house and identify any work necessary to ensure that the house is wind and watertight and in all other respects reasonable fit for human habitation and to notify the tenant of any such work. The landlord must also carry out any necessary work to keep the house in this condition within a reasonable timescale and make good any damage, including decoration, caused in carrying out the work. The landlord or someone authorised by the landlord can also enter the tenant's home on 24 hours notice to inspect the house and carry out any necessary work. Where forced entry is necessary for inspection, the landlord is entitled to charge the tenant to make good any damage. Landlords should consider incorporating details of access arrangements into the tenancy agreement.

Landlord's Consent to Work (section 28)

93. This section and Part 1 of Schedule 5 require a tenant to get the written consent of the landlord before undertaking any work, other than interior decoration, on a house. "Work" is defined as:
- alteration, improvement or enlargement of the house or of any fittings or fixtures;
 - addition of new fittings or fixtures;
 - erection of a garage, shed or other structure;
 - but does not include repairs or maintenance of any of these.
94. The landlord must not unreasonably withhold its consent, but can set any reasonable conditions with respect to the work, including any standards that the work must meet. Scottish Ministers may give guidance to landlords on such conditions or standards of work. Part 1 of Schedule 5 includes provision for a tenant to appeal against either a refusal by a landlord to allow a tenant to undertake work, or against a particular condition imposed by the landlord.

Reimbursement of Cost of Work (section 29)

95. This section applies when an SST comes to an end. Where a tenant has carried out improvement work to the house, with the consent of the landlord, the landlord can make a payment to the tenant or his representative. This payment can be up to the cost of the improvement work, after deducting the amount of any grant paid by a local authority through a repairs or improvements grant (under Part XIII of the 1987 Act).

Right to Compensation for Improvements (section 30)

96. This section sets out the detailed arrangements to support a tenant's entitlement under the right to compensation for improvement. Where the tenant has carried out certain improvement works with the consent of the landlord they are entitled to be compensated for the cost of those works, when the tenancy comes to an end. Scottish Ministers can make regulations prescribing:
- those works which qualify for compensation;
 - certain circumstances in which the tenancy comes to an end and compensation is not payable;
 - minimum and maximum levels of compensation; and
 - the procedures to be followed, and the factors to be taken into account, when claiming for or determining compensation.

97. Regulations in respect of these matters already exist for secure tenancies under the Secure Tenants (Compensation for Improvements) (Scotland) Regulations 1994 (SI1994/632). Assured tenants do not have an equivalent statutory right, but many housing association landlords operated voluntary schemes similar to that operating for secure tenants. As detailed earlier in this guidance, the right to compensation for improvements carried out by previously secure tenants prior to the commencement of the SST is protected. This means that when those tenants convert to the new SST they will continue to have rights to compensation for any improvements carried out by them as secure tenants before the 30 September 2002, as well as a right to compensation for any further improvements carried out on or after that date. The Scottish Secure Tenants (compensation for improvements Regulations 2002) will govern claims for compensation in relation to improvements that are begun on or after 30 September 2002.
98. The new Regulations will contain similar provisions to the existing Regulations with compensation payable for qualifying improvement work in terms of the Regulations. Compensation is not payable: if the tenant exercises their RTB; if the home is being repossessed or if the tenant is being granted a new tenancy for their existing house by the same landlord. Compensation is payable if there is a change of landlord or if the tenancy is assigned to a new tenant.
99. A tenant can receive compensation of up to £4,000 for any one improvement, but will not receive any compensation for an improvement if the amount payable under the terms of the scheme is below £100. A tenant can claim compensation for the cost of materials (but not appliances such as cookers or fridges) and for labour costs (but not their own labour).
100. In calculating compensation due a landlord will start with the cost of the improvements and may require the tenant to provide evidence of the amount spent. The landlord will deduct any grant paid from the cost of the improvements and adjust the present value by a depreciation formula based on the notional life of the improvements set out in a Schedule to the Regulations. The landlord may also reduce the amount of compensation if they consider that the cost of the improvement was excessive, the quality is higher than it would have been had the landlord installed it or if the tenant owes any money at the end of the tenancy. The landlord may also adjust the level of compensation up or down depending on the condition of the improvement when the tenancy ends.
101. A tenant must make a claim in writing to the landlord during a period starting 28 days before and ending 21 days after the tenancy comes to an end. If the landlord refuses to pay compensation, the tenant may ask the landlord to have the decision reviewed by an independent valuer appointed by the landlord, or any of the landlord's members who took no part in making the initial decision or all the landlord's members within 28 days of receiving the refusal.
102. Compensation under the new Regulations will cover the following improvements:
- Bath or shower;
 - Cavity wall insulation;

- double glazing or other external window replacement or secondary glazing;
- draught proofing of external doors or windows;
- insulation of pipes, water tank or cylinders;
- installation of mechanical ventilation in bathrooms and kitchens;
- kitchen sink;
- loft insulation;
- rewiring and the provision of power and lighting or other electrical fixtures; (including smoke detectors);
- security measures other than burglar alarm systems;
- space or water heating;
- storage cupboards in bathroom or kitchen;
- thermal radiator valves;
- wash hand basin;
- water closet (WC);
- work surface for food preparation.

Interior decoration does not qualify for compensation.

- 103.** The discretionary power under section 29 of the Act enables compensation to be paid for improvements which fall outside the scope of the new scheme. Compensation will not be payable under the new Regulations if compensation has already been paid under section 29 in respect of those improvements.
- 104.** Schedule 5 to the Act sets out the terms for the landlords consent for improvements including the ability of the landlord to attach conditions and the right of the tenant to appeal to a sheriff against decisions of the landlord.

Effect of Work on Rent (section 31)

- 105.** This section prevents a landlord increasing the rent of a tenant, the successor to the tenancy or the successor's spouse or co-habitee to reflect any increase in the value or amenities of the house arising from improvement works undertaken and agreed with the landlord by that tenant.

Assignment, Subletting, etc. (section 32)

- 106.** This section entitles a tenant to assign or sublet their house or to take in a lodger with the consent of the landlord. In the case of an assignation, the house must have been the assignee's only or principal home for 6 months prior to application

for consent to assign. The landlord's consent may only be withheld if there are reasonable grounds to do so. Subsection (3) sets out examples of what such grounds might be. These are where:

- a Notice of Proceedings for Possession has been served on the tenant specifying any of the "conduct" grounds set out in paragraphs 1 to 7 of Schedule 2 to the Act;
- an order for recovery of possession of the house has been made against the tenant under section 16 (2) of the Act;
- it appears to the landlord that the tenant is to receive a payment for the assignation, subletting or other transaction which is other than a reasonable rent or a reasonable and returnable deposit;
- the transaction would lead to overcrowding; and
- the landlord proposes to carry out work to the house or building which would affect the accommodation likely to be used by the subtenant or other person who would reside in the house as a result of the transaction.

107. Subsection (4) provides that where the landlord is a RSL which is a co-operative housing association, any consent is subject to the condition that the assignee, subtenant, or other person is a member of the association when the assignation or sublease takes effect or when possession is given to the other person. This ensures that the status of the co-operative cannot be undermined by tenants assigning their tenancy to non-members. Tenants who enquire about this should be advised to make sure that the prospective assignee applies for membership in advance of their request for the assignation to take place.

108. The examples of reasonable grounds in subsection (3) can be modified by order but, although they are specified on the face of the Act as a reasonable basis for refusal, this should not prevent landlords from refusing on other grounds which they consider to be reasonable. Equally, the landlord can use its discretion to allow the assignation even where these statutory grounds exist.

109. Subsection (6) requires that where the landlord has given consent to an assignation, subletting or other transaction, the tenant must notify the landlord of any proposed increase in the rent payable by the subtenant at the commencement of the assignation, subletting or other transaction and must not increase the rent if the landlord objects to the increase.

110. Landlords should make this clear to tenants in their published rules and should remind tenants about this requirement when the tenant makes application for consent to assign, sublet or otherwise give up possession of the house or any part of it.

111. Subsection (7) clarifies the status of an assignation, subletting or other transaction, while subsection (8) defines “subtenant” as a person entitled to possession of a house or any part of a house under an assignation, subletting or other transaction, and includes a lodger.

Exchange of House (section 33)

112. This section provides a tenant with a right to exchange their house with another tenant, providing that both tenants are Scottish secure tenants and that the landlords of both tenants have given their consent. Such consent may only be refused if there are reasonable grounds to do so. Subsection (3) sets out examples of what such grounds might be. These are where:

- a Notice of Proceedings for Possession has been served on the tenant specifying any of the “conduct” grounds set out in paragraphs 1 to 7 of Schedule 2 to the Act;
- an order for recovery of possession of the house has been made against the tenant under section 16 (2) of the Act;
- the house was provided by the landlord in connection with the tenant’s employment with the landlord e.g. is a tied house;
- the house has been designed or adapted for occupation by a person with special needs and if the exchange took place, there would no longer be a person with such special needs occupying the house;
- the accommodation in the other house is substantially larger than required by the tenant and the tenant’s family, or is not suitable to the needs of the tenant’s family; or
- the exchange would lead to overcrowding of the house such as would render the occupier guilty of an offence under section 139 of the 1987 Act.

113. These examples of grounds can be modified by order made by Scottish Ministers under subsection (5) but, as in the case of assignations, etc. it is quite appropriate for landlords to refuse an exchange on other grounds if they consider that these are reasonable. Equally, the landlord can use its discretion to allow the exchange even where these statutory grounds exist. The statutory right to exchange only applies where a Scottish secure tenant exchanges with another Scottish secure tenant. Good practice would suggest, however, that there will be circumstances where at least one of the parties does not have an SST but the exchange would be allowed. An example of this would be mobility exchanges from other parts of the United Kingdom.

114. Subsection (4) requires that where the landlord is a RSL which is a co-operative housing association, any consent is subject to the condition that the tenant of the other house is a member of the association when the exchange takes effect.

115. Subsection (6) provides that on an exchange, the existing tenancy is terminated and the tenant is taken to have been granted an SST of the other house. Landlords should note that section 34(6) of the Act applies the provisions relating to SSTs (subject to specific exceptions) to short SSTs. This would include the right to exchange. In deciding whether to consent to a request to exchange from a tenant with a short SST, the landlord(s) will require to take into account whether the special circumstances that led to the tenant being granted a short SST still apply. A landlord who wishes the tenant to have a short SST of the other house, must be satisfied that there are grounds to do this under section 34 and Schedule 6 to the Act. Where the landlord serves a notice in these circumstances the tenant will have a right to appeal against this decision.

Assignment, Subletting, Exchange, etc. (Schedule 5)

116. Paragraph 9 of Part 2 of Schedule 5 requires the tenant to make a written application for consent to assign, sublet or otherwise give up possession of the house or any part of it. The tenant must give details of the proposed transaction, in particular, of any payment which has been or is to be received by the tenant in consideration of the transaction.
117. Similarly, paragraph 10 of Part 2 of Schedule 5 requires a tenant who wishes to exchange the house which is the subject of the tenancy for another house which is the subject of an SST, to make a written application for consent to the landlord and (if different) to the landlord of the other house. The tenants must give details of the proposed transaction and, in particular, of the other house.
118. On an application under paragraphs 9 or 10, the landlord may consent or refuse consent, provided that it is not refused unreasonably (paragraph 11 of Part 2 of Schedule 5).
119. Paragraph 12 of Part 2 requires the landlord to intimate consent or refusal and, in the case of refusal, the reasons for the refusal within one month of receipt of the application. If the landlord fails to comply with this, it is to be taken to have consented to the application. There is no scope within the legislation to give qualified consent or refusal. If the landlord does not have sufficient information on which to base his decision he must refuse. Good practice would suggest, however, that in such cases the refusal be accompanied by a letter explaining that the application has been refused due to a lack of information and inviting a further application when such information is available.
120. Paragraph 14 of Part 2 provides a right of appeal to the court by a tenant whose landlord refuses consent. Paragraph 15 requires that in such proceedings the court must, unless it considers that the refusal is reasonable, order the landlord to consent to the application. Notwithstanding the right of appeal to the courts, landlords should also ensure that they have clear and well-publicised internal appeals mechanisms in place.

SHORT SCOTTISH SECURE TENANCIES

The Short Scottish Secure Tenancy (section 34)

121. The short Scottish secure tenancy (short SST) has many of the features of the Scottish secure tenancy but also some differences. The majority of tenancies that social landlords will offer to their tenants will be SSTs but in specifically defined circumstances, it will not be appropriate for a full Scottish secure tenancy to be offered and social landlords will be able, but not obliged, to offer a short SST instead.
122. Following consultation with interested parties, the Scottish Executive has decided that it would not be appropriate to convert all existing short assured tenancies to full SST tenancies on 30 September 2002. Indeed, it will expect RSLs to review their existing short assured tenancies and bring them to an end in the normal way at the ish date for the tenancy in question, following the procedures in the Housing (Scotland) Act 1988 (section 33), by serving a notice on the tenant at least two months (or more if the terms of the tenancy provide) before the ish date for the tenancy.
123. RSLs will need to decide, in advance, whether they wish to relet the tenancy with a short or a full SST. If they opt for a short SST, they will need to follow the notification procedures set out at paragraph 126 and ensure that the tenancy meets the specific criteria (described below).

The basic conditions for the short SST to apply are that:

- it would have been an SST otherwise;
- it is for 6 months or more; and
- the landlord has served a notice on the prospective tenant that this type of tenancy will be offered.

It is important to note that the condition that a short SST would have been an SST otherwise means that the requirements at section 11(1) of the Act relating to an SST must be met.

When a Short SST May be Used

124. The circumstances in which a short SST may be used are set out in paragraphs 1-7 of Schedule 6 to the Act. In summary they are:
1. lets to persons evicted for anti-social behaviour from a tenancy in Scotland, England, Wales or Northern Ireland, within a period of 3 years prior to the service of a notice that a short SST will be offered;

2. lets to persons where they or other members of their household are the subject of ASBO granted on or after 30 September 2002 under s 19 of the Crime and Disorder Act 1998;
3. temporary lets to persons moving into the area in order to take up employment;
4. temporary lets pending development affecting the house;
5. temporary lets to homeless persons for tenancies of 6 months or over (lets to homeless persons of under 6 months are covered by Schedule 1 to the Act, tenancies which are not SSTs);
6. temporary lets to persons requiring or receiving housing support services as defined in section 91(8) of the Act (N.B. permanent lets to persons requiring or receiving housing support services should be Scottish secure tenancies);
7. lets in houses leased by the landlord from another body where the terms of the lease preclude the landlord subletting under an SST.

Scottish Ministers, under section 34(3) of the Act, may modify this list by order.

The Rights of a Short SST

125. The rights under a short SST are identical to the full SST except that:

- there is no right to buy;
- there is no provision for succession; and
- security of tenure is limited.

Rights to assign, sublet, etc. under a short SST are limited to the period of the short SST.

The Procedures for Establishing a Short SST

126. To create a short SST, the landlord must serve a notice on the prospective tenant which:

- must be in such form as prescribed in regulations by Scottish Ministers;
- must state that the tenancy to which it relates is to be a short SST and specify what category of short SST it is, by reference to the paragraph of Schedule 6 that applies, e.g. a short SST given because an ASBO had been taken out against the tenant or a member of the tenant's household would be a short SST in terms of paragraph 2 of Schedule 6 to the Act; and

- must specify the term of the tenancy, which must be for at least 6 months in the first instance.

127. Subsection (5) provides that at the end of the tenancy (i.e. the termination date), the tenancy may continue by:

- tacit relocation (literally, “silent renewal of lease”) in this context is the common law rule whereby a lease will, by operation of law, be treated as automatically renewing itself for the same period (or for a year if that period is greater than one year) and on the same terms unless either of the parties have taken steps to prevent tacit relocation from operating; or
- express agreement where the parties can agree to the tenancy being continued for some other period on the same or different terms. The parties are free to agree that it should continue for a period of less than 6 months. The tenancy will nevertheless continue to be a short SST.

The Procedures for Recovery of Possession of a short SST

128. Landlords can, at any time, use the procedures available under the full SST (section 14 of the Act) to recover possession, for example in cases of non-payment of rent or anti-social behaviour. There are also additional special procedures to allow landlords to recover possession after the specified period (the term) of the lease. This does not require the landlord to demonstrate any specific conduct or management grounds. All that is required is that the lease has come to an end and that the specified procedures have been followed.

129. These procedures are set out in section 36 of the Act and are as follows:

- the landlord must serve on the tenant a notice of recovery of possession which must be in such form as Scottish Ministers prescribe by regulations.

130. The notice must:

- state that the landlord requires possession of the house;
- specify a date not earlier than-
 - (i) 2 months, or such longer period as the tenancy agreement may provide, from the date of service of the notice, or
 - (ii) the date on which the tenancy could have been brought to an end by a notice to quit had it not been a short SST;

whichever is later, on or after which the landlord may raise proceedings for recovery of possession (subsection (3)).

131. The notice ceases to be in force 6 months after the date specified in it or when it is withdrawn by the landlord, whichever is earlier (subsection (4)).

132. The court must make an order for recovery of possession:
- where the tenancy has reached its term, tacit relocation is not operating (i.e. it will not be automatically renewed for the same length of time);
 - no further contractual tenancy has been entered into; and
 - where a notice has been served following the correct procedure (subsection (5)).
133. An order under subsection (5) must appoint a date for recovery of possession and has the effect of terminating the tenancy and giving the landlord the right to recover possession of the house at that date (subsection (6)).

Appeals (section 38)

134. This provision gives tenants a right of appeal to the courts if they are not satisfied with the type of tenancy or occupancy offered by the landlord, for example where the tenant has been offered a short SST and thinks he is entitled to an SST. Landlords should make tenants aware of this right when offering a short SST or occupancy agreement. Notwithstanding the right of appeal to the courts, landlords should have clear and well-publicised internal appeals mechanisms in place.

Short SST and Anti-Social Behaviour

135. There are special arrangements applying to short SSTs (offered on certain of the grounds in Schedule 6) to facilitate their use as probationary style tenancies designed to help tackle anti-social behaviour.

Short SST Following Eviction

136. Paragraph 1 of Schedule 6 provides for a short SST to be offered where a prospective tenant has been previously evicted (anywhere in the United Kingdom) for anti-social behaviour. The previous eviction can be from any social rented sector housing in the UK which is let under a secure or assured tenancy, or from any private rented housing let under an assured or short assured tenancy in Scotland, or an equivalent tenancy in the rest of the UK. This 'probationary' tenancy enables tenants to be given a second chance to sustain a successful tenancy. If the tenant (or member of their household) continues to act in an anti-social manner, the landlord can seek possession under the appropriate conduct grounds in Schedule 2. Alternatively, the landlord (perhaps if the tenancy is near its *ish*) may choose simply to bring the tenancy to an end at the *ish* using section 36 (see paragraphs 128 to 133 above). The probationary period will be for at least 6 months and can be for up to 12 months. It can be converted to a full SST at any time in that period. Landlords should note, however, that at the end of 12 months on probation, tenants automatically receive the full tenancy, provided the landlord has not raised proceedings for possession.

Short SST with Anti-Social Behaviour Order (ASBO)

137. Paragraph 2 of Schedule 6 enables landlords to offer a short SST where tenants (or a member of their household) have had an ASBO served on them. As with a previous eviction case, the tenancy will become a full SST automatically after 12 months if the landlord does not raise proceedings for possession. If the tenant (or member of their household) continues to act in an anti-social manner, the landlord can seek possession under the appropriate conduct grounds in Schedule 2. Alternatively, the landlord (perhaps if the tenancy is near its *ish*) may choose simply to bring the tenancy to an end at the *ish* using section 36.
138. Where a tenant applies for housing, the application form should require a declaration from the applicant as to whether he has been evicted from a previous tenancy within the last 3 years for anti-social behaviour and should ask for details of the landlord concerned. The receiving landlord should seek a copy of the order for possession, including the original summons, so that it can be confirmed that the decree had been granted due to one of the anti-social grounds and not on any other ground such as rent arrears. This has implications for all landlords on the records they keep in relation to their tenants and, in particular, in relation to records of evictions on anti-social (including criminal) behaviour grounds.

Support for Short SST

139. Section 34 (7) requires landlords (where the tenant is on a short SST because of previous anti-social behaviour or an ASBO) to provide or ensure the provision of such housing support services as it considers appropriate to enable the tenancy to convert to an SST. The types of support envisaged should all fall within the broad definition of "housing support services" found in section 91(8) of the Act and might include, for example, alcohol/debt/family counselling, or social work support. Section 34 (8) enables Scottish Ministers to issue guidance as to the housing support services which are appropriate. We will consider, in due course, whether further guidance is required.
140. Landlords should make sure that the support it considers appropriate to enable conversion to an SST is linked to its stated objectives in granting a short SST. In other words, the landlord should make clear that the short SST is being granted because of certain behaviour and that it will convert to an SST in 12 months under section 37 or the landlord will offer a full SST before that time, provided that the behaviour is altered and that the landlord will make certain support available specifically to help the tenant to successfully convert to an SST.

Where the Tenant Refuses Support

141. Should the tenant refuse support, it will be for the landlord to decide whether it wishes to offer the short SST on the basis that the behaviour will improve without support or whether it wishes to make acceptance of support a condition of the short SST offer. It may be that the landlord will decide to allow a short SST for 6 months without support and review the situation before the 4 months stage, to

allow 2 months', notice if the landlord decides to end the tenancy. If the landlord is unhappy with the progress of the behaviour, it can at 6 months bring the short SST to an end or offer to continue it for a further 6 months, but on condition that support is accepted.

142. The short SST is sufficiently flexible to allow the landlord to determine what support is appropriate in individual cases. It is important to note that the use of these "probationary" style short SSTs is entirely at the landlord's discretion (provided the criteria for offering such tenancies are met). Landlords are not required to use them. It will be for the landlord to decide but if the landlord does use "probationary" tenancies it must provide whatever support is necessary to assist the tenant to convert to a full SST at the 12 month stage.

Conversion to Short SST (section 35)

143. This section entitles a landlord to serve a notice converting an SST to a short SST where an ASBO has been taken out against the tenant or a member of the tenant's household. The notice must specify the tenant and/or member of the tenant's household who is subject to the ASBO. A landlord can convert a SST to a short SST where the ASBO was given at a previous address by a different landlord, provided the tenancy at the previous address had been a SST.
144. This means that all social landlords will require to have information about ASBOs served on their tenants or on members of their tenant's household. Local authorities, as the agencies responsible for applying for ASBOs, have a crucial role to play here in relation to providing information to other social landlords about ASBOs granted.
145. Where an ASBO is granted in relation to a social sector tenant, the local authority which applied for the ASBO should inform the landlord of the household concerned that an ASBO has been granted. In most cases, the landlord concerned will have made the request for an ASBO of the local authority and the local authority will simply require to confirm the outcome.
146. In some cases, however, it is possible that the landlord will not be aware that an ASBO has been granted, unless the local authority informs the landlord. This could be, for example, where an individual rather than the landlord has applied to the local authority for an ASBO against the tenant or a member of the tenant's household.
147. For this reason, local authorities who have not already done so, should put in place protocols for sharing information with other social landlords about ASBOs granted in respect of persons in any household of which they are the landlord. Such sharing of information should take account of the Data Protection legislation.
148. The intention of this power to downgrade an SST to a short SST is to strengthen landlords' powers to deal with anti-social tenants. The conversion of the tenancy

from SST to short SST sends a strong signal to the tenant that the landlord will not tolerate anti-social behaviour. This new power to downgrade a tenancy will apply only in relation to ASBOs granted on or after commencement of the SST on 30 September 2002. It will not apply to ASBOs already in force at that time.

149. As with the short SST for those who have previously been evicted for anti-social behaviour, the short SST under this section is intended as a 'probationary' tenancy and landlords are required in terms of section 34 (7) to give appropriate support to the household to enable the tenancy to convert to an SST after 12 months. There is no scope to extend this type of short SST beyond the 12 month period. Either the tenancy must convert or it must be brought to an end, either at the *ish* or through the courts. If landlords consider that support continues to be necessary on conversion to the full SST, they have discretion to continue to provide or ensure the provision of such support. If anti-social behaviour recurs after conversion to a full SST, the landlord can seek repossession through the courts or a further ASBO can be sought and, if granted, the tenancy can once again be demoted to a short SST.
150. Section 35(5) gives a tenant a right of recourse to the court where the tenant is aggrieved by a landlord converting an SST to a short SST. Where the court finds in favour of the tenant, it can effectively reinstate the SST (subsection (6)).
151. The purpose of these probationary style short SSTs is to encourage landlords to give a tenancy to applicants whom they might not otherwise be inclined to house. It also gives the tenant a further clear incentive to improve their behaviour and ensures that they will receive the support they need to sustain a full tenancy in a responsible manner.
152. The Executive believes that this is a positive way of tackling the problem of anti-social behaviour, which has more advantages over simply moving the problem elsewhere without attempting to resolve it.
153. Landlords will continue to have powers to evict for repeat of unreasonable conduct both during and beyond the probationary period.

Conversion to SST (section 37)

154. Where a tenant has been granted a short SST because they have previously been evicted from a tenancy for anti-social behaviour or because an ASBO has been taken out against the tenant or one of the tenant's household, this section provides for the automatic conversion of the short tenancy to a full SST after a period of 12 months, unless the landlord has served a notice for recovery of possession on the tenant. It is important for landlords to note that unless they take steps to recover possession, the tenancy will convert to an SST. It is also important to note that the presumption must be in favour of conversion to a full SST unless there are grounds for recovery of possession. Furthermore, on conversion to an SST, the landlord should sign the tenant up to a Scottish secure tenancy agreement. Landlords should note that there is no provision for conversion to a full SST for those short SSTs granted on the grounds 3 to 7 described in paragraph 124.

155. Subsections (2) and (3) make further provisions for cases where a landlord has served such a notice for recovery of possession. These provide that where the notice has ceased to be in force, or has been withdrawn, by the landlord without proceedings for recovery of possession having been raised, the tenancy will convert to an SST. This will be with effect from the date on which the notice ceased to be in force, or was withdrawn, or the expiry of the 12 month period, whichever is the later.
156. If proceedings for recovery of possession have been raised and have been finally determined in favour of the tenant, the tenancy becomes an SST with effect from the date the proceedings were finally determined or the expiry of the 12 month period, whichever is the later.
157. Subsection (3) provides that proceedings are finally determined when the period for appealing has expired without an appeal being lodged, or where an appeal is lodged the appeal is withdrawn or finally determined.
158. Subsection (4) provides that where a tenancy becomes an SST by virtue of this section, the landlord must notify the tenant of that fact and of the date on which the tenancy became an SST. In so doing, it is important that landlords take the opportunity to explain the rights and responsibilities tenants will have under the SST.
159. Given that without intervention, conversion to the SST takes place automatically at the 12 month point, it is vital for landlords to have in place systems to monitor this and, in particular, to have systems in place to review the tenancy to allow for 2 months' notice if the landlord wishes to end the tenancy.
160. Landlords will also wish to make clear to tenants on conversion to an SST the consequences of any further anti-social behaviour.
161. It will be open to landlords to decide whether or not to use short SSTs as probationary tenancies as a measure to deal with anti-social behaviour. Tenants found guilty of anti-social behaviour – either through eviction for such behaviour or the serving of an ASBO against them or someone in the household for anti-social behaviour relating to the tenancy – are not entitled to a short SST. It is for the landlord to decide, on a case by case basis, whether it wishes to allow a tenant a short SST. The Executive would, however, encourage landlords to use short SSTs in such cases as a more constructive approach to the problem of anti-social behaviour than simply to suspend applicants from the housing list.
162. Equally, where a short SST converts to an SST, it is for the landlord to decide if anti-social behaviour recurs, whether to apply for an ASBO and, if the ASBO is granted, to downgrade the SST to a short SST. The landlord has the option to consider whether to take some other action, including eviction action under section 14, without offering the tenant a further short SST.

There is no automatic conversion from a short SST to an SST for tenants who have been granted a short tenancy on other grounds specified in Schedule 6.

Application of sections 23 to 33 to Other Tenancies (section 39)

163. This section applies the rights and obligations of the SST to a tenancy which would be an SST if it were not tied accommodation or part of a building which is primarily for non-housing use. The key provisions of the SST which do not apply to such tenancies relate to termination of the tenancy and repossession of the house; to joint tenancies; to succession rights; and to the tenant participation provisions. Note that the right to buy only applies to houses let under an SST.

Notices and Interpretation of Chapter 1 (sections 40 and 41)

164. These sections clarify how notices are to be served and what is meant by certain terms used in this Chapter of the Act. The reference in section 40 of the Act to the ways in which a “notice or other document” is to be given to a person is not intended to cover routine letters such as rent increase letters which may be sent by normal post.

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