

## **GUIDANCE ON THE SCOTTISH SECURE TENANCY - REPORT FROM THE SST SUB-GROUP**

The SST sub-group has met on 2 occasions. At its first meeting it agreed a structure which informed the first draft of the guidance. At the second meeting of the sub-group the draft was tabled for consideration and the attached version takes account of the discussion at that meeting.

The sub-group are to meet again on 20 November when it is hoped to finalise the draft guidance. A copy of the final draft will be issued to members of the WGHA1 and to the Social Justice Committee in advance of full consultation from December 2001 - February 2002. It is intended that the final guidance will be issued in April 2002.

There are a number of orders required to implement the SST (and short SST) provisions in the 2001 Act. Drafts of these will be included in the final version of the guidance when it goes out to consultation. They are:

- Order(s) under section 11 (1) of the Housing (Scotland) Act 2001). This specifies for each landlord or description of landlord a date after which all new tenancies offered by those landlords must be SSTs. and includes provisions to protect the rights of the landlord, the tenant or a third party in relation to a tenancy which is converted to a SST. (Annex )
- The Scottish Secure Tenants (Proceedings for Possession) (Scotland) Order 2002 - (Annex )
- The Scottish Secure Tenants (Abandoned Properties) (Scotland) Order 2002 - (Annex ).
- The Scottish Secure Tenants (Compensation for Improvements) (Scotland) Regulations 2002 - (Annex )
- The Scottish Secure Tenants (Right to Repair) (Scotland) Regulations 2002 - (Annex )
- Notice under section 34 of the Housing (Scotland) Act 2001 to be served on a prospective tenant of a short Scottish secure tenancy (Annex ).
- Notice under section 35 of the Housing (Scotland) Act 2001 converting a Scottish secure tenancy to a short Scottish secure tenancy
- Notice under section 36 of the Housing (Scotland) Act 2001 for recovery of possession of a short Scottish secure tenancy

These have been instructed from legal colleagues in the Scottish Executive but are not currently available.

Housing Division 2  
Scottish Executive

November 2001

## DRAFT

## SCOTTISH SECURE TENANCY GUIDANCE

### Introduction

1. The purpose of this circular is to provide guidance on the new tenancy, **the Scottish secure tenancy (SST)**, and its variant **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, and will in virtually all cases 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 except where special arrangements have been agreed to introduce the new tenancy at an earlier date linked to a whole stock transfer.
2. This circular does not, however, provide detailed guidance on two closely-related issues: separate guidance will be issued on the **Right To Buy**, and on the **tenant participation** provisions set out in Chapter 3 of Part 2 of the Act.
3. This circular also does not provide guidance on tenancies in the private-sector – normally **assured** or **short assured tenancies**.

### Model Tenancy Agreements and Common Law

4. A model SST agreement was issued to all social landlords in 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. A model short SST agreement is in preparation and will be made available by Spring 2002.
5. For ease of reference in following this guidance the relevant provisions of the 2001 Act (sections 11 to 41 and Schedules 1 to 6) are replicated at Annex A to this circular.

### Secondary Legislation

6. Secondary legislation is required to fully implement some of the provisions of the Act relating to the SST and short SST. This is currently in preparation and is subject to consultation. Drafts of the relevant orders and regulations are attached for comment as Annexes [ ] to this guidance and are referred to below. These orders will be subject to confirmation by the Scottish Parliament. They are as follows:
  - Order(s) under section 11 (1) of the Housing (Scotland) Act 2001) *specifying 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). At that date, any existing tenancies of those landlords will convert to become SSTs.* The Order(s) made by Ministers under section 11(1) may include provisions to protect the rights of the landlord, the tenant or a third party (e.g. a person with a heritable security over the property) in relation to a tenancy which is converted to a SST.

- The Scottish Secure Tenants (Proceedings for Possession) (Scotland) Order 2002 - (Annex )
- The Scottish Secure Tenants (Abandoned Properties) (Scotland) Order 2002 - (Annex ).
- The Scottish Secure Tenants (Compensation for Improvements) (Scotland) Regulations 2002 - (Annex )
- The Scottish Secure Tenants (Right to Repair) (Scotland) Regulations 2002 - (Annex )
- Notice under section 34 of the Housing (Scotland) Act 2001 to be served on a prospective tenant of a short Scottish secure tenancy (Annex ).
- Notice under section 35 of the Housing (Scotland) Act 2001 converting a Scottish secure tenancy to a short Scottish secure tenancy
- Notice under section 36 of the Housing (Scotland) Act 2001 for recovery of possession of a short Scottish secure tenancy

## Consultation

**7. Comments are sought on the content of this guidance by [ ]. Comments on the draft orders are also invited. These must be received by [ ] at the latest to meet the Parliamentary timetable.**

Comments should be sent to :

Dawn Abell  
 Scottish Executive Development Department  
 Area 1G  
 Victoria Quay  
 Edinburgh EH6 6 QQ

Or by e-mail to: dawn.abell@scotland.gov.uk

## The Scottish Secure Tenancy

8. Aa tenancy will only be a 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 registered social landlord 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 further below.

9. 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.

10. Some tenancies may meet these general criteria but will nonetheless not be Scottish secure tenancies because of the exemptions set out in schedule 1. These exemptions are set out and discussed further below. (see paragraph 22).

### 11. Basic criteria for an SST

#### ***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. (See section 111 of the Act, which also defines a “flat”.) “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

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

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 1988 Act. Any house let by one of these bodies, which also meets the other criteria in this section, will be 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)).

#### ***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 cannot be offered to a company or organisation, only to an individual. 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)) 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 would be entitled to instigate proceedings to bring that joint tenant's interest in the tenancy to an end under s20 of the Act (see paragraph 48 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. Normally, the accommodation occupied for the purposes of employment would not be considered to be a person's principal home. Their principal home would be the place they returned to – what is, in effect, their "family home".

***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 single 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 their membership, this would be a breach of the tenancy agreement and the co-op would be entitled to instigate proceedings to recover possession of the property.

***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)).***

**Ministers will make an Order (s) specifying 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). At that date, any existing tenancies of those landlords will convert to become SSTs through the Order. [Your views are requested on a draft of this order attached at Annex [ ]]. The Order must be laid before the Scottish Parliament by [ ] and recipients are asked for any comments on its contents by [ ] at the latest.]**

### **Existing tenants of Scottish Homes**

12. There will be just under 5,000 houses in Scottish Homes' ownership when Communities Scotland is set up on 1 November 2001. Scottish Homes will continue as a residuary body in order to complete the transfer of these houses to other community landlords. Firm plans are in hand for the vast majority of the houses to be transferred by September 2002. Where there are no firm plans Scottish Homes will be discussing options with tenants. In the meantime, tenants will continue to be secure tenants in terms of the Housing (Scotland) Act 1987.

### **Protecting existing rights under the SST (section 11 (2))**

13. Any Orders made by Ministers under section 11(1) may include provisions to protect the rights of the landlord, the tenant or a third party (e.g. a person with a heritable security over the property) in relation to a tenancy which is converted to a SST. Ministers will use

this power to protect the existing right to buy entitlement of those existing secure and assured tenants who have the right to buy and further details on this as provided in the associated guidance in the modernised right to buy. Apart from protecting right to buy entitlement, it has also been agreed that the order should protect the following rights:

- The right of existing secure tenants of housing associations (now registered social landlords) to have a fair rent determined by the Rent Officer; and
- The right of existing tenants of housing associations with statutory assured tenancies to refer their rent to the Rent Assessment Panel.

14. In both cases, this right is protected for existing tenants for the duration of their tenancy. The right does not transfer if they move to another tenancy as a result of a transfer or exchange and the right does not pass to persons who succeed to their tenancy or who take over their tenancy as a result of an assignation.

15. The 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 below) by virtue of that ASBO.

**16. [Your views are requested on a draft of this Order which is attached. The Order must be laid before the Scottish Parliament by [ ] and recipients are asked for any comments on its contents by[ ]at the latest.]**

#### **Right to a joint tenancy (section 11 (5))**

17. Any tenant under an SST is entitled to a joint tenancy with one or more other individuals, so long as the house is to be the only or principal home of all the tenants (section 11(5)). The tenant must apply in writing, and the application must be jointly with the other individuals. (This requirement for joint application effectively gives any existing tenant a right of veto over any other individual seeking to become a joint tenant in the same house.) 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.

#### **Continuation of tenancy (section 11 (8))**

18. Once a tenancy is a 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 registered social landlord 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 registered social landlord which is a co-operative housing association and the tenant is no longer a member of the association.

19. These circumstances are unlikely to arise often in practice, but could occur through the de-registration of an RSL, or the transfer of local authority stock to a private sector landlord. Even if such a change takes place, the tenancy will continue to be an SST with all the associated rights, protections and obligations.

20. 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 of, 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 housing co-operative gives up his or her membership, then the appropriate remedy is to recover possession of the tenancy.

### **Houses under temporary occupation (section 11 (9))**

21. 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 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 a SST in this house except for the RTB. In this situation, landlords can simply recover possession of this alternative house as necessary and they are not required to use the normal procedures as set out in sections 12 to 16 (see below).

### **Tenancies which are not SSTs**

22. Section 11 (4) of the Act says that a tenancy is not a SST if it is of a kind mentioned in Schedule 1 to the Act. The exceptions will apply to new tenancies and to existing tenancies which would otherwise become Scottish secure tenants under section 11 (2) of the 2001 Act. They are:

- Premises occupied under contract of employment - i.e. tied houses;
- Tied properties of police and fire authorities;
- Lettings to students by specified educational institution - i.e. of a type specified by regulations made by the Scottish Ministers
- Temporary accommodation used as “decant housing” while work is being undertaken;
- Temporary accommodation for homeless persons. **N.B.** This applies only to tenancies of a term less than 6 months. Tenancies of 6 months or more will be short Scottish secure tenancies;
- Temporary accommodation (up to 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.
- 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 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;

- 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 a SST. In practice, it is unlikely that it will be possible to offer an SST in many leased houses given the rights available to Scottish secure tenants, for example, the rights of succession and the right to buy

### **Restriction on Termination of Tenancy (section 12)**

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

- (a) 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;
- (b) action by the landlord as a result of abandonment of the house by the tenant;
- (c) the death of the tenant where the statutory requirements for succession are not met;
- (d) where the tenant or a member of the tenant's household is the subject of an Anti-social Behaviour Order, and the landlord takes action to convert it to a short SST under section 35 of the 2001 Act. (See below)
- (e) by written agreement by the tenant and landlord
- (f) 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.

24. 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)**

25. Section 13 of the Act provides that a joint tenant may terminate his or her interest in the tenancy by giving 4 weeks notice 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.

26. 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 sections 20 and 20 below).

### **Proceedings for possession (section 14)**

27. Section 14 (1) of the Act entitles a landlord under a 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 the 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 registered social landlords. 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.

28. Subsection (2) precludes the landlord from raising proceedings for recovery of possession of the house unless the landlord has:

(a) served on the tenant and any qualifying occupier a notice in a form prescribed by Scottish Ministers. **[A draft of that notice has now been prepared and is to be found at Annex [ ]. The Order must be laid before the Scottish Parliament by [ ] and any comments on the draft notice must be received by [ ] at the latest.**

(b) the proceedings are raised on or after the date specified in the notice;

(c) the notice is in force at the time when the proceedings are raised

29. 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.

30. 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 the information is kept up to date. Landlords should in any event make sure that they have an audit trail which clearly establishes attempts made to identify and notify any qualifying persons ..

31. Subsection 4 (a) and (b) requires that the notice to be served on the tenant and any qualifying occupier must include the ground on which the court order will be sought, which must be one of the 15 grounds set out in Part 1 of schedule 2 to the Act, and must be served at least 4 weeks before the court order is sought.

32. Subsection (6) defines "qualifying occupier" for the purposes of this section and section 15 (see below) as a person who occupies the house as that person's only or principal home and who is:

(a) a member of the tenant's family aged at least 16 years;

(b) a person to whom the tenant has with the consent of the landlord, assigned, sublet or otherwise given up possession of the house or any part of it, or

(c) a person who with the landlord's consent has been taken in as a lodger

### **Rights of qualifying occupiers in possession proceedings (section 15)**

33. This section enables a qualifying occupier (see definition above) 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 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.

## **Powers of court in possession proceedings (section 16)**

34. Section 16 (1) sets out the powers of the court in proceeding for recovery of possession of a house let under a 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.

35. Subsection (2) sets out the circumstances in which the court will make an order for terminating a SST and giving the landlord the right to recover possession of the house on a ground set out in Part 1 of schedule 2. These are detailed in Annex. Broadly, these grounds are divided into "conduct" and "management" grounds as follows:

### 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 4 - The condition of the house or common parts, or 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 six 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.
- Ground 7 - The tenant or someone residing in or visiting the tenant's house, has been anti-social to anyone else in the locality and it is not reasonable for the landlord to transfer the tenant to another house.

### Management Grounds

- Ground 8 - The tenant, 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 Part VII 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 six 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.

36. 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.

37. Suitability of alternative accommodation is determined by reference to Part 2 of schedule 2. The accommodation is suitable if it consist of premises which are to be let as a separate dwelling under a Scottish secure tenancy 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 tenants family. These criteria are as follows:

- the proximity of the accommodation to the place of work (including school or college)) of the tenant of the or the tenant's family, compared to 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 to 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,
- any special needs of the tenant or the tenant's family

38. 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.

39. In relation to ground 10, if the house is being modernised and refurbished the court can make an order entitling the tenant to return to the house when the work has been completed.

40. 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 at liberty to take account of any other relevant considerations as well. The aim is to achieve greater consistency in the interpretation of "reasonableness" by courts. The specific criteria is set out in schedule 2 Part II of the Act and is broadly as follows:

(a) the nature, frequency and duration of the conduct leading to the eviction proceedings;

(b) 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;

(c) the effect of the tenant's conduct on others for example, whether there are serious adverse consequences for other local residents;

(d) whether the landlord has considered and, if appropriate, progressed other possible courses of action before opting for the relatively draconian measure of eviction.

41. 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.

42. 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 new tests of reasonableness.

### **Abandoned tenancies (Section 17)**

43. This section enables a landlord under a 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.

### **Repossession (Section 18)**

44. 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. The landlord must:

- give 4 weeks notice in writing (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.

45. 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 and 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 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.

46. Subsection (4) gives an order making power to the Scottish Ministers to outline arrangements for the securing of tenants' belongings in their absence and arrangements for their return or disposal. **[A draft of this order (based on the current order which applies to secure tenancies) is attached at Annex ]. The Order must be laid before the Scottish Parliament by [ ] and any comments on it must be received by [ ] at the latest.**

#### **Tenant's recourse to court (section 19)**

47. This section gives a Scottish secure tenant whose house has been repossessed in accordance with the abandonment procedures in sections 17 and 18 a right of appeal to the court. 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)**

48. This section enables a landlord under a 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 the landlords and the 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). 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.

## **Joint tenancies: abandoning tenant's recourse to court (section 21)**

49. 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. 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)**

50. This section and schedule 3 make provision for succession to a 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 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.

51. 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 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 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 household.
- In the case of fully mutual housing co-operative housing, qualifying persons must also apply for membership and be accepted as members of the co-operative. Such co-operatives are required by regulation to have a clear and non-discriminatory membership policy.

**52. In all cases the house of the deceased tenant must have been the only or principal home of the qualifying person.**

53. 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, cohabitees, 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).

54. Subsection (8) clarifies that tenancies are not terminated on the death of a joint tenant if the remaining tenant or tenants continue to live in the house.

55. 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 remain in the house for 6 months but not under a SST. Landlords should enter into an occupancy agreement with the tenant for the 6 months to enable rent to be collected. This is to provide time for the person concerned to find alternative suitable accommodation and landlords will, in any case, wish to consider if they wish to allocate a new tenancy to the person concerned in the normal way.

56. Subsection (10) makes provision for a SST to continue (for the purposes of succession) where a tenant has to move to alternative accommodation.

57. 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 tenancy in terms of paragraph 10 of schedule 3, the landlord will decide who is to succeed. [DN legal dilemma- who is responsible for tenancy while decision being made. Danger of landlord collecting rent in such circumstances - 'non-violent profit' Executive to take up with Solicitors].

### **Tenant's right to written tenancy agreement and to information (section 23)**

58. 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:

- (a) draw up a tenancy agreement stating (expressly or by reference) the terms of the tenancy,
- (b) 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
- (c) supply a copy to the tenant.

59. The Requirements of Writing (Scotland) Act 1995 requires that the Agreement 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.

60. Subsection (2) makes clear that the tenant is not liable for any fees in connection with the preparation of the tenancy agreement.

61. Subsection (3) permits the 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.

62. 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).

63. 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, Victoria Quay, Edinburgh EH6 6 QQ Tel: 0131 244 2105.

64. Subsection (5) requires the landlord to notify the tenant of any changes to the legislation, including subordinate legislation, governing the right to buy which might affect the tenant's right to purchase.

65. 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:

- (a) the terms of the tenancy,
  - (b) the landlord's policy and procedures in relation to setting of rents and charges,
  - (c) 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,
  - (d) how the Right to Buy provisions apply in relation to the tenant, the tenancy and the house
  - (e) the obligations the tenant is likely to incur if the tenant exercises his or her right to buy the house, including any obligation to maintain any building of which the house forms part and any common areas,
  - (f) where the landlord is a local authority or a registered social landlord, the landlord's tenant participation strategy,
  - (g) 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.

66. The categories set out at (a) to (g) 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. Landlords will need to take steps to ensure that all this relevant information is available in accessible form for tenants by the time the Scottish secure tenancy is introduced.

#### **Restriction on variation of tenancy ( section24)**

67. This section limits the way in which changes to a SST can be made. Rents and other charges can be varied in accordance with section 25 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. The statutory position can only be altered by primary legislation and will be applicable even if not signed up to.

### **Increase in rent or charges (section 25)**

68. This section requires landlords to give each tenant not less than four 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.

69. It is important that landlords involve tenants from the beginning when setting rent policy, although the precise arrangements for doing this will be a matter for the landlord and are likely to vary according to local arrangements for consultation. 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.

### **Variation of tenancy by court order (section 26)**

70. This section allows either a landlord or a tenant to apply for a court order to change a term of 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).

71. 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)**

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

#### **Repairs (section 27)**

73. 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 the Scottish Ministers. Secure tenants currently have this right under the Secure Tenants (Right to Repair) (Scotland) Regulations 1994 (SI1994/1046). Assured tenants did not have an equivalent statutory right but many housing association landlords operated schemes similar to that operating for secure tenants.

**74. A draft of new regulations is to be found at Annex [ ] to this guidance. The opportunity has been taken to revisit the current right to repair scheme, in particular the list of repairs, the timescales for carrying out repairs, and the maximum value of repairs and of compensation payments under the scheme. Recipients are asked to examine the draft carefully and are invited to offer any comment on the proposed**

**repairs, timescales and value of repairs. Local authorities in particular, may wish to offer comments in the light of their experience of the 1994 Regulations.**

#### **Duty to Inspect and Right of Access (section 27 and schedule 4)**

75. Section 27 with 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 within a reasonable timescale and make good any damage 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.

#### **Landlord's consent to work (section 28)**

76. This section and Part 1 of schedule 5 require a tenant to get the written consent of the landlord to undertaking any work, other than interior decoration, on a house. "Work" is defined as:

- (a) alteration, improvement or enlargement of the house or of any fittings or fixtures,
  - (b) addition of new fittings or fixtures,
  - (c) erection of a garage, shed or other structure,
- but does not include repairs or maintenance of any of these.

77. 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. The 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)**

78. This section applies when a 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, 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 (a "grant paid or payable under Part XIII of the 1987 Act").

#### **Right to compensation for improvements (section 30)**

79. 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. The Scottish Ministers can make regulations prescribing:

- those works which qualify for compensation;
- certain circumstances in which compensation is not payable;

- minimum and maximum levels of compensation;
- the procedures to be followed, and the factors to be taken into account, when claiming for or determining compensation.

80. Regulations in respect of these matters already exist for secure tenancies in the Secure Tenants (Compensation for Improvements) (Scotland) Regulations 1994 (SI1994/632). Assured tenants did not have an equivalent statutory right but many housing association landlords operated schemes similar to that operating for secure tenants.

**81. A draft of new regulations is to be found at Annex [ ] to this guidance. The opportunity has been taken to revisit the current Compensation for Improvements Scheme, in particular the levels of compensation payments under the scheme. Recipients are asked to examine the draft carefully and are invited to offer any comment. Local authorities in particular, may wish to offer comments in the light of their experience of the 1994 Regulations.**

### **Effect of work on rent (section 31)**

82. This section prevents a landlord increasing the rent of a tenant, the successor to the tenancy or the successor's spouse or cohabitee 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)**

83. 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 assignment, 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) 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,
- (b) an order for recovery of possession of the house has been made against the tenant under s 16 (2) of the Act,
- (c) it appears to the landlord that the tenant is to receive a payment for the assignment, subletting or other transaction which is other than a reasonable rent or returnable deposit.
- (d) if the transaction would lead to overcrowding,
- (e) if 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.

84. Subsection (4) provides that where the landlord is a registered social landlord which is a co-operative housing association any consent is subject to the condition that assignee, subtenant, or other person is a member of the association when the assignment 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.

85. These “statutory” grounds 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.

86. 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.

87. 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.

88. 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)**

89. 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) 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,

(b) an order for recovery of possession of the house has been made against the tenant under s 16 (2) of the Act,

(c) the house was provided by the landlord in connection with the tenant's employment with the landlord i.e. is a tied house,

(d) 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,

(e) 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

(f) 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.

90. These grounds can be modified by order of the 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 assignation even where these statutory grounds exist.

91. Subsection (4) requires that where the landlord is a registered social landlord 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.

92. Subsection (6) provides that on an exchange, the existing tenancy is terminated and the tenant is taken to have been granted a SST of the other house.

### **Alterations, assignation, subletting, exchange etc (Schedule 5)**

93. Part 2 paragraph 9 of schedule 5 provides 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, giving 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.

94. Similarly, Part 2 paragraph 10 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 a SST to make a written application for consent to the landlord and (if different) to the landlord of the other house, giving details of the proposed transaction and, in particular, of the other house.

95. 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)

96. Part 2 paragraph 11 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.

97. Part 2 paragraph 14 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.

98. It is important that landlords who wish to refuse consent do so within the one month period required, otherwise the application will be deemed to have been granted. It is also important, particularly in the event of any appeal by the tenant to the courts, that the landlord gives his reasons for refusing consent and that those reasons are reasonable.

## **SHORT SCOTTISH SECURE TENANCIES (section 34)**

### **What is a short Scottish secure tenancy?**

99. The short Scottish Secure Tenancy (SSST) is a variant of the Scottish Secure Tenancy. It has some similarities with the short assured tenancy currently used by RSLs but there are important differences. The majority of tenancies that social landlords will offer to their tenants will be Scottish secure tenancies but in a relatively small number of cases, 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.

100. Following consultation with the SFHA, the Scottish Executive has decided that it would not be appropriate to convert all existing short assured tenancies to full Scottish secure 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 ), i.e. by serving a notice on the tenant at least two months (or more if the terms of the tenancy provide) before, at or after the ish date for the tenancy.

101. 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, then they will need to follow the notification procedures set out below and ensure that the tenancy meets the specific criteria (also described below).

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

- (a) it would have been a SST otherwise,
- (b) it is for 6 months or more
- (c) the landlord has served a notice on the prospective tenant that this type of tenancy will be offered.

### **When can a short SST be used?**

102. The circumstances in which a short SST may be used are set out in Schedule 6. In summary they are:

- 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.
- lets to persons where they or other members of their household are the subject of Anti-social Behaviour Orders granted under s 19 of the Crime and Disorder Act 1998;
- temporary lets to persons moving into the area in order to take up employment;
- temporary lets pending development affecting the house;
- 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 of the Act, i.e. tenancies which are not SSTs)

- temporary lets to persons requiring or receiving housing support services; i.e. as defined in section 81(8) of the Act
- lets in houses leased by the landlord from another body where the terms of the lease preclude the landlord subletting under a SST.

The Scottish Ministers under subsection (3) may modify this list by order.

### **What rights does a short SST enjoy ?**

103. 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
- security of tenure is limited as described below

### **What are the procedures for establishing a short SST?**

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

(a) must be in such form as prescribed by Scottish Ministers. Scottish Ministers will provide this notice under secondary legislation. **A draft of the proposed Notice is attached at Annex [ ]. The Notice must be laid before the Scottish Parliament by [ ] and recipients are invited to submit any comments on the draft Notice by [ ] at the latest.**

(b) must state that the tenancy to which it relates is to be a short SST and specify what type of short SST it is by reference to the paragraph of schedule 6 which it meets, 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.

(c) must specify the term of the tenancy. This must be for at least 6 months in the first instance.

105. Subsection 5 provides that at the *ish* of the tenancy, ( i.e. the termination date), the tenancy may continue -

(a) by tacit relocation -(i.e. it will automatically be renewed for the same length of time), or

(b) by express agreement - (i.e. 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.)

### **What are the procedures for recovery of possession?**

106. Landlords can, at any time, use the procedures available under the full SST (section 14 ) to recover possession, for example in cases of non-payment of rent or anti-social behaviour, but there is also additional special procedures to allow landlords to recover possession after the specified period 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.

107. 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 the Scottish Ministers prescribe by regulations [**A draft of the proposed Notice is attached at Annex [ ]**]. **The Notice must be laid before the Scottish Parliament by [ ] and recipients are invited to submit any comments on the draft Notice by [ ] at the latest.**]
- The notice must :
  - (a) state that the landlord requires possession of the house,
  - (b) 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)
- 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 )
- 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) and no further contractual tenancy has been entered into, and where a notice has been served. (subsection (5))
- 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)**

108. This provision gives tenants a right of appeal to the courts if they are not satisfied that the landlord has interpreted the legislation correctly and has, as a result, offered an inappropriate form of tenancy. . Landlords should make tenants aware of this right when offering a tenancy.

## **SHORT SST AND ANTI-SOCIAL BEHAVIOUR**

109. There are special arrangements applying to short SSTs to facilitate their use as probationary style tenancies designed to help tackle anti-social behaviour.

### **Short SST following Eviction**

110. Paragraph 1 of Schedule 6 provides for a short SST to be offered where a prospective tenant has been previously evicted for anti-social behaviour. The previous eviction can be from any social rented sector housing or private rented housing let under an assured or short assured tenancy in the United Kingdom. This 'probationary' tenancy enables tenants to be given a second chance to sustain a successful tenancy. After 12 months on probation, tenants automatically receive the full tenancy provided they have complied with the terms of the tenancy.

### **Short SST with ASBO**

111. Paragraph 2 of schedule 6 enables landlords, where tenants who have had an anti-social behaviour order (ASBO) served on them or on a member of their household, to convert their full Scottish secure tenancy to a short Scottish secure tenancy for a 12 month probationary period. If the tenant's conduct is satisfactory, the tenancy would revert to a full Scottish secure tenancy automatically after 12 months but if the tenant (or member of the tenant's household) breaks the terms of their ASBO or otherwise conducts themselves in an anti-social or criminal manner, the landlord would be able to end the short Scottish secure tenancy using the simplified procedures available. (See under section 36).

112. Where a tenant applies for housing, the application form should require a declaration from the applicant as to whether he or she 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, not another 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**

113. Subsection (7) requires landlords to provide such housing support services as it considers appropriate to enable the tenancy to convert to a SST. The types of support envisaged should all fall within the broad definition of "housing support services" found in section 81(8) of the Act and might include, for example, alcohol/debt/ family counselling, or social work support. Subsection (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.

114. Landlords should make sure that the support it considers appropriate to enable conversion to a 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 a SST in 12 months or earlier, provided that that behaviour is altered and that the landlord will make certain support available specifically to help the tenant to successfully convert to an SST.

### **What if tenant refuses support?**

115. 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. It may be that the landlord will decide to allow a SST for 6 months without support and review the situation at the 4 months stage. If the landlord is unhappy with the progress of the short SST, he can at that stage bring the short SST to an end or offer to continue it for a further 6 months, but on condition that support is accepted.

116. The short SST is sufficiently flexible to allow the landlord to determine what 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. 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 enable the tenant to achieve a full Scottish secure tenancy within 12 months.

### **Conversion to short SST (section 35)**

117. This section entitles a landlord to serve a notice converting a SST to a short SST where an anti-social behaviour order (ASBO) has been taken out against the tenant or a member of the tenant's household. The notice must specify the tenant or other person who is subject to the anti-social behaviour order.

118. This means that all social landlords will require to have information about ASBOs served on their tenants or on members of their tenants' 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.

119. Where an ASBO is granted in relation to a social sector tenant, the local authority who 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.

120. 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.

121. 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.

122. The intention of this power to downgrade a 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.

123. 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 a SST after 12 months.

124. Subsection (5) gives a tenant a right of recourse to the court where the tenant is aggrieved by a landlord converting a SST to a short SST. Where the court finds in favour of the tenant it can effectively reinstate the SST (subsection 6 ).

125. The purpose of these probationary style short SSTs is to encourage landlords to give applicants a tenancy 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.

126. The Executive believes that this is by far the most positive way to tackle the problem of anti-social behaviour, rather than simply to move the problem elsewhere without attempting to resolve it.

127. 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)**

128. 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 to quit on the tenant.

129. Subsections (2) and (3) make further provisions for cases where a landlord has served such a notice to quit. 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 a SST 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.

130. If proceedings for recovery of possession have been raised and have been finally determined in favour of the tenant, the tenancy becomes a SST with effect from the date the proceedings were finally determined or the expiry of the 12 month period, whichever is the later.

131. 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.

132. Subsection (4) provides that where a tenancy becomes a SST by virtue of this section, the landlord must notify the tenant of that fact and of the date on which the tenancy became a SST. In so doing, it is important that landlords take the opportunity to explain the rights and responsibilities tenants will have under the SST.

133. 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 convert or end a tenancy 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.

134. Landlords will also wish to make clear to tenants on conversion to SST the consequences of any further anti-social behaviour.

135. 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- 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.

136. Equally, where a short SST converts to a SST, it is for the landlord to decide, if anti-social behaviour recurs whether to apply for an ASBO and downgrade the SST to a short SST or whether to take some other action, including eviction action, without offering the tenant a further short SST.

**N.B.** There is no automatic conversion from a short SST to an SST for tenants who have been granted a short tenancy on other grounds.

#### **Application of sections 23 to 33 to other tenancies (section 39)**

137. This section applies the rights and obligations of the SST to a tenancy which would be a 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; to the right to buy; and to the tenant participation provisions.

#### **Notices and interpretation of Chapter 1 (sections 40 and 41)**

138. These sections clarify what is meant by certain terms used in this Chapter of the Act.

## A. SCOTTISH SECURE TENANCY - KEY FEATURES

### Who will be Scottish secure tenants?

- Tenants of local authorities, registered social landlords (including tenants who are members of fully mutual co-operative housing associations) and tenants of water and sewerage authorities.
- The tenant must use the house as his or her only or principal home.
- In the case of fully mutual co-operative housing associations, the tenant must also be a member of the association.
- Persons who are not tenants but occupy or intend to occupy the house as their only or principal home may apply for a joint tenancy and the landlord must agree to this unless the landlord has reasonable grounds for not doing so.
- Ten specified exemptions are set out in Schedule 1 of the Act and tenancies in these categories are not Scottish secure tenancies.

### Security of tenure

- A SST can only be ended in one of the following ways:
  - 4 weeks notice by the tenant;
  - written agreement by the tenant and landlord;
  - 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;
  - 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, and the landlord takes action to convert it to a short SST.
- A joint tenant may terminate his or her interest in the tenancy by giving 4 weeks notice to the landlord and each of the other joint tenants.
- 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.
- Any tenants affected by abandonment action by the landlord have the right of appeal to the court.

## **Succession**

- The Act provides a right to 2 rounds of succession for Scottish secure tenancies.
- 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 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 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 household.
- In the case of fully mutual co-operative housing associations, qualifying persons must also apply for membership and be accepted as members of the association.
- There are rules for houses that have been designed or adapted for persons with special needs.

## **Information**

- Tenants must be given a written tenancy agreement.
- Prospective tenants must be given information about the right to buy and the obligations the tenant is likely to incur if that right is exercised and tenants must be informed of any change in their right to buy entitlement.
- Tenants must be given information about the landlords' complaints procedure. They must also be given information on a range of specified matters; for example, the landlord's policy on setting rent, on request.
- Tenants must be given at least 4 weeks notice of any increase in rent or other charges and landlords must, where rents are to be increased for all or a class of tenants, consult tenants in advance of any increase.

## **Repairs**

- Landlords must follow the requirements of schedule 4 of the Act which require them to ensure, that at the beginning of the tenancy (and subsequently), the house is wind and watertight and, in all other respects, reasonably fit for human habitation.

- Tenants have the right to arrange for certain types of repairs to be carried out and then get reimbursed from the landlord (this is sometimes referred to as the “right to repair”).

### **Compensation for improvements**

- Tenants have the right to compensation at the end of the tenancy for certain types of improvements made to their homes with the permission of the landlord.

### **Assignment, sub-letting and exchanges**

- Tenants may sublet (or take in a lodger) with the consent of the landlord. Similarly tenants may exchange their house with a tenant or another landlord providing both landlords consent.
- Tenants may also assign their house with the consent of the landlord if the house has been the assignee’s only or principal house for at least 6 months beforehand.
- Landlords may only refuse consent if there are reasonable grounds for doing so.
- In the case of fully mutual co-operative housing associations, the assignee, sub-tenant or tenant moving into the house as a result of the exchange must become a member of the association before the change takes effect.

### **Right to buy**

- Generally, tenants have the right to buy unless they are occupying a house which is covered by an exemption. The main exemptions provided for in the Act are:
  - where the landlord is a fully mutual co-operative housing association;
  - where the landlord is a registered social landlord which obtained charitable status before the Act received Royal Assent (18 July 2001);
  - where the house is part of a group housing scheme designed for persons with special needs who receive support services and/or benefit from special facilities;
  - where the landlord has at no time let, or had available for letting, more than 100 houses;
  - where the landlord is a registered social landlord and the house is covered by the 10 year exemption provided for by section 44 of the Act (or an extension of the 10 year exemption which has been agreed by Scottish Ministers);
  - Where the local authority has sought and received approval of Scottish Ministers to designate the area in which the house is situated as a “pressured area” where the right to buy is suspended for a period of up to 5 years, (which can be extended further).
- The intention is to use the order making power in section 11 so that existing tenants with the right to buy whose tenancy is converted to a SST will retain the right to buy on existing terms and conditions. All tenants of new tenancies

created after the introduction of the SST, including tenancies created as a result of transfers and exchanges by existing tenants, and persons who succeed to existing tenancies (for which separate provisions will be made in an order) will be entitled to the modernised right to buy (5 years qualifying period with the discount starting at 20% and increasing by 1% for each year to a maximum of 35% or £15,000 whichever is less).

- A landlord can, in certain circumstances, refuse an application to buy if the tenant has arrears of rent (or other charges) council tax or water and sewerage charges. Additionally, the right to buy does not apply where the landlord has raised proceedings for recovery of possession under the specified “conduct grounds” in schedule 2.
- Landlords may seek the approval of Scottish Ministers to refuse an application to buy a house which the landlord intends to demolish.
- The Act extends the existing power under the 1987 Act which allows landlords to seek the approval of Scottish Ministers to refuse an application to buy which has been designed or adapted for persons of pensionable age not covered by the group housing scheme exemption (previously this was limited to houses first let on a secure tenancy before 1 January 1990).
- The obligation on landlords to act as lender of last resort has been repealed.

## **B. SHORT SCOTTISH SECURE TENANCY - KEY FEATURES**

### **When can this be used?**

- Schedule 6 of the Act sets out the circumstances in which a local authority, registered social landlord or water authority can offer a short SST. These are:
  - lets to persons previously subject to a repossession order for anti-social behaviour;
  - lets to persons where they or other members of their household are the subject of Anti-social Behaviour Orders;
  - temporary lets to persons moving into the area in order to take up employment;
  - temporary lets pending development affecting the house;
  - temporary lets to homeless persons for tenancies of 6 months or over;
  - temporary lets to persons requiring or receiving housing support services;
  - lets in houses leased from another body where the terms of the lease preclude a full SST.
- Tenants may appeal to the sheriff court if they consider that they are aggrieved at being given a short SST rather than a SST.

## **Security of tenure**

- The terms of the tenancy must be for at least 6 months.
- Landlords may seek an order for recovery of possession of the house from the court where they have given 2 months notice before the end of the lease or, alternatively, by using the recovery procedures available for full Scottish secure tenancies.

## **Tenancy Rights**

- These are identical to the full SST except:
  - there is no right to buy;
  - there is no provision for succession;
  - security of tenure is modified as described above;

## **Conversion to full SST**

- Landlords may offer a full tenancy if and when they consider that this is appropriate.
- For tenants who are given a short tenancy because of previous anti-social behaviour (sometimes described as “probationary tenancies”), these will automatically convert to full tenancies after 12 months unless the landlord serves a notice to commence proceedings for recovery of possession. This applies whether the short tenancy is one converted from a full tenancy due to an Anti-social Behaviour Order being taken out against the tenant or a member of the tenant's household or one created under paragraphs 1 or 2 of Schedule 6 to the 2001 Act. In such cases, the landlord must provide, or ensure the provision of, such housing support services as it considers appropriate with a view to enabling conversion to a full tenancy.

## **C. TENANT PARTICIPATION AND CONSULTATION**

- In addition to the duties to provide information to tenants under the SST under section 23, the Act also requires local authorities and registered social landlords to:
  - prepare a strategy to promote the participation of tenants in making proposals for the management of housing and the provisions of related services;
  - ensure that the strategy sets out the arrangements for taking account of views of both registered tenants organisations and tenants generally, giving them advance warning of matters that are likely to be under consideration, and providing information about the proposals and their effects;
  - assess the resources required and provide a statement about the resources proposed to give effect to the strategy;
  - maintain a register of tenant organisations that meet criteria specified by Scottish Ministers;

- notify registered tenants organisations and tenants of the likely effect on tenants of proposals relating to housing management, repair and maintenance, standards of service, their tenant participation strategy and any planned disposal and give the tenants an opportunity to make representations.
- Tenants can also seek to establish tenant management co-operatives to exercise certain of the landlord's housing functions (which could include management of the houses in its area) by agreement with the landlord.

## ANNEX B

### **SCOTTISH SECURE TENANCY – KEY DIFFERENCES WITH EXISTING SECURE AND ASSURED TENANCIES**

<u>Topic</u>	<u>Main Changes</u>
1. Eligibility	<ul style="list-style-type: none"><li>• All tenants must use the house as their only or principal home.</li><li>• Tenants have a right of appeal to the court if they consider that they should have been granted a SST and some alternative (Short SST or occupancy agreement) has been proposed.</li><li>• Some differences in the specified exemptions (Schedule 1 of the 2001 Act includes relevant exemptions from the previous provisions relating to secure and assured tenancies in the 1987 and 1988 Housing (Scotland) Acts).</li><li>• Tenants of fully mutual housing co-operatives brought within the scope of the new tenancy.</li></ul>
2. Joint Tenancies	<ul style="list-style-type: none"><li>• All persons occupying or intending to occupy the house as their only or principal home may apply for a joint tenancy and this cannot be unreasonably refused.</li></ul>
3. Security of Tenure	<ul style="list-style-type: none"><li>• Grounds for recovery are largely based on the existing secure tenancy and do not include certain grounds currently available for assured tenancies. For example, the mandatory ground for rent Arrears, recovery for persistent rent arrears or recovery by heritable creditors to obtain vacant possession.</li><li>• All actions for recovery on conduct grounds are subject to a test of reasonableness by the courts (as is the case with secure tenancies at present).</li><li>• Courts are required to have regard to 4 specified criteria in considering the reasonableness of recovery</li></ul>

*actions on “conduct grounds”.*

- *Other occupiers (who are not tenants) have the right to be a party to any court proceedings for recovery.*

#### *4. Succession*

- *More extensive rights of succession in comparison with both secure and assured tenancies and in particular:*
  - *Provides for a second round of succession;*
  - *Creates succession rights for same sex couples and carers;*
  - *Removes 12 months residency test that currently applies in secure tenancies to family members (other than spouses).*

#### *5. Abandonment*

- *New provisions to allow for termination of a joint tenant’s interest in the tenancy where that person has abandoned the house.*

#### *6. Rent*

- *No provisions for rents to be determined by the Rent Officer or Rent Assessment Panel (as is the case, at present, for certain housing associations’ tenancies) But, considering the need to retain these rights for existing tenants.*
- *New duty requiring landlords to consult tenants on proposed rent increases and take account of their views.*

#### *7. Repair*

- *All tenants to have the “right to repair” (currently limited to secure tenancies of local authorities).*
- *Landlords must inspect the house prior to the commencement of the tenancy and let the tenant know what repairs need to be done.*
- *Landlords have the right to get access to the property*

*providing at least 24 hours notice is given, to inspect or carry out repairs.*

- *Landlords must carry out repairs within a reasonable time and make good any damage caused when undertaking the work.*

8. *Assignment, Sub-Letting and Exchanges*

- *Similar to current secure tenancy provisions (which give stronger rights to tenants than assured tenancies) but includes 6-month residency test for assignments.*

9. *Information*

- *Requirement on landlords to notify tenants annually about the right to buy is repealed but prospective tenants must be given information about the right to buy and the obligations that a tenant is likely to occur if that right is exercised.*
- *Tenants must be notified of any change in their right to buy entitlement.*
- *New duty on landlords to provide information on their complaints procedure and when requested, their policy on rent setting, allocations, exchanges and repairs.*