

# **HOUSING (SCOTLAND) ACT 2001 - IMPLEMENTATION OF THE PROVISIONS RELATING TO THE SCOTTISH SECURE TENANCY**

## **Introduction**

1. This leaflet provides initial information on how the Scottish Executive intends to implement the provisions in Housing (Scotland) Act 2001 relating to the Scottish secure tenancy. It also refers to the associated provisions relating to right to buy and tenant participation. It has been prepared by the Scottish Executive in consultation with the recently established Working Group on Housing Act Implementation.

2. The leaflet has been prepared primarily for housing professional staff working in local authorities and registered social landlords who, in due course, will need to implement the Scottish secure tenancy within their organisations. We also hope that the leaflet will be of interest to tenant organisations and others advising tenants who wish to know about the implications of the new tenancy legislation.

3. The leaflet is intended only as a broad overview of how the relevant provisions will be implemented. More detailed guidance on the Scottish secure tenancy as a whole and on particular topics will be prepared in due course, again in consultation with the Working Group on Housing Act Implementation. Before the new tenancy arrangements can be introduced, it will also be necessary to lay a number of orders before the Scottish Parliament.

## **What is the Scottish secure tenancy?**

4. This is the new statutory tenancy which is set out in Part 2 of the Housing (Scotland) Act 2001 and which will, in due course, replace the existing secure tenancy for local authority tenants and secure and assured tenancies in the housing association sector. It will therefore, provide a single, common tenancy for virtually all tenants of local authorities and registered social landlords.

5. The Scottish secure tenancy has many of the same features as the existing secure tenancy but there are also a number of improvements in the rights of tenants, for example, in the right to succeed to tenancies, together with a number of other changes designed to help tenants and landlords.

6. In addition, the new provisions in the Act relating to tenant participation and consultation are closely linked to the Scottish secure tenancy. All local authorities and registered social landlords will be required to take on board new requirements relating to tenant participation and consultation. In particular, they will be required to prepare tenant participation strategies and to consult tenant organisations and individual tenants on specified matters.

7. Also closely linked to the Scottish secure tenancy are the provisions in the Act relating to the right to buy. The Act makes a number of changes to the existing right to buy legislation and, in particular, introduces a “modernised” right to buy for new tenants with a longer qualifying period and a lower maximum discount than at present.

8. In addition to the Scottish secure tenancy, the Act makes provision for a short Scottish secure tenancy which can be used in very limited circumstances as set out in the Act.

9. Further details on the relevant provisions are set out in Annex A to this leaflet although this is only a summary. Annex B summarises the main changes to tenancy arrangements as compared with existing secure and assured tenancies. Copies of the Act itself and the associated Explanatory Notes are available from HMSO and can also be viewed via the Scottish Parliament web-site.

### **When will the Scottish secure tenancy be introduced?**

10. Our intention is that at a specified date all existing secure and assured tenants of local authorities and registered social landlords will convert to the Scottish secure tenancy. Our preference is to introduce the new tenancy from a single date for as many tenants as possible. The precise date selected will be confirmed in due course, but the Executive is currently planning for the new tenancy to be introduced from the end of September 2002.

11. In some cases, for example, where a local authority is planning to go ahead with a whole stock transfer before this date, it may make sense to introduce the new tenancy arrangements at the same time as the transfer takes place. If local authorities in this situation would prefer the new tenancy to be commenced earlier in their areas, then the Executive will seek to arrange for this. However, it is unlikely that all the relevant orders linked to the Scottish secure tenancy will be in place by that date so special provisions may be necessary to retain the existing orders linked to the secure tenancy, for example, in relation to the right to repair and compensation for improvements, on a temporary basis

12. After the specified date, new tenancies of local authorities and registered social landlords (unless they fall into the exceptions set out in Schedule 1 of the Act) will be Scottish secure tenancies or short Scottish secure tenancies.

### **How will the Scottish secure tenancy be introduced?**

13. The statutory provisions in the Act will apply once the relevant provisions have been commenced and an order made by Scottish Ministers under section 11. There is, therefore, no requirement for landlords to “sign up” individual tenants before the new tenancy can be implemented although it will be essential to ensure that they are fully informed in advance of the changes.

14. Most tenancy agreements will include additional items dealing with matters over and above the provisions set out in the Act. For example, the tenancy agreement may include rules relating to the keeping of pets. The Executive has separately consulted on a model tenancy agreement and we hope to issue the final version in the autumn. This should provide help for landlords, in consultation with tenants, to decide what contractual items should be included in the tenancy agreement.

15. The Act requires all new tenants to have a written tenancy agreement and landlords will need to take steps to revise their existing agreements in line with the provisions in the Act and take account of any additional items they wish to include. Again we hope that the model tenancy will be of assistance to landlords in preparing this tenancy agreement. In relation to tenants who convert to the Scottish secure tenancy, landlords may as a matter of good practice also offer tenants a new tenancy agreement based on the statutory rights in the Act and other additional items.

**Will it be possible to protect rights which existing tenants or landlords have which are not part of the Scottish secure tenancy?**

16. The Scottish secure tenancy has been designed to create a fair balance of rights and responsibilities between landlords and tenants taking account of past experience with the secure and assured tenancies. Nevertheless, the Executive recognises that there may be some cases where it is only reasonable to retain existing rights for current tenants or landlords even though, in future for new tenancies, these will not be part and parcel of the tenancy agreement. The Act provides for this by giving Scottish Ministers a power to make an order under section 11 of the Act to ensure that the rights of tenants, landlords and any other relevant parties are not adversely affected by the tenancy becoming a Scottish secure tenancy. The Scottish Executive has still to decide which rights should be protected in this way and we will be consulting further about this. However, Ministers are committed to ensuring that existing tenants with the right to buy will, on the conversion of the tenancy to a Scottish secure tenancy, still be able to exercise this right on the existing terms and conditions. Tenants in new tenancies created after the introduction of the Scottish secure tenancy, including new tenancies created as a result of transfers and exchanges by existing tenants, and persons who succeed to existing tenancies will be eligible for the new modernised right to buy.

**Will additional resources be provided for landlords to help them introduce the new tenancy arrangements?**

17. Jackie Baillie, Minister for Social Justice, has announced that approximately £10m in total has been allocated to help housing managers in local authorities and registered social landlords introduce the new Scottish secure tenancy. We are discussing possible ways of allocating these additional resources with the Housing Act Implementation Working Group and a further announcement about this will be made in due course.

**How can I find out more about the details of implementing the new Scottish secure tenancy?**

18. The Scottish Executive has prepared a detailed workplan covering all the guidance and orders that need to be available to allow for general implementation of the new tenancy by end September 2002. This work will be taken forward in consultation with the Housing Act Implementation Working Group and, in some cases, there will be wider consultation before the material is finalised. Copies of all the Working Group papers will also be placed on the Scottish Executive's housing website. The eventual guidance and orders will, of course, be circulated widely. A number of organisations are also considering providing training and other events to assist landlords and tenants prepare for the changes.

Scottish Executive  
August 2001

## 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 Scottish secure tenancy 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 Scottish secure tenancy.
- 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 Scottish secure tenancy will retain the right to buy on existing terms and conditions. All tenants of new tenancies created after the introduction of the Scottish secure tenancy, 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 Scottish secure tenancy. 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 Scottish secure tenancy.
- Tenants may appeal to the sheriff court if they consider that they are aggrieved at being given a short Scottish secure tenancy rather than a Scottish secure tenancy.

### **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 Scottish secure tenancy except:
  - there is no right to buy;

- there is no provision for succession;
- security of tenure is modified as described above;

### **Conversion to full Scottish secure tenancy**

- 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 Scottish secure tenancy 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.

## 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 Scottish Secure Tenancy and some alternative (Short Scottish Secure Tenancy 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 secured and assured tenancies in the 1987 and 1998 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 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, 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> </ul>

- Courts are required to have regard to 4 specified criteria in considering the reasonableness of recovery 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.