



Private Housing (Tenancies) (Scotland) Act 2016

2016 asp 19

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 17th March 2016 and received Royal Assent on 22nd April 2016

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

PART 1

PRIVATE RESIDENTIAL TENANCY

1 Meaning of private residential tenancy

- (1) A tenancy is a private residential tenancy where—
- (a) the tenancy is one under which a property is let to an individual (“the tenant”) as a separate dwelling,
 - (b) the tenant occupies the property (or any part of it) as the tenant's only or principal home, and
 - (c) the tenancy is not one which schedule 1 states cannot be a private residential tenancy.
- (2) A tenancy which is a private residential tenancy does not cease to be one by reason only of the fact that subsection (1)(b) is no longer satisfied.

Commencement Information

II [S. 1](#) in force at 1.12.2017 by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

2 Interpretation of section 1

- (1) This section makes provision about the interpretation of section 1.
- (2) A tenancy is to be regarded as one under which a property is let to an individual notwithstanding that it is let jointly to an individual, or individuals, and another person.

Status: This version of this Act contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Private Housing (Tenancies) (Scotland) Act 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) A tenancy is to be regarded as one under which a property is let as a separate dwelling, despite the let property including other land, where the main purpose for letting the property is to provide the tenant with a home.
- (4) A tenancy is to be regarded as one under which a property is let as a separate dwelling if, despite the let property lacking certain features or facilities—
 - (a) the terms of the tenancy entitle the tenant to use property in common with another person (“shared accommodation”), and
 - (b) the let property would be regarded as a separate dwelling were it to include some or all of the shared accommodation.
- (5) In a case where two or more persons jointly are the tenant under a tenancy, references to the tenant in section 1(1)(b) and in subsection (3) are to any one of those persons.

Commencement Information

I2 [S. 2](#) in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

3 Writing not required to constitute private residential tenancy

- (1) A purported contract becomes lawfully constituted, despite not being constituted in a written document as required by section 1(2) of the Requirements of Writing (Scotland) Act 1995, when—
 - (a) a person occupies a property as the person's only or principal home in pursuance of the purported contract's terms, and
 - (b) the tenancy which the purported contract would create, were it lawfully constituted, would satisfy the conditions in paragraphs (a) and (c) of section 1(1).
- (2) Any term of a purported contract which is unrelated to a private residential tenancy is not to be regarded as a term of the contract for the purpose of subsection (1).

Commencement Information

I3 [S. 3](#) in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

4 Extended meaning of tenancy in this Act

For the purposes of this Act—

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

Commencement Information

I4 [S. 4](#) in force at 1.12.2017 by [S.S.I. 2017/346](#), reg. 2, [sch.](#)

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5 Extended meaning of tenancy and related expressions in other enactments

Unless the contrary intention appears, a reference in any enactment to—

- (a) a tenancy includes a private residential tenancy,
- (b) a landlord or tenant includes a landlord or tenant under a private residential tenancy,
- (c) property being let includes property being let under a private residential tenancy,
- (d) a lease includes an agreement giving rise to a private residential tenancy.

Commencement Information

I5 [S. 5](#) in force at 1.12.2017 by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

6 Power to modify schedule 1

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

Commencement Information

I6 [S. 6](#) in force at 1.12.2017 in so far as not already in force by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

PART 2

TENANCY TERMS

7 Statutory terms of tenancy

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

Commencement Information

I7 [S. 7](#) in force at 31.10.2016 for specified purposes by [S.S.I. 2016/298](#), [reg. 2](#), [sch.](#)

I8 [S. 7](#) in force at 1.12.2017 by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

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8 Regulations under section 7

- (1) Regulations may not be made under section 7(1) unless—
 - (a) they prescribe, in relation to the tenancies to which the regulations are to apply, the terms set out in schedule 2, or
 - (b) those terms are prescribed in relation to those tenancies already.
- (2) Regulations made under section 7 may not be revoked in exercise of the power conferred by that section to the extent that their revocation would result in terms set out in schedule 2 not applying in relation to some or all private residential tenancies.
- (3) Nothing in this section prevents provision being made under section 7(3) so that—
 - (a) in some circumstances, a term set out in schedule 2 is not a term of a private residential tenancy,
 - (b) in some or all circumstances, a term set out in schedule 2 applies subject to modification.
- (4) Before making regulations under section 7, the Scottish Ministers must consult such persons representing the interests of tenants and landlords under private residential tenancies as they think fit.

^{F1}(5)

Textual Amendments

- F1** S. 8(5) repealed (1.12.2017) by [The Private Housing \(Tenancies\) \(Scotland\) Act 2016 \(Commencement No. 3, Amendment, Saving Provision and Revocation\) Regulations 2017 \(S.S.I. 2017/346\)](#), regs. 1(1), **5(2)**

Commencement Information

- I9** S. 8 in force at 31.10.2016 by [S.S.I. 2016/298](#), reg. 2, [sch.](#)

9 Protection of terms allowing use of shared living accommodation

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

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Commencement Information

I10 [S. 9](#) in force at 1.12.2017 by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

PART 3

TENANCY INFORMATION

Landlord's duties to provide information

10 Duty to provide written terms of tenancy

- (1) Where the terms of a private residential tenancy are not set out in writing between the parties, the landlord must, before the end of the day specified in subsection (2) or (as the case may be) (3), provide the tenant with a document which sets out all of the terms of the tenancy.
- (2) The day referred to in subsection (1) is—
 - (a) the day on which the tenancy commences, if the tenancy is a private residential tenancy on that day, or
 - (b) the day falling 28 days after the day on which the tenancy became a private residential tenancy, if it became one after the day on which the tenancy commenced.
- (3) If, as a result of a subsequent change to its terms, all of the terms of a private residential tenancy are no longer set out in writing—
 - (a) subsection (2) does not apply, and
 - (b) the day referred to in subsection (1) is the day falling 28 days after the change to the tenancy's terms takes effect.

Commencement Information

I11 [S. 10](#) in force at 1.12.2017 by [S.S.I. 2017/346](#), [reg. 2](#), [sch.](#)

11 Duty to provide specified information

- (1) The Scottish Ministers may by regulations impose a duty on any person who is, or is to be, the landlord under a private residential tenancy to provide the person who is, or is to be, the tenant—
 - (a) with information specified in the regulations,
 - (b) by a deadline specified in the regulations.
- (2) The power to specify information under subsection (1)(a) includes the power to specify the form in which the information is to be provided.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult such persons representing the interests of tenants and landlords under private residential tenancies as they think fit.