

## Private Residential Tenancies: Your essential guide to the new regime



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Landlords letting a residential property under a new lease are now subject to a new letting regime in Scotland. The 'private residential tenancy' has been created by the Private Housing (Tenancies) (Scotland) Act 2016, and from 1 December 2017, all new tenancies of residential property (that is not exempt) to individuals must be a private residential tenancy (PRT).

The PRT will replace assured tenancies and short assured tenancies. There is no equivalent to the short assured tenancy under the 2016 Act, and in fact the new tenancy will be open-ended. It will last until a tenant wishes to leave the let property, or a landlord uses one (or more) of 18 grounds for eviction (please see Table C).

Any existing short assured or assured tenancy (and also statutory and protected tenancies) will continue until either the tenant or the landlord brings it to an end by serving notice to quit the let property. Any short assured tenancy that is renewing on a rolling basis can continue until either the landlord or the tenant bring it to an end or can be renewed at the expiry date by the same parties.

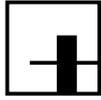
A landlord and tenant under an assured or short assured tenancy can agree to convert it to a PRT, but there is no compulsion to do so, nor any automatic conversion, and it is difficult to see how conversion would be attractive to either landlords or tenants.

### What is a PRT?

A residential tenancy will be a PRT if:

- the property is let to a person as a separate dwelling (this includes lets where there are shared facilities);
- the tenant lives in the property as their main or only home;
- the rent payable is more than £6 per week, not including any services, repairs, maintenance or insurance;
- the property is not an excluded premises (please see Table A);

If the tenancy meets these requirements, it will be a PRT; if it does not, and is not an excluded property, it may fall into



**TABLE A**

**The tenancy will not be a PRT if:**

- it is a shop, licensed premises, or property which includes 2 or more acres of agricultural land;
- it is an agricultural tenancy (including a 1991 Act tenancy, an SLDT, LDT, MLDT or a repairing tenancy) and is occupied by the person responsible for the control of the farming of the let property;
- it is a student let granted while the tenant is a student AND the landlord is a university, college or other further education body;
- it is a student let where the landlord is an institutional provider of student accommodation (meaning they can let other properties in the same building or complex, which has at least 30 bedrooms) and other properties in that building or complex are predominantly used for student housing. Planning permission for the building or complex must have required that it would be used predominantly for housing students;
- it is let for the purposes of a holiday;
- the landlord also lives there;
- the landlord is either a registered social landlord, a local authority, a co-operative housing association, the Scottish Police Authority, the Secretary of State for Defence, or Scottish Water;
- it is granted on a temporary basis to provide accommodation to homeless people;
- it is for less than 6 months and granted in connection with the supervision and care of someone on probation or released from prison;
- the tenant is an asylum seeker or a displaced person; or
- it is a 'shared ownership agreement'.

another category such as a contractual tenancy, holiday let or licence to occupy.

**How to create a PRT**

There must be a written agreement between the landlord and the tenant, but there is no longer any requirement (as there was with short assured tenancies) to issue a pre-tenancy notice.

Landlords must give tenants written terms and conditions, which can be in electronic form, before the tenancy starts (or within 28 days of an existing assured tenancy converting to a PRT or terms of the tenancy changing).

The Government has produced a style Model Tenancy Agreement, but the landlord can use any other form of tenancy agreement it chooses. If using the Model Tenancy Agreement:

- it contains mandatory clauses, which must be used;
- other clauses are optional;
- additional clauses may be added;
- it must be accompanied by explanatory 'Easy read' notes produced by the Government.

If using another style of tenancy agreement:

- it must contain at least the prescribed statutory terms (please see Table B);
- it must be accompanied by a copy of the Government's 'Private Residential Tenancy Statutory Terms Supporting Notes'.

The terms of the Model Tenancy Agreement are suitable for typical urban tenancies. For PRTs for more rural locations, the model agreement will need to be adapted to deal with issues such as private access rights, septic tanks and private water supplies.

The Easy-read notes or the Supporting notes replace the Tenants Information Pack under the assured and short assured tenancy regime.

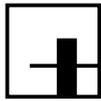


TABLE B

**A PRT tenancy agreement must provide that:**

- receipts must be given for any payment of rent made in cash;
- any increase in the rent may only be made in accordance with the 2016 Act;
- no subletting or assignation of the tenancy is allowed without the written agreement of the landlord;
- the tenant must tell the landlord in writing, if anyone aged 16 or over (who is not a joint tenant) occupies the property with the tenant, as their only or principal home;
- the tenant must tell the landlord in writing, when anyone aged 16 or over stops occupying the property as their only or principal home;
- the tenant is to allow reasonable access to the property for the landlord to carry out any works they are entitled to do, or inspect or value the property, on 48 hours' notice unless access is required urgently;
- the tenant is to allow reasonable use of facilities within the property in connection with anything done or to be done in the exercise of such access; or
- the tenancy may not be brought to an end by the landlord, the tenant, nor any agreement between them except in accordance with the 2016 Act.

The penalty for failing to provide these documents could be the equivalent of up to 3 months' rent.

#### What else goes in a PRT?

There is **no requirement for a termination (ish) date**, since the ability to repossess the property at the end of the agreed duration is no longer available.

The **maximum amount of rent** that can be demanded in advance is 6 months'.

Any **deposit** taken cannot exceed the equivalent of **2 months' rent**.

There is no requirement for a landlord or tenant to physically **sign** the document. It is sufficient for landlords and tenants simply to type their names into the document. This will facilitate electronic exchange of the agreement. In practice we would recommend that the parties physically sign the agreement, to avoid the possibility of fraud, or misunderstanding the implications of entering your details onto the form.

#### Rent Increases

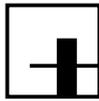
A landlord may not increase rent more than once in each 12 month period. The tenant must be given at least 3 months' notice before any rent increase can take place. There is a statutory rent-increase notice which must be used for this purpose.

Within 21 days of receiving the rent-increase notice, the tenant can refer the proposed increase to a Rent Officer if the tenant thinks the increase is unreasonable, **but not** if the property is located within a Rent Pressure Zone. The landlord or tenant can appeal the Rent Officer's decision as to the open market rent to the First Tier Tribunal – the decision of the Tribunal is then final.

#### Rent Pressure Zones

The provisions on Rent Pressure Zones are to address the problem of rents rising by too much in hot-spot areas - they are not intended to be applied to a whole local authority area. A local authority can apply to the Scottish Ministers to have a part of their area designated as a Rent Pressure Zone, if it considers that in the proposed area: rents are rising by too much; the rises are causing undue hardship to tenants; and they are also having a detrimental effect on the local authority's broader housing system. The local authority will have to provide evidence to support this, as well as providing rent data and a profile of private rented properties in the area.

If a Rent Pressure Zone is designated, this will effectively place a cap on the amount by which rents can be increased. It must be formalised by way of parliamentary regulations which will set out the maximum percentage rent increase permitted. This will be calculated according to a formula linked to the Consumer Price Index. The cap will only apply to



rent increases in PRTs in that area, not any other type of tenancy.

### Terminating a tenancy – what is required

The PRT has no end date, so the tenancy continues until validly terminated by either party. This must be done in accordance with the 2016 Act – a PRT cannot be brought to an end by the landlord or the tenant, or by any agreement between them that is not in accordance with the 2016 Act. So even if there is a clause in the tenancy agreement that says the tenancy will end on a particular date, this cannot be enforced by the landlord, if the tenant refuses to leave.

### Termination by the tenant

If a tenant wants to end the tenancy, he has an easy time of it. All he needs to do is give notice in writing to the landlord stating a date on which the tenancy will end. There is no statutory form of notice for this. The notice must be given freely and without coercion of any kind. The tenant must provide a minimum period of notice before the date the tenancy is to end, but can also change his mind before expiry of the notice period, and if the landlord agrees, the tenancy can resume.

### Termination by the landlord

For a landlord to terminate is a more complicated matter, although now, only one notice is required: the statutorily prescribed 'Notice to Leave'.

As there is no right to terminate a PRT simply because it has come to the end of its term, a landlord must be able to demonstrate that one of the statutory grounds for eviction (please see Table C) applies.

The 2016 Act provides for 'consensual termination' – where the parties agree that the tenant will leave, so there is no need for court action to remove them. But the Notice to Leave still has to state the statutory ground for eviction which is the reason for termination. If the tenant is prepared to leave, then once he has ceased to occupy the property following receipt of notice, the tenancy is legally ended.

However, if the tenant refuses to leave, the landlord has to apply to the First-tier Tribunal for an order to evict the tenant. There are 18 eviction grounds available to the landlord, who must be able to produce evidence of at least one of them. Around half of them are the same as, or similar to the eviction grounds under the assured tenancy regime, but the rest are new. An important new ground for the landlord is: that the landlord intends to sell, which wasn't a ground for eviction previously.

Some of the grounds are mandatory (M), meaning that if correct or proved, the First-tier Tribunal must grant an eviction order. Others are discretionary (D), so will depend on the circumstances. And two are either mandatory or discretionary depending on the facts.

Often the ground for repossession will be rent arrears. This will be a mandatory ground for eviction if the tenant has been in rent arrears for three or more months in a row and still owes at least a month's rent by the first day of the Tribunal hearing (provided the arrears are not due to a delay or failure in the payment of housing benefit).

If the tenant owes less than a month's rent (or is no longer in arrears) by the first day of the Tribunal hearing, the ground

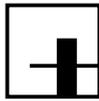


TABLE C

**Eviction Grounds**

1. Landlord intends to sell the let property (M)
2. Let property to be sold by lender (M)
3. Landlord intends to refurbish the let property (M)
4. Landlord intends to live in let property (M)
5. Landlord's family member intends to live in the let property (D)
6. Landlord intends to use the let property for non-residential purpose (M)
7. Let property required for religious worker (M)
8. Tenant has stopped being — or has failed to become — an employee (M) or (D)
9. Tenant no longer needs supported accommodation (D)
10. Tenant is no longer occupying the let property (M)
11. Tenant has breached a term of the tenancy agreement (D)
12. Tenant is in rent arrears over three consecutive months (M) or (D)
13. Tenant has a relevant criminal conviction (M)
14. The tenant has engaged in relevant antisocial behaviour (D)
15. Tenant has associated in the let property with someone who has a criminal conviction or is antisocial (D)
16. Landlord has had their registration refused or revoked (D)
17. Landlord's HMO licence has been revoked (D)
18. An overcrowding statutory notice has been served on the landlord (D)

is discretionary, and the Tribunal will decide whether it is reasonable to issue an eviction order.

**Period of notice**

For notice by the tenant, the minimum period of notice to be given is either: a number of days for notice that the landlord and the tenant have validly agreed between them, or if no agreement, then **28 days**. The date of termination is to be a day that is **after** the last day of the notice period.

The notice period that the landlord has to give is **28 days** if the tenant has occupied for less than 6 months, or if the ground of eviction is one of the 'fault' grounds: fault of the tenant that is – such as tenant being in arrears or no longer occupying the property.

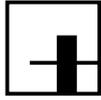
In all other cases the period of notice is **84 days**.

The number of days is calculated:

- beginning with the day on which the notice is **received** by the recipient, and
- ending however many days (e.g. 28) **after** the notice period begins.

This means including in the notice period a number of days from sending the notice until it is received if sending by post or by email. Email is not regarded as received the same day: a document sent by registered post or the equivalent of recorded delivery or sent 'using electronic communications' is taken to have been received 48 hours after it is sent, unless the contrary is shown. This means having to add on an extra 2 days.

The termination date has to be the requisite period **after** the notice period begins. Where something must be done **after** a stipulated date, the date itself is disregarded and time runs from the beginning of the following day. This means another day for the actual date of receipt. And the termination date has to be a date occurring after the last day of the notice period, so that's at least another day that has to be added, meaning the specified termination date needs to be a total of at least 32 days from the date of sending the notice.



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The landlord and the tenant can agree an alternative minimum notice period, but it must be in writing.

### Succession rights

This is something of a departure from the succession position under assured tenancies, where the landlord could use the fact that the tenant inherited the tenancy as a ground for repossession, unless they inherited it from a spouse or civil partner, and they had not themselves inherited the tenancy.

Now it will be possible for a wider class of individuals to inherit.

A **spouse or civil partner or someone living with the tenant as though they were married**, (not being a joint tenant) can inherit the tenancy, provided that:

- the original tenant has told the landlord in writing that the property was being occupied by the spouse etc.,
- they must have still been in that relationship immediately before the tenant died, and
- the property must be their only or principal home, also at the time of death, and have been for a continuous period of at least 12 months (and provided the landlord had been told about them prior to that period).

Notification to the landlord is accordingly crucial for succession rights. A widow could not inherit for example, even if she had lived at the property with her husband for years, if the husband had not told the landlord, or had only told the landlord about it 6 months before he died.

If there is no partner, then a **family member** over the age of 16 (at the time of death) can inherit the tenancy. Family member means a parent, grandparent, child, grandchild, brother or sister, either of the tenant, or a relative of the person who was a partner of the tenant or is a partner of a relative of the tenant. Again it must be their only or principal home, for at least 12 months before the date of death and written notification must have been given to the landlord. This underlines the importance of advising the landlord of any persons over 16 living at the property.

If there is no surviving partner or family member who qualifies to inherit, it is possible for a **resident carer** to inherit the tenancy – they must be at least 16, and have occupied the property as their only home for at least 12 months, and have given up their previous home.

Inheritance to a PRT can only happen **once** – so it doesn't apply if the deceased tenant had inherited the tenancy themselves.

One important point to note however is a change in the law in relation to succession to an assured or short assured tenancy: as soon as the successor becomes the tenant, the tenancy automatically becomes a PRT.

### Other Things to Remember

This is only the lease portion of the tenancy - there are requirements with which a residential landlord must comply,

- Landlord registration
- Deposits & deposit schemes
- HMO licensing
- Gas Safety certificates
- Electrical Installation reports
- Carbon Monoxide detectors & hard-wired smoke alarms
- Repairing standard



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