

COST OF LIVING (TENANT PROTECTION) SCOTLAND ACT 2022 – IMPLICATIONS FOR EVICTIONS

This Act, which came into effect 28th October 2022, introduces temporary restrictions on residential landlords enforcing decrees for removing against tenants in certain circumstances.

What cases are affected by this legislation?

Any proceeding raised prior to the Act coming into effect will not be affected if the eviction notice was served before 6th September 2022. Eviction Notices encompass all Notices of Proceedings, Notices to Quit, Notices to Leave etc..

In relation to any other proceedings, the Act places restrictions on enforcing a decree for removing (including serving a Charge for Removing), however the definition of decree for removing is much narrower than in the Bankruptcy and Diligence etc.. (Scotland) Act 2007.

In this Act, a decree for removing means:

- a warrant of ejection obtained in an action in respect of a protected tenancy (including a short tenancy) or a statutory tenancy under the Rent Act 1984, or a student residential tenancy;
- a decree obtained by virtue of a summary application under section 38 of the Sheriff Courts Act 1907 in respect of a student residential tenancy;
- a decree for recovery of possession of heritable property in respect of a Scottish secure tenancy or a short Scottish secure tenancy under the Housing Act 2001, or a student residential tenancy;
- an order for possession in respect of an assured tenancy (including a short-assured tenancy) under the Housing Act 1988;
- an eviction order issued under section 51 of the Private Housing (Tenancies) Act 2016.

Any other type of eviction on a decree of removing not mentioned above is free from the restrictions (for example actions by secured lenders, actions against unauthorised occupiers).

Exemptions

A decree for removing which falls within the scope of the legislation will also be exempt from the restrictions if the basis of the application was any of the following:

In respect of the Private Housing (Tenancies) Act 2016:

- i. intent to sell property to alleviate financial hardship
- ii. property to be sold by lender
- iii. intent to live in property to alleviate financial hardship
- iv. not an employee (accommodation provided to workers)
- v. tenant not occupying let property
- vi. substantial rent arrears
- vii. criminal behaviour
- viii. anti-social behaviour
- ix. association with person who has been convicted or engaged in relevant anti-social behaviour.

In respect of the Housing Act 2001, any Decree of Removing granted where the basis of the application was:

- i. rent arrears, but only relating to rent lawfully due from the tenant which has not been paid and the amount of such rent specified is equal to or greater than £2,250
- ii. conviction for certain offences
- iii. tenant absent or not occupying house
- iv. anti-social behaviour or harassment
- v. nuisance, annoyance or harassment
- vi. demolition of, or substantial work on, the property
- vii. islands council as education authority.

In respect of the Housing Act 1988, any Decree of Removing granted where the basis of the application was:

- i. intent to live in house to alleviate financial hardship
- ii. house to be sold by lender
- iii. substantial rent arrears
- iv. conviction for certain offences, acting in an anti-social manner or pursuing a course of anti-social conduct
- v. employment with landlord ceases.

In respect of the Rent Act 1984:

- i. substantial rent arrears
- ii. nuisance, annoyance, or conviction for using or allowing dwelling-house to be used for immoral or illegal purposes
- iii. employment with landlord ceases
- iv. intent to live in house to alleviate financial hardship
- v. owner-occupier's house to be sold by lender
- vi. owner's house to be sold by lender.

In respect of a Student Residential Tenancy:

- i. criminal behaviour
- ii. anti-social behaviour.

“Substantial Rent Arrears” is defined as a cumulative amount of rent arrears that equates to or exceeds 6 months’ rent under the tenancy when Notice to Leave / Notice to Quit is issued to the tenant under this ground.

Duration of Restrictions

Any decree for removing which is not exempt from the restrictions, cannot be enforced (including service of a Charge for Removing) until the earlier of:

- 6 months after the decree of removing was granted
- The expiry of the Act (the Act is due to expire on 31/03/2023, however there is provision that the Scottish Ministers may introduce regulations to extend the expiry to 31/03/2024).

Can Eviction Notices be served / Court proceedings raised?

Yes, the Act only places restrictions on enforcing certain decrees for removing and all other matters relating to the eviction process are unaffected.

Can monetary elements on decrees be pursued?

If a decree for removing is subject to the moratorium restrictions, the Scottish Government have advised that any monetary element on the same decree cannot be pursued for the same period.

Instructing Stirling Park

If instructing enforcement of a decree for removing while this Act is in effect, please provide a copy of the Notice to Quit / Notice of Proceedings, and the Summons / Application which raised the action, in addition to the decree for removing.

Instructions can be sent to  officers@stirlingpark.co.uk, where they will be reviewed by a senior Sheriff Officer.

If you have any questions, or require further information please contact us at:

 enquiries@stirlingpark.co.uk,

 or contact our Glasgow office on 0141 565 5767.

