

Evictions in Scotland, Stalker, 2nd Edition

Book Review

by

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Up to a quarter or one third of civil litigation connects somehow to housing, while respect for the home is an oft-cited convention right. Yet, housing law is somewhat of a Cinderella of legal practice, much more important and deserving of recognition than its demure profile would suggest, or than it typically receives. It is also, it has to be said, a tricky area of law, being relatively technical and simultaneously steeped in tradition yet subject to continual evolution and reform.

Thus, it is not an area of law for cursory afterthought, let alone dabbling. For unwary or foolhardy practitioners, it is beset with common law nuances, meandering statutory labyrinths, and procedural pitfalls. In truth, it is an area of law that, for decades, has been crying out for root and branch codification. However, instead, it only ever receives partial legislative attention in varying degrees of tinkering, albeit sometimes at seemingly breathless rate.

Thus, absent a code, what practitioners need is a treatise that they can use both as an atlas and as an ordnance survey map, where the current topography has been diligently and exhaustively charted out by an expert and steadfastly reliable navigator.

That's exactly what this book is.

Housing law's said everyday relevance and challenging nature are perhaps two features that have attracted a number of astute legal minds to write on it over the years. This is of great solace to practitioners. Nowadays, Adrian Stalker is among the foremost authorities in this area, and his new edition of this book is the most up-to-date definitive reference manual currently on sale. In a nutshell, it is an absolute 'must have' for any Scots lawyer whose practice verges onto this territory, or even near it.

When the first edition was published back in 2007, Adrian was calling at the bar following several years as principal of Shelter Scotland's legal team. Meanwhile, I myself had just taken up the reins of Renfrewshire Law Centre. There, housing law, including evictions, would form a core area of practice for my legal team, being one of the few local firms providing representation in the busy heritable court. Straightaway, Adrian's book attained biblical status. My single copy became the most borrowed and dog-eared item in our library, and soon I had to order a fresh one for each of my colleagues.

Accordingly, it seems fitting that, in the author's preface to the new edition, one of those colleagues receives thanks for commentary on draft chapters (and that individual is only one of several specialists who have lent some of their own insight).

If housing law is a tricky area in which to practise, then writing on it must feel like a Sisyphean challenge. This too is reflected in the preface, which observes that the first draft of the second edition was completed back in 2015, only for Adrian to realise that yet another wave of reform was already on the horizon. Thus, in a sense, this is the third edition, albeit only the second published. It states the law as at 31 May 2020, some 14 years and 11 months onwards from the first edition.

To give a sense of the technical complexity and pace of change that beset housing law, the most recent Housing (Scotland) Act discussed in the first edition was the 2006 Act. Since then, Holyrood has passed two further pieces of primary legislation bearing that name in 2010 and 2014, as well as, *inter alia*, the Private Rented Housing (Scotland) Act 2011, the Private Housing (Tenancies) (Scotland) Act 2016, the Housing (Amendment) (Scotland) Act 2018, and the Coronavirus (Scotland) Act 2020, while Ministers have also laid numerous other associated Statutory Instruments into law. Moreover, the principal form of private tenancy has undergone fundamental revamping, while the private sector regime has been transferred (almost entirely lock, stock and barrel) over to the jurisdiction of the First-tier Tribunal for Scotland (Housing & Property Chamber).

Meanwhile, for example, the Leases Act 1449 remains sound and enforceable law (being an Act of the Old Scottish Parliament, and, as such, written in Scots).

Thus, at a time when the Government had appointed the Gill and Taylor Reviews^[1] to identify means by which to promote access to justice by simplifying legal procedure, it was simultaneously all out on reforming housing law in a way that, by 2020, would render its procedural framework significantly more elaborate than at the start of the millennium.

This is reflected even by the sheer length of the new edition. Much of the core text remains identical, or subject only to minor clarification or revisal. Nonetheless, principal content now runs to some 547 pages as compared with the first edition's 239. And, whereas the publisher has changed, the book's formatting remains largely the same. Thus, the fact that the new edition is almost twice as long is attributable largely to the foregoing changes in and additions to substantive law and procedure, as well as resultant jurisprudence.

Also, the number of chapters is greater at fifteen as compared with the first edition's nine. The overall structure and direction of travel remain essentially the same, starting with exposition of fundamental concepts, then charting the law over various forms of procedure and modes of tenancy or occupancy. However, new chapters include, by necessity, one dedicated to Private Residential Tenancies (introduced under the 2016 Act), and another to FTT procedure (where jurisdictional transfer commenced under the 2014 Act). Also, there is an excellent entirely fresh chapter entitled 'Public Law, Human Rights and Equality Act Defences', while the appendix deals with Covid-19 measures.

I was invited to review this book in August. I decided to put off writing till I would have an opportunity to use it in practice. It certainly can be read as a purely academic exercise. Adrian's style is as fluid and cogent as one would wish for a reference dealing with complex concepts in considerable depth and detail.^[2] Nonetheless, the real test of any book such as this is in its utility to practitioners at a practical level.

Being myself recently called counsel with a background in housing law, much of my work still relates to this area. And, such is the nature of real life problems meriting counsel's attention, that they tend to be those that defy ready answer. Given said extent of legal reform betwixt first and second editions, and in view also of the hitherto intervening dearth of a solid text, lawyers, even those who practise in this area, do nowadays find themselves befuddled, on occasion, and for entirely understandable reasons — be it whether occupancy constitutes licence or tenancy, or be it what form of tenancy, or be it whether court or FTT has jurisdiction, for example.

Accordingly, having now had such opportunity, I can affirm that this book indeed serves not only as an entire treatise, and a moreishly readable one at that, but also as an extremely practical and illuminating day-to-day toolbox. Its index is also carefully drawn up to direct the reader to the most useful text with minimal fuss. Adrian's voice speaks from the pages with clarity, assurance and authority. His passion and conscientiousness for the subject matter are obvious, as are his own years of practical immersion in it in all its aspects. There is depth and detail, but these are pitched at a precisely sweet level, absent any superfluity or confusion as can

sometimes beleaguer purely academic works by purely academic authors. Like all truly excellent law books, this efficiently sates the reader's need for useful understanding while leaving one with a sense of having been guided by the author's utmost safe and skilful pair of hands.

This is not a bedtime read. But it is a book for all law students, legal academics, housing law advisors, solicitors and counsel who have any interest in evictions in Scotland. For them, it is indispensable. And for their clients.

Without reservation, I recommend this book. If you work in a firm where more than one of you practise in this area, I suggest you order more than one copy. This book won't spend much time on a shelf in your library.

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1. Lord Gill's Scottish Civil Courts Review 2009, and Sheriff Principal Taylor's Review of Expenses and Funding of Civil Litigation in Scotland 2013
2. Detail is perspicaciously sifted between main text, where essential for understanding, on one hand, and, on the other, footnotes, where it might otherwise distract from the main text.