

2002 No. 320

HOUSING

**The Scottish Secure Tenancies (Proceedings for Possession)
Regulations 2002**

Made 26th June 2002

Laid before the Scottish Parliament 27th June 2002

Coming into force 30th September 2002

The Scottish Ministers, in exercise of the powers conferred by section 14(4) and 109(2) of the Housing (Scotland) Act 2001(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Scottish Secure Tenancies (Proceedings for Possession) Regulations 2002 and shall come into force on 30th September 2002.

Form of notice

2. The form of the notice contained in the Schedule to these Regulations is hereby prescribed for the purposes of section 14(4) of the Housing (Scotland) Act 2001.

MARGARET CURRAN
A member of the Scottish Executive

St Andrew's House,
Edinburgh
26th June 2002

SCHEDULE

NOTICE OF PROCEEDINGS FOR RECOVERY OF POSSESSION

(a) This notice is to inform you, (name(s) of tenant(s) [or qualifying occupier] that , being the landlord of the dwellinghouse at (address) may, at any time during the period of 6 months beginning on (see Note 3), raise proceedings for possession of that dwelling house on the following grounds:

.....
.....

Which is/are deemed to fall within the terms of paragraph(s) (see Note 4) of Part I of Schedule 2 to the Housing (Scotland) Act 2001

[we also inform you that we are seeking possession under the above ground/grounds* for the following reasons

.....
.....
.....

(state particulars of how the ground(s) have arisen: continue on addition sheets if required)]

Signed.....

Dated.....

*Delete as appropriate

NOTES FOR THE GUIDANCE OF QUALIFYING OCCUPIERS

- 1. You as a qualifying occupier have a right to play a part in any court proceedings arising from the notice. If you wish to make an application to be included in any subsequent court action, you should consult a solicitor. You are entitled to have your rights considered alongside the tenant and you or your representative will be able to put your point of view to the court, for example, to explain the consequences of the repossession action for you.
2. You should also read the notes for the guidance of tenants which explain in detail why the notice is being served and the procedures that require to be followed.

NOTES FOR THE GUIDANCE OF TENANTS

- 1. This notice is a warning that your landlord may be going to raise proceedings against you in the sheriff court to gain possession of your house. It is not a notice to quit and it does not affect your right to continue living in the house or your obligation to pay rent. You cannot be evicted from your house unless the sheriff court grants your landlord a possession order. You should read the rest of the notes carefully to find out what might happen if your landlord does start possession proceedings against you.
2. Your landlord will also serve a notice on any qualifying occupiers who reside with you. A qualifying occupier is a person who occupies your house as their only or principal home and who is aged at least 16 years. This can be a lodger or a person to whom with the consent of the landlord, you have assigned, sublet or otherwise given up possession of the house or part of it. The qualifying occupier can be party to the possession proceedings by applying to the court. This

allows a qualifying occupier's rights to be considered. For example, the qualifying occupier can put his his/her point of view to the court, to explain the consequences of repossession on him/her.

3. Now that this notice has been served on you there is no other preliminary step which your landlord need take before starting court action against you for possession of the house referred to in the notice. The date given in the notice is the earliest date on which your landlord can take court action. After that date the landlord is allowed to start possession proceedings against you at any time during the following 6 months. If that 6 month period passes without possession proceedings being started, your landlord would have to serve another one of these notices on you before it could start court action for possession and that notice would, like this one, have to give you at least 4 weeks warning before court action could be started.

4. Your landlord has explained in the notice the reason or reasons why it is considering taking possession proceedings against you. In order to help you understand your legal position if proceedings are taken, the paragraph number (referring to Part I of Schedule 2 of the Housing (Scotland) Act 2001) which applies to your landlord's reason for considering possession proceedings is given near the end of the notice. If, for example, your landlord's reason for considering possession proceedings is rent arrears, the paragraph number given will be 1. If the number is between 1 and 7, read note 5 below; if the number is between 8 and 14 read note 6 below. If the number is 10, read note 7 as well as note 6. If the number is 15 read note 8.

5. If the paragraph number given near the end of the notice is between 1 and 7, and your landlord does take court action for possession against you, the sheriff court will be concerned with whether the facts on which your landlord is founding are correct (for example, whether you are in rent arrears if that is the reason which your landlord has given) and, if it decides that the facts are correct, whether it is reasonable that you should be evicted, which will depend on the circumstances of your case. In deciding whether it is reasonable to make an order for the termination of the tenancy, the court must take into account all the circumstances of the case. The 2001 Act also sets out specific criteria which courts must take into account although they are at liberty to take account of any other relevant considerations as well.

The specific criteria are set out in section 16 of the Act and are broadly as follows:

- (a) in the case of numbers 1 and 3 to 7, the nature, frequency and duration of the conduct leading to the eviction proceedings;
- (b) in the case of number 2, the conduct in respect of which the person in question was convicted.
- (c) how far the tenant was personally responsible for the conduct or whether it was the consequence of acts or omissions by others, for example, if the recovery action results from rent arrears, whether any housing benefit entitlement has been paid timeously or in full;
- (d) the effect of the tenant's conduct on others for example, whether there are serious adverse consequences for other local residents;
- (e) whether the landlord has considered and, if appropriate, progressed other possible courses of action with a view to securing the cessation of that conduct before opting for eviction.

The court can postpone a decision on the case and impose conditions on you, for example about paying off rent arrears, if it wishes. If you obey the conditions the court would not normally grant your landlord a possession order afterwards. If a possession order is granted against you, your landlord will have to evict you once the date given in the order has passed, unless it decides to grant you a new tenancy of your house. If it evicts you, it will not be under any obligation to rehouse you. Any action which must be taken by a local authority under its powers and duties in relation to some categories of homeless people is a separate matter and you should not assume that you will be entitled to rehousing.

If you apply to purchase your house once a notice for recovery of possession is served on any of the grounds set out in paragraphs 1 to 7 of Part 1 of Schedule 2 of the 2001 Act your application will not be accepted. While the repossession proceedings are ongoing any application will be rejected and you may only reapply to purchase your house once the notice has been withdrawn by

your landlord or it has expired or the court has made a decision and appeals have been considered and dealt with.

6. If the paragraph number given near the end of the notice is between 8 and 14, the court must grant a possession order against you provided the landlord can show that it (the landlord) has arranged for suitable alternative accommodation to be made available to you. In considering whether the alternative accommodation offered to you is suitable the court has to take account of the following points:-

- the proximity of the accommodation to the place of work (including school or college) of you or your family, compared to your existing house,
- the extent of the accommodation required by you and your family,
- the character of the accommodation offered compared to your existing house,
- the terms on which the accommodation is offered compared with the terms of your existing tenancy,
- if any furniture was provided by the landlord under the existing tenancy, whether furniture is to be provided under the new tenancy which is comparable in relation to your need and the needs of your family,
- any special needs of yourself or your family.

Your landlord must make you an offer of alternative accommodation in writing, and must give you at least 14 days to make up your mind about the offer. Until your landlord has done this the court will not grant a possession order. Once it has been done the court will grant a possession order unless you tell the court that you do not consider the offer suitable and explain why.

7. If the paragraph number given near the end of the notice is 10, and your landlord only wants to move you out of your house temporarily while works are carried out, the court will make an order entitling you to return to your house once the works are completed. This will not affect your right to suitable alternative accommodation but you will not become a Scottish secure tenant of the house that you are moved to and you will have no right to stay there once the house which you live in now is ready for occupation.

8. If the paragraph number given near the end of the notice is 15 and your landlord wants to transfer the house to your husband or wife (or ex-husband or ex-wife) or co-habitee, where one of you no longer wishes to live with the other, the court must be satisfied that it is reasonable to grant the order and the landlord will offer a suitable alternative house.

9. If you are at all uncertain about what this notice means or of your rights you should obtain advice as quickly as possible. You may be able to get this from your landlord, from a number of sources of free and independent advice such as your local Citizens' Advice Bureau or Housing Advice Centre or from a solicitor. If you need to employ a solicitor, legal aid may be available, depending on your income.

10. These Notes are intended for guidance only.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the form of notice to be used by a landlord when notifying its tenant under a Scottish secure tenancy, within the meaning of Part 2 of the Housing (Scotland) Act 2001, that the landlord may commence possession proceedings in respect of the dwellinghouse which is the subject of the Scottish secure tenancy.

Such notices must be served by a landlord on a tenant and any qualifying occupier, in terms of section 14(2) of that Act.

The notice sets out the time limits within which the landlord is permitted to commence possession proceedings and the grounds on which the landlord is seeking possession.

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