

EXECUTIVE NOTE

THE REMOVING FROM HERITABLE PROPERTY (FORM OF CHARGE) (SCOTLAND) REGULATIONS 2011

SSI 2011/158

1. This instrument is made in exercise of the powers conferred by section 216(6) of the Bankruptcy and Diligence etc. (Scotland) Act 2007. It is subject to negative resolution procedure.

Policy Objectives

2. This instrument prescribes the form of Charge for Removing for the purposes of section 216(1) (service of charge before removing) of the Bankruptcy and Diligence etc. (Scotland) Act 2007.
3. A Charge for Removing is required to be served by an officer of the court before removing a person, and any effects that person may have, from heritable property by virtue of a court decree or warrant.
4. This charge and the procedures for removal are prescribed under Part 15 of the Bankruptcy and Diligence etc. (Scotland) Act 2007. Section 216 of that Act also provides for the removal of an occupant deriving a right or having permission from the defender, subject to any notice to quit for an assured tenant having been provided.
5. Section 216 introduces the requirement that a defender is given 14 days' notice (by way of service of a charge) before any removing of the defender and of any effects can take place. Any occupant deriving right to occupy from the defender may also be removed under the same procedure. This standardises the procedure across various types of removings, where currently the notice period may be as little as 48 hours.

Consultation

6. The form prescribed in this instrument has been developed through consultation with a number of stakeholders through the Lord President's Advisory Group on Diligence, which includes representatives from the Society of Messengers at Arms and Sheriff Officers, Sheriff and Court of Session Rules Councils, and the Scottish Court Service.

Financial Effect

7. The financial effect on Scottish Government business and local government will be restricted to costs associated with the implementation of the new forms in place of the documentation currently required under court rules and procedures. Therefore a Regulatory Impact Assessment has not been carried out.