

EXECUTIVE NOTE

THE HOUSING (SCOTLAND) ACT (CONSEQUENTIAL AMENDMENT) ORDER 2011

SSI 2011/445

The above instrument is made in exercise of the powers conferred by Section 163 of the Housing (Scotland) Act 2010 (“the 2010 Act”).

Policy Objectives

This Order amends the power to make orders and regulations in the Housing (Scotland) Act 2001 (“the 2001 Act”). The amendment is consequential to the amendment made to the 2001 Act by section 153(b) of the 2010 Act and will clarify the Parliamentary procedure for making an order under section 16(5A)(c) of the 2001 Act. This will allow Ministers to lay a draft order under section 16(5A)(c) before Parliament in due course.

Overview of the Policy

Section 16(5A) of the 2001 Act (as added by section 153(a) of the 2010 Act) provides that, in cases where an order for recovery of possession of a tenancy in the social rented sector is made on grounds including rent arrears, the tenancy is terminated only if the landlord recovers possession of the house in pursuance of the order. The previous position was that an order for possession automatically terminated the tenancy, and this will continue to be the case for non-rent arrears cases (s.16(5)(a)).

New section 16(5A)(c) provides that a court order for possession in rent arrears cases must specify the period for which the landlord’s right to recover possession is to have effect. This period must be no longer than any maximum period prescribed by the Scottish Ministers by order. Ministers intend to set a maximum period by order to coincide with the date new section 16(5A) takes effect (The Scottish Secure Tenancies (Repossession Orders) (Maximum Period) Order 2012).

New section 16(5A) will strengthen the protection of tenants in the social rented sector against eviction for rent arrears and is particularly intended to provide additional support for tenants who, by virtue of their circumstances, are unable or unaware of the need to take legal advice at an early stage to prevent a decree being granted.

Consultation

There was no statutory requirement to consult on this Order and we did not consider that consultation was necessary as the Order is intended solely to make provision consequential to the 2010 Act which was subject to full consultation.

Impact Assessments

An Equality Impact Assessment was prepared for the Housing (Scotland) Bill and shared with the Local Government and Communities Committee to assist their consideration of the Bill in its passage through Parliament. A separate Equality Impact Assessment was not considered necessary for this Order as it is intended solely to make provision consequential to the 2010 Act.

Section 14 of the 2001 Act as amended by the 2010 Act requires landlords to comply with certain pre-action requirements (set out in new section 14A) before seeking recovery of possession for rent arrears. Section 14A(9) gives Ministers power to make further provision by order about pre-action requirements. As referred to above, section 16(5A)(c) of the 2001 Act as added by the 2010 Act contains a power to prescribe a maximum period during which the landlord has a right to recover possession of a house. Instruments under these sections will be laid before Parliament in due course. An Equality Impact Assessment will be carried out before the instruments are laid.

Financial Effects

The Order does not have any new financial effects that were not anticipated when the 2010 Act was enacted. A Financial Memorandum was produced for the Bill which sets out the financial implications of the Bill.

As mentioned above, instruments under sections 14A(9) and 16(5A)(c) will be laid before Parliament in due course. A Business and Regulatory Impact Assessment will be completed before they are laid.

Social Housing Division
December 2011