

POLICY NOTE

THE NOTICE TO LOCAL AUTHORITIES (SCOTLAND) AMENDMENT (No. 2) REGULATIONS 2017

SSI 2017/421

The above instrument was made in exercise of the powers conferred by section 11(3) and (4) of the Homelessness etc. (Scotland) Act 2003. The instrument is subject to the negative procedure.

Policy Objectives

The purpose of these Regulations is to amend the Notice to Local Authorities (Scotland) Regulations 2008 (“the 2008 Regulations”) in consequence of section 29 of the Criminal Finances Act 2017 (“the 2017 Act”).

Section 29 of the 2017 Act amends Part 5 of the Proceeds of Crime Act 2002 (“POCA”), regarding the civil recovery of property obtained through unlawful conduct. The amendments provide a more efficient and effective means for the trustee for civil recovery to recover possession of heritable property in Scotland where the Court of Session makes a recovery order in respect of that property under section 266 of POCA. Firstly, they require the Court of Session, on the application of the Scottish Ministers (as the relevant enforcement authority), to grant decree of removing and warrant for ejection in relation to any persons occupying heritable property in respect of which it makes a recovery order. Secondly, they provide for the trustee for civil recovery (in whom the property vests by virtue of the recovery order) to enforce the decree and warrant.

Section 29 inserts a new section 245ZA into Part 5 of POCA in consequence of these amendments. As part of the regime to safeguard against homelessness, new section 245ZA requires the Scottish Ministers to notify the relevant local authority where they apply for decree of removing and warrant for ejection in relation to heritable property which consists of or includes a dwellinghouse. Such notice must be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (“the 2003 Act”).

The 2008 Regulations prescribe the form and manner in which notice of certain proceedings for possession is to be given for the purposes of section 11 of the 2003 Act. These Regulations therefore amend the 2008 Regulations, to prescribe the form and manner in which the Scottish Ministers must give notice under new section 245ZA of POCA. This will ensure that the relevant local authority receives proper notice of an application under POCA for decree of removing and warrant for ejection in respect of a dwellinghouse (or dwellinghouses) within its area.

Consultation

There is no statutory requirement to consult on these Regulations. The Scottish Government did not consider that any formal public consultation was necessary, given that the Regulations simply adapt an existing form of notice under the 2008 Regulations for the purpose of new section 245ZA of POCA. It did, however, consult with (and take into account the views of) the Civil Recovery Unit which exercises the Scottish Ministers’ functions under Part 5 of POCA on their behalf.

Impact Assessments

There are no equality, children’s, privacy or environmental impact issues arising from these Regulations.

Financial Effects

The Cabinet Secretary for Justice confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Safer Communities Directorate
Scottish Government
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