

POLICY NOTE

THE SHORT SCOTTISH SECURE TENANCIES (PROCEEDINGS FOR POSSESSION) REGULATIONS 2018

SSI 2018/155

The above instrument was made in exercise of the powers conferred by section 36(3) and 109(2) of the Housing (Scotland) Act 2001 (“the 2001 Act”). The instrument is subject to negative procedure.

Policy Objectives

The Short Scottish Secure Tenancies (Proceedings for Possession) Regulations prescribe the form of notice to be used by a social landlord when notifying a tenant with a short Scottish secure tenancy that the landlord intends to apply to the sheriff court for an order to evict the tenant from the house.

The new Regulations replace the form of notice prescribed in the Short Scottish Secure Tenancies (Proceedings for Possession) Regulations 2002 (S.S.I. 2002/319). The revised form of notice is required due to changes to short Scottish secure tenancies introduced by sections 7,8,9,10 and 11 of the Housing (Scotland) Act 2014 (“the 2014 Act”).

The Regulations set out the form of notice for landlords to use where they are seeking repossession of a house and:

- the short Scottish secure tenancy has been granted on antisocial behaviour grounds (schedule 1);
- the short Scottish secure tenancy has been granted on any other grounds (schedule 2).

Section 36 of the 2001 Act, as amended by section 11 of the 2014 Act, requires a landlord to state in the notice the reasons why they are seeking recovery of possession. Where the short Scottish secure tenancy was granted on antisocial behaviour grounds (section 35, or paragraph 1,2 or 2A of the 2001 Act), the landlord is also required to set out in the notice the tenancy obligations that the landlord considers to have been broken. Schedule 1 and 2 have been amended to include these new requirements.

Section 11 also introduces a right for a tenant with a short Scottish secure tenancy to apply for a review of the landlord’s decision to seek recovery of possession of the house within 14 days from the date the notice is served (regardless of the ground on which the short Scottish secure tenancy was granted). Note 5 to Tenants in schedule 1 and schedule 2 explains this new right.

Where a short Scottish secure tenancy has been granted on antisocial behaviour grounds (section 35, or paragraph 1,2 or 2A of the 2001 Act), changes introduced at section 11 of the 2014 Act mean that tacit relocation, cannot operate when the notice offering the tenant the short Scottish secure tenancy under section 34(4) of the 2001 Act was served on or after 1 May 2019. A landlord seeking repossession in cases where the notice under section 34(4) of the 2001 Act was served on or after 1 May 2019 is therefore not required to serve a notice to quit before the tenant has to leave their home. Note 2 and Note 6 to Tenants in schedule 1 contains a choice of text for landlords to use, depending on when the notice under section 34(4) of the 2001 Act was served.

For short Scottish secure tenancies granted on grounds other than antisocial behaviour, (paragraph 3,4,5,6,7 or 7A of schedule 6 of the 2001 Act), a notice to quit must have been served before a tenant has to leave their home. Note 6 to tenants in schedule 2 explains the things the landlord must have done in these cases before the tenant has to leave their home.

Consultation

There was extensive consultation on the overall policy objectives of the Housing (Scotland) Bill 2013 prior to its introduction to Parliament, in addition to the consideration of the relevant provisions during the passage of the Bill in 2014.

There was no statutory requirement to consult on these Regulations, however there has been targeted consultation on the detail and format of the Regulations with stakeholders to ensure that the revised form of notice meets their needs.

Impact Assessments

An Equality Impact Assessment (EQIA) was carried out on the social housing provisions in the Bill: <http://www.gov.scot/Publications/2013/11/8851> .

These Regulations make technical amendments to the existing form of notice to allow landlords to use provisions in the 2014 Act. It is not considered that the existing EQIA need be repeated for these Regulations.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was completed prior to the Bill's passage through the Scottish Parliament:

<https://www.webarchive.org.uk/wayback/archive/20160411155202/http://www.gov.scot/Resource/0043/00437647.pdf> .

As set out in the BRIA at section 5.3, landlords and other relevant bodies have been consulted on the content and format of the revised form. No additional costs have been identified from this consultation which were not covered by the BRIA.

Scottish Government
Housing and Social Justice Directorate
14 May 2018