

EXECUTIVE NOTE

THE HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) ACT 2010 (CONSEQUENTIAL PROVISIONS) ORDER 2010 (SSI 2010/DRAFT)

The above instrument is made in exercise of the powers conferred by section 15(1)(a) of the Home Owner and Debtor Protection (Scotland) Act 2010. The instrument is subject to affirmative resolution procedure.

Policy Objectives

The purpose of the Home Owner and Debtor Protection (Scotland) Act 2010 (Consequential Provisions) Order 2010 is to make consequential amendments to the form of notice in Schedule 6 of the Conveyancing and Feudal Reform (Scotland) Act 1970 and Part 1 of the Schedule to the Mortgage Rights (Scotland) Act 2001.

The amendments to the forms are required as a consequence of the changes introduced by the Home Owner and Debtor Production (Scotland) Act 2010, to give information to debtors and occupants about their rights. In particular the forms have been amended to:

- Inform debtors and entitled residents that they will now have the right to be heard in court
- Inform those facing repossession that the application for repossession may be challenged if the creditor has failed to comply with the new pre-action requirements
- Give information about the new procedures by which debtors may voluntarily surrender their property to the creditor
- Encourage anyone facing repossession to seek advice from a solicitor, Citizens Advice Bureau or other agency or lay representative, about the rights introduced by the 2010 Act and to consider whether they may be eligible for legal aid

Consultation

There was no statutory requirement to consult on this Order. However, the following bodies have been consulted during the preparation of the instrument and by correspondence:

Aberdein Considine & Company Solicitors
Anderson Fyfe Solicitors
Citizens Advice Scotland
Consumer Focus
COSLA
Council of Mortgage Lenders
Finance and Leasing Association
Homeloan Management Limited
Law Society of Scotland

Lloyds Banking Group
Money Advice Scotland
Nationwide Building Society
RBS
Scottish Court Service
Scottish Legal Aid Board
Shelter

Financial Effects

The instrument has no financial impact on the Scottish Executive, local government or on business as the Order simply updates forms already in existence. As a result a Regulatory Impact Assessment is not required.