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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 156**

**HOUSING**

**The Scottish Secure Tenancies (Proceedings for Possession)  
(Form of Notice) Amendment Regulations 2018**

<i>Made</i>	- - - -	<i>12th May 2018</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>15th May 2018</i>
<i>Coming into force</i>	- -	<i>1st May 2019</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 14(4) and 109(2) of the Housing (Scotland) Act 2001(1) and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Amendment Regulations 2018 and come into force on 1st May 2019.

**Amendment of the Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Regulations 2012**

2. The Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Regulations 2012(2) are amended as follows.

3. In schedule 1, in the part of the schedule under the heading “Guidance Notes” for the entry headed “[Text for all notices on grounds 1 to 7]” substitute—

**“[Text for all notices on ground 2:**

If this notice is served on you before the day which is 12 months after—

- the day on which the person was convicted of the offence forming the ground for recovery of possession; or
- where that conviction was appealed, the day on which the appeal is dismissed or abandoned,

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(1) [2001 asp 10](#) (“the 2001 Act”). Section 14(4) was amended by section 155(a)(ii) and (iii) of the Housing (Scotland) Act 2010 ([asp 17](#)). In relation to a short Scottish secure tenancy, section 14(4) is modified by section 36(8) of the 2001 Act. Section 36(8) was inserted by section 11(f) of the Housing (Scotland) Act 2014 ([asp 14](#)).

(2) [S.S.I. 2012/92](#).

and the landlord does take court action for possession then the sheriff will be concerned whether the facts of the case are correct and whether you have any other rights. If satisfied, the sheriff must grant a possession order.

If this notice is served on you on or after that day, then the sheriff will not only be concerned whether the facts of the case are correct but also whether it is reasonable that you should be evicted. In deciding whether it is reasonable, the sheriff must take into account all the circumstances of the case. The sheriff must also take into account all the specific criteria set out in section 16 of the Housing (Scotland) Act 2001, which are broadly as follows:

- the nature, frequency and duration of the conduct for which the tenant, a person residing or lodging with them or a subtenant has been convicted;
- how far the tenant was personally responsible for the conduct leading to the eviction proceedings or whether it was the consequence of acts or omissions by others;
- the effect of the conduct on others, for example whether there are serious adverse consequences for other local residents; and
- whether the landlord has considered and, if appropriate, tried other courses of action to stop the conduct before opting for eviction.

The sheriff may decide not to grant a possession order, or may delay the decision or impose conditions which must be complied with. If a possession order is granted, the landlord will be able to evict you. If the landlord evicts you, it will not be under any obligation to re-house you. You should not assume that you will be entitled to be re-housed by the landlord or a local authority.]\*

**[Text for all notices on grounds 1 and 3 to 7:**

If the landlord does take court action for possession, the sheriff will be concerned with whether the facts of the case are correct and if so, whether it is reasonable that you should be evicted. In deciding whether it is reasonable, the sheriff must take into account all the circumstances of the case. The sheriff must also take into account all the specific criteria set out in section 16 of the Housing (Scotland) Act 2001, which are broadly as follows:

- the nature, frequency and duration of the conduct leading to the eviction proceedings;
- how far the tenant was personally responsible for the conduct leading to the eviction proceedings or whether it was the consequence of acts or omissions by others;
- the effect of the conduct on others, for example whether there are serious adverse consequences for other local residents; and
- whether the landlord has considered and, if appropriate, tried other courses of action to stop the conduct before opting for eviction.

The sheriff may decide not to grant a possession order, or may delay the decision or impose conditions which must be complied with. If a possession order is granted, the landlord will be able to evict you. If the landlord evicts you, it will not be under any obligation to re-house you. You should not assume that you will be entitled to be re-housed by the landlord or a local authority.]\*”.

4. In schedule 2, in the part of the schedule under the heading “Guidance Notes” after the entry headed “[Text for notice to a qualifying occupier”, from “If the landlord does take court action for possession” to the end substitute—

**“[Text for all notices other than on ground 2:**

If the landlord does take court action for possession, the sheriff will be concerned with whether the facts of the case are correct and if so, whether it is reasonable that you should be evicted. In deciding whether it is reasonable, the sheriff must take into account all the circumstances of the

case. The sheriff must also take into account all the specific criteria set out in section 16 of the Housing (Scotland) Act 2001 which are broadly as follows:

- the nature, frequency and duration of the conduct leading to the eviction proceedings;
- how far the tenant was personally responsible for the conduct leading to the eviction proceedings or whether it was the consequence of acts or omissions by others;
- the effect of the conduct on others, for example whether there are serious adverse consequences for other local residents; and
- whether the landlord has considered and, if appropriate, tried other courses of action to stop the conduct before opting for eviction.

The sheriff may decide not to grant a possession order, or may delay the decision or impose conditions which must be complied with. If a possession order is granted, the landlord will be able to evict you. If the landlord evicts you, it will not be under any obligation to re-house you. You should not assume that you will be entitled to be re-housed by the landlord or a local authority.]\*

**[Text for all notices including ground 2:**

If this notice is served on you before the day which is 12 months after-

- the day on which the person was convicted of the offence forming the ground for recovery of possession; or
- where that conviction was appealed, the day on which the appeal is dismissed or abandoned,

and the landlord does take court action for possession then the sheriff will be concerned whether the facts of the case are correct and whether you have any other rights. If satisfied, the sheriff must grant a possession order.

If this notice is served on you on or after that day then the sheriff will not only be concerned whether the facts of the case are correct but also whether it is reasonable that you should be evicted. In deciding whether it is reasonable, the sheriff must take into account all the circumstances of the case. The sheriff must also take into account all the specific criteria set out in section 16 of the Housing (Scotland) Act 2001 which are broadly as follows:

- the nature, frequency and duration of the conduct for which the tenant, a person residing or lodging with them or a subtenant has been convicted;
- how far the tenant was personally responsible for the conduct leading to the eviction proceedings or whether it was the consequence of acts or omissions by others;
- the effect of the conduct on others, for example whether there are serious adverse consequences for other local residents; and
- whether the landlord has considered and, if appropriate, tried other courses of action to stop the conduct before opting for eviction.

The sheriff may decide not to grant a possession order, or may delay the decision or impose conditions which must be complied with. If a possession order is granted, the landlord will be able to evict you. If the landlord evicts you, it will not be under any obligation to re-house you. You should not assume that you will be entitled to be re-housed by the landlord or a local authority.]\*;

\*Delete where not applicable”.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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St Andrew's House,  
Edinburgh  
12th May 2018

*KEVIN STEWART*  
Authorised to sign by the Scottish Ministers

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Regulations 2012 (“the 2012 Regulations”) to reflect the terms of section 16(2)(aa) of the Housing Scotland Act 2001 (which was inserted by section 14(2)(a) of the Housing (Scotland) Act 2014) which means that the court no longer has to consider whether it is reasonable to make an order for eviction in cases where the landlord has a ground for recovery of possession set out in paragraph 2 of schedule 1 to the 2001 Act and the notice in the form of the 2012 Regulations is served within 12 months of the tenant’s conviction or dismissal or abandonment of any appeal.