
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 92

HOUSING

The Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Regulations 2012

<i>Made</i>	- - - -	<i>14th March 2012</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>16th March 2012</i>
<i>Coming into force</i>	- -	<i>1st August 2012</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, commencement, interpretation and revocation

1.—(1) These Regulations may be cited as the Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Regulations 2012 and come into force on 1st August 2012.

(2) In these Regulations “the Act” means the Housing (Scotland) Act 2001.

(3) The Scottish Secure Tenancies (Proceedings for Possession) Regulations 2002⁽²⁾ are hereby revoked.

Saving provision

2. Nothing in these Regulations affects the validity of a notice served under section 14(2)(a) of the Act (proceedings for possession) before 1st August 2012.

Form of notice

3.—(1) Subject to paragraph (2), the prescribed form of notice for the purposes of section 14(4) of the Act (form of notice) is contained in Schedule 1.

(2) Where section 14(2A) of the Act (unpaid rent)⁽³⁾ applies, the prescribed form of notice for the purposes of section 14(4) of the Act is contained in Schedule 2.

(1) 2001 asp 10; section 14(4) was amended by the Housing (Scotland) Act 2010 (asp 17), section 155(a)(ii) and (iii).

(2) S.S.I. 2002/320.

(3) Section 14(2A) was inserted by the Housing (Scotland) Act 2010, section 155(a)(i).

Status: This is the original version (as it was originally made).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

St Andrew's House,
Edinburgh
14th March 2012

KEITH BROWN
Authorised to sign by the Scottish Ministers

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SCHEDULE 1

Regulation 3(1)

NOTICE OF PROCEEDINGS FOR RECOVERY OF POSSESSION (IN CASES WHERE GROUNDS DO NOT INCLUDE RENT ARREARS)

This notice is to inform you, (name(s) of tenants(s) [or qualifying occupier]) that, being the landlord of the dwellinghouse at (address) may, at any time during the period of 6 months beginning on (see Guidance Notes), raise proceedings for possession of that dwellinghouse on the following ground(s):

.....

..... which is/are deemed to fall within the terms of paragraph(s) (see Guidance Notes) of Part 1 of schedule 2 to the Housing (Scotland) Act 2001.

We also inform you that we are seeking possession under the above ground(s) for the following reasons:

.....

.....

.....

(state particulars of how the ground(s) arose: continue on additional sheets if required).

Signed

Date

GUIDANCE NOTES

This notice is a warning that the landlord may raise proceedings in the sheriff court to gain possession of the house you live in. It is not a notice to quit and it does not affect your right to continue living in the house or obligations to pay rent. You cannot be evicted from your house unless the sheriff grants a possession order.

These Notes are intended for guidance only. If you are at all uncertain about what this notice means or if you are unsure of your rights you should get advice as quickly as possible. You may be able to get this from your landlord, from your local Housing Advice Centre (which is independent of your landlord), a Citizens Advice Bureau, or from a solicitor. If you need to employ a solicitor, legal aid may be available depending on your income.

The date given in the notice is the earliest date on which the landlord can start court action for possession. After that date the landlord is allowed to start court action at any time during the following 6 months. If the landlord does not start court action in that 6 month period they would have to serve another one of these notices on you before they could start court action.

The law sets out the grounds on which the sheriff may order recovery of possession of your house. The landlord has explained in the notice the reason or reasons why they are considering taking court action and which paragraph(s) of Part 1 of schedule 2 to the Housing (Scotland) Act 2001 applies/apply.

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[Text for all notices to a tenant:

Your landlord will serve a notice on any qualifying occupiers who live with you. A qualifying occupier is a person who is 16 years old or more and occupies your house as their only or main home. This can be a lodger or someone you have assigned, sublet or given up the house or part of it to, with the landlord's consent. The qualifying occupier can be party to any court action for possession by applying to the sheriff court. This allows the sheriff to consider a qualifying occupier's rights and the consequences of repossession for them.]*

[Text for all notices to a qualifying occupier:

As a qualifying occupier, you have the right to play a part in any court action arising from this notice. You are entitled to have your rights considered and you or your representative will be able to put your point of view to the sheriff, for example, to explain the consequences of the repossession action for you.]*

[Text for all notices on grounds 1 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 the specific criteria set out in section 16 of the Housing (Scotland) Act 2001, which are broadly as follows:

- [Text for grounds 1 and 3 to 7: the nature, frequency and duration of the conduct leading to the eviction proceedings;]*
- [Text for ground 2: the nature, frequency and duration of the conduct for which the tenant, a person residing or lodging with them or a subtenant was 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 grounds 8 to 14 where the notice is to a tenant:

If the landlord does take court action for possession, the sheriff will be concerned with whether the facts of the case are correct. If the sheriff decides that the facts are correct, the sheriff must grant a possession order, provided the landlord can show that they have arranged for suitable alternative accommodation to be made available to you. In considering whether the alternative accommodation offered to you is suitable the sheriff has to take account of the following points:

- the proximity of the accommodation to the place of work (including school or college) of you or your family, compared with your existing house;
- the extent of the accommodation required by you and your family;
- the character of the accommodation offered compared with your existing house;
- the terms on which the accommodation is offered compared with the terms of your existing tenancy;

* Delete where not applicable

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- if any furniture was provided by the landlord under the existing tenancy, whether furniture is to be provided under the new tenancy which is comparable in relation to your need and the needs of your family; and
- any special needs of yourself or your family.

The landlord must make you an offer of alternative accommodation in writing, and must give you at least 14 days to make up your mind about the offer. Until the landlord has done this the sheriff will not grant a possession order. Once it has been done, the sheriff will grant a possession order unless you tell the sheriff that you do not consider the offer suitable and explain why. Once a possession order has been granted, the landlord will be able to evict you.]*

[Additional text for ground 10 where the tenancy will not be terminated under section 16(6) of the Housing (Scotland) Act 2001 and where the notice is to a tenant:

The landlord only wants to move you out of your house temporarily while works are carried out. The sheriff will make an order which will entitle you to return to your house once these works are completed. This will not affect your right to suitable alternative accommodation but your existing tenancy will not be terminated and you will have no right to stay in the alternative accommodation once your landlord confirms that the house which you live in is ready to be occupied again.]*

[Text for grounds 8 to 14 where the notice is to a qualifying occupier:

If the landlord does take court action for possession, the sheriff will be concerned with whether the facts of the case are correct. If the sheriff decides that the facts are correct, the sheriff must grant a possession order, provided the landlord can show that they have arranged for suitable alternative accommodation to be made available to the tenant and the tenant's family. You should speak to the landlord or seek independent advice on how this might affect you as a qualifying occupier. If you become a party to the eviction action, you or your representative will be able to put your point of view to the sheriff.]*

[Additional text for ground 10 where the tenancy will not be terminated under section 16(6) of the Housing (Scotland) Act 2001 and where the notice is to a qualifying occupier:

The landlord wants to move the tenant and qualifying occupiers out of the house, and into suitable alternative accommodation, temporarily while works are carried out. The tenant's existing tenancy will not be terminated and the sheriff will make an order which will entitle the tenant to return to the house once the landlord confirms that the house is ready to be occupied again.]*

[Text for ground 15 where the notice is to a tenant:

The landlord wants to transfer the house to your husband, wife or civil partner (or ex-husband, ex-wife or former civil partner) or to a cohabitee, because one of you no longer wishes to live with the other. The sheriff must be satisfied that the facts of the case are correct, that it is reasonable to grant the order and that the landlord will offer you a suitable alternative house.]*

[Text for ground 15 where the notice is to a qualifying occupier:

The landlord wants to transfer the house to the tenant's husband, wife or civil partner (or ex-husband, ex-wife or former civil partner), or to a cohabitee, because one of them no longer wishes to live with the other. The sheriff must be satisfied that the facts of the case are correct, that it is reasonable to grant the order and that the landlord will offer the tenant a suitable alternative house. You should speak to the landlord or seek independent advice on how this might affect you as a qualifying occupier.]*

** Delete where not applicable*

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SCHEDULE 2

Regulation 3(2)

NOTICE OF PROCEEDINGS FOR RECOVERY OF POSSESSION
(IN CASES WHERE GROUNDS INCLUDE RENT ARREARS)

- (a) This notice is to inform you, (name(s) of tenants(s) [or qualifying occupier]) that, being the landlord of the dwellinghouse at(address) may, at any time during the period of 6 months beginning on (see Guidance Notes), raise proceedings for possession of that dwellinghouse on the following ground(s):

.....

which is/are deemed to fall within the terms of paragraph(s) 1 [and] (see Guidance Notes) of Part 1 of schedule 2 to the Housing (Scotland) Act 2001.

We also inform you that we are seeking possession under the above ground(s) for rent arrears of (insert amount) and for the following additional reasons (if any):

.....

(state particulars of how the ground(s) arose: continue on additional sheets if required).

- (b) We have completed a number of steps called Pre-Action Requirements before issuing you with the notice. We have completed the boxes below to show you how we have met each Pre-Action Requirement.

- 1. The landlord has provided the tenant with clear information about the terms of tenancy agreement, the outstanding rent and any other outstanding financial obligation of the tenancy, including a description of any charges likely to be incurred if the money due is not paid.

Completed

The landlord should note briefly here what information was provided, and on what dates.

- 2. The landlord has made reasonable efforts to provide the tenant with advice and assistance on whether the tenant may be able to get housing benefit or other financial help (such as benefits or grants).

Completed

The landlord should note briefly here what advice and assistance was offered, and on what dates.

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3. The landlord has provided the tenant with information on where to go for debt advice and assistance.

Completed

The landlord should note briefly here what information was provided, and on what dates.

4. The landlord has made reasonable efforts to agree with the tenant a reasonable plan for paying the money due and paying the rent in the future.

Completed

The landlord should briefly note the relevant details here, including dates.

5. The landlord has asked the tenant if they have made an application for housing benefit and, if they have done, the landlord has considered the likely effect of that application on the money due.

Completed

The landlord should note here the date enquiries were made, and brief details of its consideration of the tenant's housing benefit entitlement where applicable, including dates.

6. The landlord has considered whether the tenant is taking any other steps to pay the money due.

Completed

The landlord should note briefly here what other steps have been taken, if any, and brief details of its consideration of those steps.

7. The landlord has considered whether the tenant is keeping to an agreed plan for paying the money due and continuing to pay the rent.

Completed Not applicable

Where applicable, the landlord should briefly note the relevant details here, including dates.

8. To be completed where the landlord is a Registered Social Landlord:

The landlord has advised the tenant to contact their local authority about their housing situation.

Completed

The landlord should note here the date on which the tenant was advised to contact their local authority.

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If you need any further information or if you are the tenant and you disagree we have taken the steps set out above, you should contact us to discuss your concerns.

Signed

Date

GUIDANCE NOTES

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These Notes are intended for guidance only. If you are at all uncertain about what this notice means or if you are unsure of your rights you should get advice as quickly as possible. You may be able to get this from the landlord, from your local Housing Advice Centre (which is independent of the landlord), a Citizens Advice Bureau, or from a solicitor. If you need to employ a solicitor, legal aid may be available depending on your income.

The date given in the notice is the earliest date on which the landlord can start court action for possession. After that date the landlord is allowed to start court action at any time during the following 6 months. If the landlord does not start court action in that 6 month period they would have to serve another one of these notices on you before they could start court action.

The law sets out the grounds on which the sheriff may order recovery of possession of your house. The landlord has explained in the notice the reason or reasons why they are considering taking court action and which paragraph(s) of Part 1 of schedule 2 to the Housing (Scotland) Act 2001 applies/apply.

The reason(s) given for seeking possession include(s) rent arrears. When seeking possession for this reason the landlord must have completed a number of steps called Pre-Action Requirements before issuing you with this notice. The landlord has explained above the steps they have taken to meet these Pre-Action Requirements.

[Text for notice to a tenant:

Your landlord will serve a notice on any qualifying occupiers who live with you. A qualifying occupier is a person who is 16 years old or more and occupies your house as their only or main home. This can be a lodger or someone you have assigned, sublet or given up the house or part of it to, with the landlord's consent. The qualifying occupier can be party to any court action by applying to the sheriff court. This allows the sheriff to consider a qualifying occupier's rights and the consequences of repossession for them.]*

[Text for notice to a qualifying occupier:

As a qualifying occupier, you have the right to play a part in any court action arising from this notice. You are entitled to have your rights considered and you or your representative will be able to put your point of view to the sheriff, for example, to explain the consequences of the repossession action for you.]*

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** Delete where not applicable*

- the nature, frequency and duration of the conduct leading to the eviction proceedings;
- [Text for ground 2: the nature, frequency and duration of the conduct for which the tenant, a person residing or lodging with them or a subtenant was 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 does evict 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*

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the form of notice to be used by a landlord when notifying its tenant and any qualifying occupier under a Scottish secure tenancy, within the meaning of Part 2 of the Housing (Scotland) Act 2001 (“the Act”), that the landlord may raise possession proceedings in respect of the house which is the subject of the Scottish secure tenancy.

A notice in the prescribed form must be served by a landlord on a tenant and any qualifying occupier, in terms of section 14(2) of the Act.

Regulation 3 provides that the prescribed form of notice is contained in Schedule 1 to the Regulations, except for cases where proceedings are to include the ground that rent lawfully due from the tenant has not been paid (as set out in paragraph 1 of schedule 2 to the Act). In those cases, the prescribed form of notice is contained in Schedule 2 to the Regulations.

Both notices set out the time limits within which the landlord is permitted to raise possession proceedings and the grounds on which the landlord is seeking possession. The notice in Schedule 2 also sets out the steps taken by the landlord which the landlord considers to constitute compliance with the pre-action requirements in section 14A of the Act.

Regulation 1 revokes the Scottish Secure Tenancies (Proceedings for Possession) Regulations 2002 (S.S.I. 2002/320). Regulation 2 makes a saving for notices served prior to the present Regulations coming into force.

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