Housing (Scotland) Act 2001 and 2010

Guidance for Social Landlords on Pre-Action Requirements and Seeking Repossession of Social Housing

June 2012

The Scottish Government

1. INTRODUCTION

1. Payment of rent is the responsibility of every tenant. Every tenancy agreement states what rent and other charges the tenant must pay and when. Nothing in this guidance affects the obligation on tenants to meet their tenancy responsibilities.

2. Tenants, however, can find themselves in a variety of circumstances which make it difficult to pay their rent. Many social landlords ("landlords") do all they can to give tenants advice and support, but we know that practice varies. We know too that landlords make different decisions about when to serve a notice on the tenant that they may seek to repossess the property. Evictions are traumatic for tenants and their families and costly for landlords. That is why eviction must always be a last resort.

3. The Housing (Scotland) Act 2010 ("the 2010 Act") introduced pre-action requirements that landlords must satisfy in all rent arrears cases before serving a notice on a tenant. This notice ("a notice") advises the tenant that the landlord is considering court action to recover possession of the property because of the tenant's rent arrears. Pre-action requirements are aimed at providing further protection for tenants facing eviction for rent arrears by:

- creating greater consistency in practice between landlords;
- making sure that landlords and tenants explore other ways of resolving the arrears; and
- making sure that eviction for rent arrears is a last resort.

4. This statutory guidance is aimed at landlords and gives guidance on the pre-action requirements under sections 14 and 14A of the Housing (Scotland) Act ("the 2001 Act") as amended by section 155 of the 2010 Act and changes to repossession orders under section 16 of the 2001 Act as amended by section 153 of the 2010 Act. For ease of reference, we have shown the legislation in a consolidated way in **Annex A.**

5. In brief, the pre-action requirements are to:

- Give clear information about the tenancy agreement and the unpaid rent or other financial obligations;
- Make reasonable efforts to give help and advice on eligibility for housing benefit and other types of financial assistance;
- Give information about sources of help and advice with the management of debt;
- Make reasonable efforts to agree with the tenant a reasonable plan for future payments;
- Consider the likely result of any application for housing benefit that has not yet been decided;
- Consider other steps the tenant is taking which are likely to result in payment within a reasonable time;
- Consider whether the tenant is complying with the terms of an agreed plan for future payments; and

- Encourage the tenant to contact their local authority (where the local authority is not the landlord).

6. There are 5 pieces of secondary legislation which landlords must follow in order to meet the pre-action requirements. These are:

- Scottish Secure Tenancies (Proceedings for Possession) (Pre-Action Requirements) Order 2012 ("the PAR Order") which sets out more detail about the pre-action requirements[1] (**Annex B**);
- Scottish Secure Tenancies (Proceedings for Possession) (Confirmation of Compliance with Pre-Action Requirements) Regulations 2012 ("the Confirmation Regulations") which sets out the way in which a landlord must confirm to the court, before raising proceedings for possession on grounds which include rent arrears, that the pre-action requirements have been complied with[2];
- Scottish Secure Tenancies (Proceedings for Possession) (Form of Notice) Regulations 2012 ("the Notice Regulations") which replace the existing Notice of Proceedings form with 2 new forms – for cases where grounds do and do not include rent arrears[3] (a copy of Schedule 2 for cases where the grounds for recovery of possession include rent arrears is provided at **Annex C**);
- Scottish Secure Tenancies (Repossession Orders) (Maximum Period) Order 2012 ("the Period Order") which sets the maximum period for which the order for repossession granted by the court has effect[4].
- Housing (Scotland) Act 2010 (Commencement No.7 and Transitional Provision) Order 2012 which sets as 1 August 2012 the date pre-action requirements and changes to repossession orders come into force and provides transitional provision for pre-action requirements where a notice is served before that date.[5]

7. The secondary legislation (with the exception of the new form at Schedule 1 in the "Notice Regulations" for cases where the grounds do not include rent arrears), the pre-action requirements and this guidance do not apply in cases where social landlords seek repossession only for reasons other than rent arrears. If there are multiple grounds for seeking repossession, and those grounds include rent arrears, then landlords must meet the pre-action requirements and take account of this guidance before serving a notice on the tenant.

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1 PAR Order (http://www.legislation.gov.uk/ssi/2012/127/made)
2 Confirmation Regulations (http://www.legislation.gov.uk/ssi/2012/93/contents/made)
3 Notice Regulations (http://www.legislation.gov.uk/ssi/2012/92/contents/made)
4 Period Order (http://www.legislation.gov.uk/ssi/2012/128/contents/made)
5 Commencement Order (http://www.legislation.gov.uk/ssi/2012/91/contents/made)

8. Landlords must meet the pre-action requirements for all notices of proceedings involving rent arrears which are served on a tenant and any qualifying occupiers on or after 1 August 2012. The pre-action requirements do not apply in cases where landlords have served a notice on a tenant or qualifying occupiers before 1 August 2012 and which is in force on the date that court action is raised.

2. MANAGING RENT ARREARS

9. The pre-action requirements set out what landlords must do, as a minimum, before taking action to evict a tenant. Nothing in this guidance prevents a landlord from doing more to support tenants facing financial problems.

10. Where landlords' practice already gives greater protection to tenants with rent arrears, that practice should continue. Landlords should however make sure that their internal procedures are consistent with the pre-action requirements.

11. Making new tenants aware of their responsibilities when landlords allocate a home, including the need to pay rent and the implications of not doing so, can help to result in a long-term, sustainable housing solution. Many landlords help tenants by:

- helping with housing benefit applications in order to prevent a delay in the payment of housing benefit that can result in rent arrears building up; and
- referring to advice agencies or in-house specialists for, money advice, welfare benefit checks and other financial help.

12. Most arrears appear to arise through a change of circumstances or because tenants get into difficulty with the general management of their affairs. The first consideration then is about identifying and where possible resolving the issue that has resulted in the tenant falling into arrears. Early personal contact may prevent more acute problems developing in the future.

13. The point at which a landlord takes the decision to seek repossession of a property is a matter for each landlord. Rent arrears have an impact on landlords' finances and may have an impact on the services they deliver to their tenants. Landlords need to balance these impacts with the impact on individual households of losing their home. There are however occasions when tenants fall into arrears for short periods of time or for technical reasons, such as banking delays or Housing Benefit payment cycles.

14. The basic principle that underpins this guidance is that landlords and tenants must do all that they can to resolve the arrears before landlords take action to evict.

Bankruptcy

15. Under the Bankruptcy (Scotland) Act 1985 (as amended), a landlord cannot generally recover rent arrears through court action once a tenant has been sequestrated.

16. The decision around whether to stop eviction proceedings that are ongoing when sequestration proceedings begin is a matter for the landlord. Landlords should be aware, however, that payment of arrears to a landlord by an insolvent debtor may run the risk that the courts would find this an unfair preference to one creditor over all creditors under section 36 of the 1985 Act. As such other creditors could challenge the payment of arrears.

17. In cases where a tenant is sequestrated **before** the landlord starts eviction proceedings, the landlord should consider not taking, or threatening, action to evict if the arrears are not paid. Attempting to collect rent arrears in this way could lead to challenge by other creditors, also a sheriff might not consider eviction reasonable in these circumstances.

18. It is recommended that the landlord seeks to recover as much as possible of the arrears through the sequestration process and writes off the remainder of the arrears at the point of sequestration, treating this as a debt no longer due. Whilst rent is technically still due to the landlord, legally the debt is irrecoverable. But if the tenant fails to pay rent that is due for a later period, court action may be taken to evict on the basis of those subsequent arrears. In that situation, the pre-action requirements should only need to be undertaken by the landlord in relation to the subsequent arrears.

19. Where a court sequestrates a tenant **after** court proceedings to repossess a property have begun the landlord will have already met the pre-action requirements. If the landlord wishes to continue to pursue eviction action, the decision around whether eviction is reasonable is one for the court to decide.

3. PRE-ACTION REQUIREMENTS

Requirement to provide clear information about the tenancy agreement and outstanding financial obligations

20. Section 14A(2) of the 2001 Act requires landlords to give tenants clear information about:

> (a) the terms of the tenancy agreement; and
> (b) outstanding rent and any other outstanding financial obligation of the tenancy.

21. Article 2(1) of the PAR Order says that in giving information to tenants, landlords must make sure that they are given:

> (a) a description of the rent and any other financial obligations of the tenant under the tenancy agreement; and
>
> (b) information about the amount due to the landlord under the tenancy agreement, which must be broken down so as to show -
>
> (i) the total amount of outstanding rent and of any other outstanding financial obligations of the tenancy; and
>
> (ii) a description of any charges which the landlord anticipates will be incurred if the arrears of rent or any other financial obligation of the tenancy are not paid.

22. Article 2(2) of the PAR order says that "charges" in Article 2(1)(b)(ii) means:

- any future charges resulting from arrears of rent or any other outstanding financial obligation of the tenancy that are detailed in the tenancy agreement; and
- any illustrative indication of legal expenses that tenants may incur from such obligations.

The illustrative indication of legal expenses allows landlords to include any charges for legal expenses allowed for under the Scottish Secure Tenancy Agreement. The court assesses these expenses. At this stage landlords will not know the court's assessment of expenses, and these would depend on how any action proceeds, but landlords may choose to give tenants illustrative information about costs that tenants have had to pay in similar cases, where that information is available. The intention is for the tenant to receive an indication of the likely legal expenses they may incur if court action as a result of rent arrears becomes necessary.

23. Article 2(3) states that landlords must give tenants the information required by section 14A(2) of the 2001 Act and the Order as soon as a landlord considers reasonably practicable after a tenant enters into arrears.

24. ‘Other financial obligations of the tenancy’ means all financial commitments in the tenant’s tenancy agreement apart from rent. They may, for example, include service charges or payments towards insurance.

25. The statement of the amount of unpaid rent and other financial obligations of the tenancy must give the tenant a total figure for the amount that they owe.

26. It would be helpful if, wherever possible, landlords can provide tenants with a breakdown of the total figure so that they can clearly understand how the arrears have accumulated. This breakdown should include the amount housing benefit covers wherever practicable. It would also be helpful if landlords explained to tenants how much they need to pay towards their rent, and when, over and above any housing benefit entitlement.

27. In meeting the requirements of section 14A(2) of the 2001 Act, landlords must make sure that the information they give to tenants is clear, not misleading and easily understandable. Landlords should aim to give tenants the information they need in plain language and in a format that is accessible.

28. Not all tenants will have English as a first language, which may make it difficult for them to access information in standard formats. Some tenants may have literacy problems, visual impairments or learning difficulties. Where landlords know that tenants have particular needs they should take account of these needs. The aim is to make sure that as far as possible tenants understand their financial position.

Requirement to make reasonable efforts to provide tenants with advice and assistance on eligibility for Housing Benefit and other types of financial assistance

29. Section 14A(3) of the 2001 Act requires landlords to make reasonable efforts to provide tenants with help and advice on their eligibility to receive:

> (a) housing benefit; and
>
> (b) other types of financial assistance (for example, other benefits or grants).

30. Article 3 of the PAR Order says that in providing such help and advice to tenants, landlords must:

> (a) make reasonable efforts to contact tenants in order to identify whether they need advice and assistance on their eligibility to receive Housing Benefit and other types of financial assistance;
>
> (b) give tenants details of persons or bodies who will be able to provide tenants with such advice and assistance; and

(c) give tenants reasonable assistance with claiming housing benefit, if the tenant asks them to do so.

Reasonable efforts

31. All contact with tenants while seeking to resolve the arrears should be on the basis of this guidance.

32. The legislation does not set out what reasonable efforts means and what is needed will differ depending on the circumstances of each case. In the end it will be for the courts to decide whether a landlord's efforts are reasonable.

33. There may be occasions when landlords make every effort but tenants refuse or fail to respond. In this case landlords should record brief details and dates of the help offered and the lack of engagement on the part of tenants. The pre-action requirements require landlords to show the efforts that they have made.

34. In meeting the requirements of section 14A(3) of the 2001 Act landlords must make reasonable efforts to give tenants help and advice. The method by which landlords give this advice is not set in legislation and, although it could be face to face, it could include contact with tenants in writing, by email by telephone or by text message. Landlords should take account of tenants' preferences on how they wish landlords to contact them. Landlords should consider a range of methods and not rely on a single approach.

35. Where landlords know that tenants have support needs they should also consider those needs when preparing for giving help and advice, taking into account the tenant's health and social care needs. If landlords are aware that tenants have difficulty in reading or understanding information, landlords should take reasonable steps to make sure that they have appropriately communicated the information in ways that tenants can understand. If tenants have difficulty in engaging directly with the landlord, for example, this could include communicating via a tenant's support worker, where there is one known to be working with the tenant and the tenant is happy for the landlord to talk about matters with the support worker.

36. Landlords should take particular care if tenants are under 18 or are particularly vulnerable. In cases where tenants are vulnerable landlords should, at an early stage, consider whether tenants have the mental capacity to understand their position. The Mental Health (Care and Treatment) (Scotland) Act 2003 puts a legal duty on some landlords to provide the right of access to independent advocacy to any person with a mental disorder. Where tenants have an advocate or someone with an appointed power of attorney landlords should include them in all communications. This would be good practice for all landlords, regardless of whether they are required to do it.

37. Wherever possible landlords should consider arranging a face to face meeting with tenants to talk about what help the tenant may already have sought and what further help they may need. For tenants in certain circumstances this could include arranging a home visit.

38. A single unsuccessful attempt to communicate with tenants is unlikely to be enough for landlords to show that they have made reasonable efforts to provide tenants with help and advice. Landlords will wish to bear in mind that they will have to give tenants information on the reasonable efforts they have made to contact them in any notice served on the tenant and may also have to prove to the court the reasonable efforts they have made. Landlords should record brief details of each attempt made, including the date(s) and the method used.

Advice and Assistance

39. Section 14A(3) of the 2001 Act requires landlords to make reasonable efforts to give tenants advice and assistance. This means that landlords must do more than give tenants advice, they must also help them. In doing this the PAR Order requires landlords to give tenants details of appropriate specialists.

40. Persons or bodies who will be able to give help and advice include:

- In-house income maximisation officers, money advice specialists or welfare benefits officers;
- Citizens Advice Bureaux;
- Welfare rights organisations; or
- Other local advice agencies.

41. Providing tenants with details of such persons or bodies includes giving them contact details for the organisation or individual, including their telephone, email and website. It will usually be for the tenant then to decide whether to approach any person or body for help, and if so for the tenant to decide which they consult.

42. Where tenants or their representatives have indicated that tenants need help to make contact with appropriate specialists, landlords could go further and refer tenants to a relevant person or body. Referral is where a landlord contacts the appropriate person or body for the tenant. Landlords must get tenants' consent in writing before making any referral. It would be good practice to also get the tenants' consent to find out the outcome of the referral.

43. If tenants ask landlords for help with a housing benefit application, landlords should do what they can to assist. This may include such things as helping tenants to fill in the necessary forms, helping to gather the necessary evidence to support the application or referral to an appropriate specialist.

Requirement to provide information in relation to the management of debt

44. Section 14A(4) of the 2001 Act requires landlords to give tenants information about sources of help and advice about the management of debt. While section 14A(3) focuses on providing tenants with support on their eligibility for benefits, section 14A(4) focuses more broadly on debt and financial management. This could, for example, include advice on household budgeting, maximising income, reducing debt and consolidating debts.

45. Landlords should make sure that they only give tenants details of free and independent sources of debt help and advice. The persons or bodies in paragraph 40, may be appropriate where they are in place locally and offer help and advice on debt management. Again, it will generally be for the tenant to decide whether to approach any person or body for help, and if so for the tenant to decide which they consult, but in appropriate cases the landlord could go further and refer.

Requirement to make reasonable efforts to agree a reasonable repayment plan

46. Section 14A(5) of the 2001 Act requires landlords to make reasonable efforts to agree with tenants a reasonable plan for future payments to the landlord. The plan has to include:

- future payments of rent; and
- payments towards the outstanding rent and other outstanding financial obligations of the tenancy.

47. Article 4(1) of the PAR Order says that in making reasonable efforts to agree a reasonable payment plan, landlords must:

(a) make prompt and reasonable attempts to contact tenants to talk about the arrears so that they can agree a plan for future payments of rent and repayment of the arrears and any other unpaid financial obligations of the tenancy;

(b) encourage tenants to give landlords all relevant information on their financial circumstances;

(c) advise tenants to seek help from an appropriate debt advice agency where tenants make landlords aware that they have other debts as well as those related to the tenancy;

(d) provide tenants with details of any plan the landlord proposes, set out in such a way as to allow tenants to consider the proposal;

(e) allow tenants time to consider any plan the landlord proposes;

(f) consider the affordability of any plan for tenants taking into account tenants' personal and financial circumstances where the landlord knows them; and

(g) give tenants a copy of any plan they have agreed with landlord.

48. Article 4(2) of the PAR Order says that if the landlord rejects the payment plan proposed by the tenant, the landlord must provide reasons for rejecting the plan in writing.

49. The guidance under 14A(3) of the 2001 Act on '*reasonable efforts*' and '*advice and assistance*' equally apply to this requirement to make reasonable efforts to agree a reasonable payment plan.

50. Landlords should tell tenants that any debt agency they contact about their debts should be one which offers free and independent advice.

51. The aim is to arrive at a payment plan which is affordable and sustainable for tenants. The emphasis for landlords should be on considering tenants' total income and expenditure. Landlords have to encourage tenants to give them all relevant information on the tenants' financial circumstances. This involves landlords:

- explaining to tenants the need for the information;
- asking them to be open and honest about their financial circumstances; and
- being clear about how they will use the information to draw up a plan that the tenant should be able to afford and keep up payments on.

52. Landlords can only make decisions on known information. Where a financial statement has been drawn up by a Citizen's Advice Bureau, money advice agency or similar organisation landlords should take this into account. Where tenants receive welfare benefits and their rent is being met by housing benefit, an example of an affordable and sustainable plan for tenants may be on-going direct deductions towards the rent arrears from welfare benefits.

53. Where a payment plan would be affordable and sustainable for tenants, but landlords do not consider it reasonable, landlords may have to explain their reasons for this to the court.

54. It must be clear to tenants that the payment plan is based on:

- future rent payments;
- repayment of the total amount of arrears due as set out in the statement to tenants under Article 2 of the PAR Order;
- where appropriate, taking into account the amount of any housing benefit and/or arrears of housing benefit that it has been decided will be paid; and
- where appropriate, taking into account the amount of any other income that it has been decided will be paid.

55. Where claims for housing benefit and/or payment for arrears of housing benefit have not been decided, the housing benefit paid is not enough, or where tenants are taking other steps to address the arrears then there are two choices open to landlords around agreeing a reasonable repayment plan:

- Estimate the amount of housing benefit; arrears of housing benefit; or other sums that tenants indicate they are due and that are likely to be paid. Then take these estimated figures into account when determining the reasonable payment plan. The risk with this approach is that the estimated sums do not materialise and landlords and tenants would have to renegotiate a reasonable payment plan with increased payments for the tenant or a longer period until the arrears have been paid off; or
- Ignore any tenants' income from benefits or other sources that are not yet known and base the repayment plan only on known costs. Take additional income into account when tenants pay them towards the arrears. This approach is likely to result in renegotiating a revised payment plan with lower payments for tenants, or a shorter period for repayment, once their financial situation improves.

56. The approach taken by landlords may depend on the circumstances of each case. Whatever option is used tenants must clearly understand the payment plan they are agreeing, what has been included and what is not and the possibilities around future revisions to the payment plan.

57. Landlords and tenants should try to agree affordable sums for tenants to pay towards arrears, based upon tenants' income and expenditure. The repayment arrangement may involve payment of regular instalments in a frequency agreeable to both parties but could also include paying the arrears in full. The duration of the payment plan will depend on the level of arrears and the affordability for tenants to repay the arrears.

58. If landlords and tenants cannot agree affordable sums for tenants to pay towards the arrears, landlords should make all reasonable efforts to try to resolve the situation before serving a notice where all of the other pre-action requirements have been met (the guidance under 14(A)(3) of the 2001 Act on '*reasonable efforts'* equally applies to this requirement to make reasonable efforts to agree a reasonable payment plan). Where the landlord cannot accept a plan proposed by the tenant, article 4(2) of the PAR Order requires the landlord to give the tenant, in writing, reasons why the landlord has rejected the plan.

Requirement to not serve a notice

59. Section 14(2A)(a) prevents landlords from serving a notice until they have complied with all of the pre-action requirements. Section 14A(6) of the 2001 Act in particular prevents landlords from serving a notice if:

> (a) an application for housing benefit has been made but not yet determined and it is, in the opinion of the landlord, likely to result in the benefit being paid at a level allowing tenants to pay, or reduce by an amount acceptable to landlords, the outstanding rent and any other outstanding financial obligation of the tenancy;

(b) tenants are taking other steps which, in the opinion of landlords, are likely to result in the payment to the landlord within a reasonable time of the outstanding rent and any other outstanding financial obligation of the tenancy; or

(c) tenants are complying with the terms of agreed payment plans.

Housing Benefit

60. Landlords must consider any application for housing benefit, this will include:

- a new claim for housing benefit;
- a claim for housing benefit after a change of circumstances;
- an application that has been made but not yet decided;
- an application for backdating of a new claim or change of circumstances;
- an application for reconsideration of a decision; or
- an appeal.

61. Article 5 of the PAR Order says that in finding out the position of a housing benefit application, landlords must encourage tenants who have made a claim for housing benefit to give their written authority to allow their landlord to talk about their application with relevant housing benefit staff. These staff are Housing Benefit staff in the local authority that the tenant has made their Housing Benefit application to. This involves landlords:

- explaining to tenants the need for information on their housing benefit claim;
- asking them for written authority; and
- being clear that they will use this authority to try to get information on the likely outcome of their housing benefit claim.

62. The 'Guidance for local authorities on the use of social security data' published by the Department for Work and Pensions in August 2010 includes an example of a customer consent form in Annex A that landlords may find useful.

63. If written authority is given, landlords must take all reasonable steps to:

(a) confirm that a housing benefit application has been made;

(b) find out when a decision on the application is likely to be made;

(c) find out whether the tenant has given all the necessary evidence and verification to support the claim, or is within the allowed period for giving such evidence or verification; and

(d) find out the likely outcome of the housing benefit application.

64. Reasonable steps could include one or more of the following, as well as any expertise landlords have in housing benefit matters:

- seeking advice from housing benefit officers;
- receiving electronic transfer of information from housing benefit officers;
- seeking advice from other benefits specialists/advisers; and
- using online housing benefit calculators.

65. Where tenants haven't given all the necessary evidence and verification to support their application for housing benefit landlords could do what they can to help tenants progress their housing benefit application, where appropriate. This could include making tenants aware of the evidence or verification housing benefit staff need or helping tenants to gather the correct evidence or verification.

66. Landlords must not contact housing benefit staff about an application without written authority from tenants to do so. Article 5 of the PAR Order also says that if tenants do not give landlords written authority landlords must take such steps as they can to establish the likely outcome of the housing benefit application. These may include, as well as any expertise landlords have in housing benefit matters:

- seeking general advice from housing benefit officers;
- seeking advice from other benefits specialists/advisers; and
- using online housing benefit calculators.

67. Under Article 5, landlords must consider the results of the steps taken in arriving at a decision as to the likely effect that the decision on the housing benefit claim will have on the unpaid rent and any other financial obligations of the tenancy.

68. Landlords must consider whether the likely amount to be paid would cut the arrears to an amount acceptable to them. In making that decision landlords should consider the remaining amount of arrears and the sums affordable to tenants for future payment towards those arrears. If the amount of arrears remaining after taking into account the housing benefit application is not acceptable to the landlord, the landlord must be able to explain that decision to the tenant. Landlords should also bear in mind that they may have to justify their opinion to the court.

69. When considering the likely outcome of the housing benefit application on the arrears, landlords may discover that the Department for Work and Pensions will reduce tenants' housing benefit entitlement due to earlier housing benefit overpayments. In such cases, landlords could do what they can to assist tenants to maximise the amount of housing benefit paid towards the rent, for example, by assisting tenants to ask for reduced rate housing benefit overpayment deductions where this may be possible.

70. Where landlords have made reasonable efforts to meet the steps set out in Article 5 and are unable to arrive at a decision as to the likely outcome of a housing benefit application, landlords must make reasonable efforts to agree a plan in line with section 14A(5) of the 2001 Act and article 4 of the PAR Order.

Other steps

71. Article 6 of the PAR Order says that in considering the other steps tenants are taking to result in payment to landlords within a reasonable time, landlords must:

> (a) try to find out whether tenants are taking other steps to pay the unpaid rent and other outstanding financial obligations of the tenancy, over and above their ongoing rental obligations;
>
> (b) consider all evidence available to them of steps taken by tenants to pay the unpaid rent and other outstanding financial obligations of the tenancy, including evidence of a claim for benefits, grants or lump sum payments due; and
>
> (c) assess whether any of the steps being taken by the tenant under (a) and (b) are likely to result in payment within a reasonable time of the unpaid arrears and other outstanding financial obligations of the tenancy.

72. Landlords will only be able to reach an opinion based on information tenants give them. It is therefore important that landlords encourage tenants to give them information on any benefit claims or other sources of income that they are expecting to receive, including income from property sales or employment (including annual bonus payments of salary).

73. Landlords must arrive at an opinion on whether the other steps tenants are taking are likely to result in payment within a reasonable time.

- Where the step involves claims for monies from third parties evidence that may inform that opinion includes:
    - evidence that tenants have given all of the necessary information and evidence needed to process the claim, application or payment;
    - evidence that tenants can reasonably expect payment; and
    - evidence that tenants' claims, applications or payments have been refused.

- Where tenants believe that other sums are due to them, landlords may take into account the expected source of those sums and consider any evidence tenants have that those sums are due in arriving at their opinion.

74. Landlords must also consider whether tenants are likely to make payment within a reasonable time. How much time landlords consider reasonable is a matter for them. Landlords should bear in mind that they should be able to explain to tenants why they do not feel that tenants are likely to make payment within a timescale that is reasonable to them, if that is the case. Landlords should also bear in mind that they may have to justify their opinion to the court.

75. If tenants are taking other steps which, in the opinion of the landlord, are likely to result in tenants making payment of the arrears to them within a reasonable time then landlords must not serve a notice on tenants. If any of the arrears remain outstanding once tenants have paid any monies arising from these other steps then the legislation does not prevent landlords from serving a notice so long as they have met all of the pre-action requirements. This includes the landlord taking reasonable efforts to agree a reasonable plan for future payments for the remaining arrears.

Compliance with agreed repayment plan

76. Article 7 of the PAR Order says that in considering whether tenants are complying with the terms of an agreed payment plan, landlords must:

> (a) promptly take reasonable steps to establish the reason for any default or shortfall in respect of an agreed payment;
>
> (b) consider whether the agreed plan continues to be affordable for tenants, taking into account any information of tenants' personal and financial circumstances known to landlords;
>
> (c) review the agreed plan where landlords consider it is no longer affordable for tenants;
>
> (d) allow tenants reasonable time to –
>
> > (i) make repayments within the terms of the agreed plan, including repayment of any shortfall or missed payment; or
> >
> > (ii) enter into a new plan.

77. Landlords should, immediately after an agreed payment plan is not kept to, contact tenants to find out why this was the case. Where there has been a significant change of circumstances impacting on tenants' ability to meet the repayment arrangements or landlords consider there are other reasons to again look at the payment level, landlords should consider whether a change to the payment level is needed.

78. If landlords consider that the payment level in the agreed plan remains appropriate, then landlords must give tenants a reasonable time to comply with the existing agreement. It is up to landlords to decide what time limit would be appropriate, bearing in mind any history of missed payments, the amount of payment missed and the affordability for tenants to meet the shortfall. Tenants are meeting the terms of an agreed payment plan if they remedy any payment shortfall within the period set by landlords.

79. If, after consideration of the reason why the payment shortfall has arisen, landlords consider the circumstances were outwith the tenant's control and that the payment level in the agreed payment plan is no longer appropriate, they should make reasonable efforts to agree a new reasonable plan for future payments. The guidance for section 14A(5) of the 2001 Act then applies.

Requirement for Registered Social Landlords to encourage the tenant to contact their local authority

80. Section 14A(7) of the 2001 Act requires landlords to encourage tenants to contact their local authority (where the landlord is not the local authority itself). This is so that the local authority can give tenants advice on what their entitlement to housing may be should they become homeless and to give them housing options advice. Landlords could do this by issuing a letter to tenants which explains the potential benefits of contacting the local authority at an early stage.

4. SERVING A NOTICE

81. Once landlords have met all of the pre-action requirements they may begin action to recover possession of a property. The first step is for landlords to serve a notice on tenants and any qualifying occupiers that explains that they may raise proceedings for possession of the property and the grounds for doing so. The Notice Regulations introduced 2 forms – for cases where grounds do and do not include rent arrears. This guidance concerns the second of these forms (Schedule 2), which for ease is also included in **Annex C.**

Content of the Notice

82. The Notice Regulations prescribe the form of the notice that landlords must use and taken with section 14(4) of the 2001 Act (as amended by section 155 of the 2010 Act) these require landlords to specify on that notice:

- the ground(s) for recovery;
- the reasons why possession is being sought;
- the date from which recovery proceedings may be raised; and
- the steps taken by them which the landlord considers to constitute compliance with the pre-action requirements.

83. The form of the notice in cases where the grounds include rent arrears now contains a section which lists each of the pre-action requirements and landlords have to mark each one as complete and set out brief details of the steps they have taken which they consider gives compliance with the legal requirements.

84. Landlords should keep records of their communications with tenants in relation to rent arrears and their attempts to resolve them as a matter of course. The notice must now include brief details and dates of the steps taken by landlords, including:

- Section 14A(2) – what information on the tenancy agreement and the unpaid rent and other financial obligations of the tenancy the landlord has provided the tenant with;

- Section 14A(3) – what help and advice the landlord has offered the tenant on their eligibility for housing benefit and other types of financial assistance;

- Section 14A(4) – what information on sources of help and advice on managing debt the landlord has provided the tenant with;

- Section 14A(5) – the efforts the landlord has made to agree with the tenant a reasonable plan for future payments, including any amendments to the plan in light of the tenant's changing circumstances (see section 14A(6)(c));

- Section 14A(6)(a) – the information provided by the tenant on any application for housing benefit and brief details of the landlord's consideration of the tenant's housing benefit entitlement, including any enquiries made;

- Section 14A(6)(b) – the information the tenant has given on any other steps they are taking to resolve the arrears and brief details of the landlord's consideration of these steps;

- Section 14A(6)(c) - consideration of whether the tenant is keeping to an agreed plan; and

- Section 14A(7) – when the landlord advised the tenant to contact their local authority (where the landlord is not the local authority itself).

Purpose

85. The purpose of the notice is:

- to inform tenants that landlords may raise proceedings in court to repossess the property (section (a) of the notice); and
- to provide information for tenants on what the landlord has done to meet each of the pre-action requirements (section (b) of the notice).

86. While landlords submit the notice to court as part of any court action, the purpose of the notice is not to provide the court with all of the details of the action landlords have taken. A court may choose to consider the notice in detail, but this is not its purpose. The main purpose of section (b) of the notice is to provide tenants with information on what landlords have done to meet each of the pre-action requirements. Where landlords decide to raise an action for possession the court may ask them to explain at a later stage, exactly how they have complied with the pre-action requirements (see paragraph 98 onwards).

87. A further benefit of the notice may be that it encourages further dialogue between the landlord and the tenant which avoids court action where possible. Information in the notice should then:

- be brief;
- relate to the most recent steps that landlords have taken;
- relate specifically to each pre-action requirement;
- be factual, for example include dates of meetings/correspondence by landlords and tenants; and
- record any lack of response or engagement by tenants.

88. The information in the notice must be as clear as possible for tenants. The guidance in paragraphs 35 and 36 around tenants who have support needs or who are vulnerable is particularly relevant and landlords should do what they can to be confident that tenants understand the position.

Who the notice is served on

89. Landlords must give a copy of the completed notice to any qualifying occupiers, this should include the completed section (b) of the notice setting out how landlords have met each of the pre-action requirements. While data protection legislation protects personal data, the rights of qualifying occupiers under section 14 of the Housing (Scotland) Act 2001 supersede these provisions. Qualifying occupiers need information about how landlords have met the pre-action requirements for possible legal proceedings to defend their legal rights.

90. Landlords can now adapt the "Guidance Notes" section of the notice to the specific circumstances of each case. This is so that the notice is as easy for the recipient to understand as possible. This means that the landlord should include only the appropriate text for either a tenant or a qualifying occupier. The only other adjustment landlords may need to make to the notes is the removal of a bullet point about ground 2 where landlords are not also relying upon that ground.

Resolving queries

91. In response to the notice tenants may contact landlords to discuss any concerns. It is in both landlords' and tenants' interests to resolve any disputes about whether landlords have met the pre-action requirements. Landlords should respond to tenants' concerns as soon as possible. If tenants dispute compliance with one or more of the requirements then it is in landlords' interests to check that they have met all of the pre-action requirements. In the end only the court can decide points of evidence and reach a view as to whether landlords have met the pre-action requirements. Answering concerns when tenants raise them may avoid protracted court action at a later date.

5. COURT ACTION AND REPOSSESSION

Raising Proceedings

92. While there is no need to revisit the pre-action requirements after the notice has been served on tenants in all cases, there may be occasions when it is appropriate to do so. Such occasions could include situations where:

- landlords raise court proceedings towards the end of the 6 months in which the notice is in force;
- Housing Benefit staff make a housing benefit determination after landlords have served a notice on tenants;
- tenants have raised concerns about compliance; or
- there has been a significant change in tenants' circumstances.

93. The decision to revisit or to raise proceedings rests with landlords.

94. Landlords must confirm to the court that they have met the pre-action requirements. To do this, landlords must include an averment in the statement of claim section of the court writ to confirm to the court that the pre-action requirements in section 14(2A)(b) of the Housing (Scotland) Act 2001 have been complied with.[6] In practice the landlord's legal representative may complete the averment on the landlord's behalf.

95. The sheriff clerk will check that landlords have included such an averment in the statement of claim before authenticating the summons. The sheriff clerk will reject any summons that does not include an averment in the statement of claim.

96. What evidence landlords submit to court is a decision for them. There is no requirement at this stage for landlords to supply the court with evidence of compliance with the pre-action requirements. Landlords may, however, have to give this evidence during court action (see paragraph 100).

97. Once authenticated, landlords can serve the court summons on tenants. Landlords have raised the court proceedings when they have served the summons on tenants.

Court Action

98. The pre-action requirements do not replace the requirement on the court to consider whether it is reasonable to make an order for recovery of possession of the property[7]. So, the court will still consider:

- the nature, frequency and duration of the conduct;

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[6] Confirmation Regulations (http://www.legislation.gov.uk/ssi/2012/93/contents/made)
[7] Housing (Scotland) Act 2001 section 16
http://www.legislation.gov.uk/asp/2001/10/section/16

- the extent to which that conduct is or was conduct of, or a consequence of acts or omissions of, persons other than the tenant;
- the effect which that conduct has had, is having and is likely to have on any person other than the tenant; and
- any action taken by the landlord, before raising the proceedings, with a view to securing cessation of that conduct.

99. The court may continue the case if it needs more information. The court may also temporarily suspend or "sist" the case where, for example, the landlord is trying to reach an agreement with the tenant. In such circumstances there is no requirement to revisit the pre-action requirements, but the court may seek similar information related to its consideration of the case and the reasonableness of granting an order for repossession.

100. If tenants or their representatives challenge compliance with one or more of the pre-action requirements in court then it is likely that landlords will need to give evidence around compliance to the court.

Repossession

101. If the court grants an order for possession of the property, section 16(5A) of the 2001 Act now means that, **in proceedings where a ground is that tenants have not paid rent lawfully due, the tenancy is not ended on a date appointed when the court grants an order. In such cases, the tenancy ends only when the landlord recovers possession of the property.**

102. This means that there is a final opportunity, even after a court has granted an order for possession, for tenants and landlords to agree a way to resolve the arrears and avoid eviction. During this period tenants existing tenancies continue to be in place.

103. This final opportunity to agree a way to resolve the arrears and avoid eviction will help tenants who, because of their circumstances, are unable to take legal advice at an early stage to prevent a court granting a decree.

104. The order granted by the court must specify a period for which landlords have a right to recover possession of the house. The Period Order prescribes a maximum period for the court order of 6 months from the date when the decree is extracted.[8] The period specified in the order may be less than this but may not be more.

105. Where tenants or their representatives lodge an appeal after the court extracts the order for recovery of possession and the court later upholds the order for recovery of possession, the maximum period of 6 months will begin from the date of the interlocutor of the court disposing of the appeal.

[8] Period Order (http://www.legislation.gov.uk/ssi/2012/128/contents/made)

106. If landlords evict tenants within the period the court specifies, then the tenancy ends. If landlords do not evict tenants then the order ceases to have effect after the specified period. If rent arrears reoccur then landlords will have to meet the pre-action requirements before raising any future proceedings to repossess the property.

ANNEX A

SECTIONS 14-16 OF THE HOUSING (SCOTLAND) ACT 2001: AS AMENDED BY SECTIONS 153 AND 155 OF THE HOUSING (SCOTLAND) ACT 2010

14 Proceedings for possession

(1) The landlord under a Scottish secure tenancy may raise proceedings by way of summary cause for recovery of possession of the house.

(2) Such proceedings may not be raised unless—

(a) the landlord has served on the tenant and any qualifying occupier a notice complying with subsection (4),

(b) the proceedings are raised on or after the date specified in the notice, and

(c) the notice is in force at the time when the proceedings are raised.

(2A) Where such 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)—

(a) the notice under subsection (2) must not be served unless the landlord has complied with the pre-action requirements in section 14A, and

(b) the proceedings may not be raised unless the landlord has confirmed to the court in such form as the Scottish Ministers may prescribe by regulations that those requirements have been complied with.

(3) Before serving a notice under subsection (2) the landlord must make such inquiries as may be necessary to establish so far as is reasonably practicable whether there are any qualifying occupiers of the house and, if so, their identities.

(4) A notice under subsection (2) must be in such form as the Scottish Ministers may prescribe by regulations, and must specify—

(a) the ground, being a ground set out in Part 1 of schedule 2, on which proceedings for recovery of possession are to be raised;

(b) a date, not earlier than—

(i) 4 weeks from the date of service of the notice, or

(ii) the date on which the tenancy could have been brought to an end by a notice to quit had it not been a Scottish secure tenancy,

whichever is later, on or after which the landlord may raise proceedings for recovery of possession; and

(c) where subsection (2A) applies, the steps taken by the landlord which the landlord considers to constitute compliance with the pre-action requirements in section 14A.

(5) A notice under subsection (2) ceases to be in force 6 months after the date specified in it in accordance with subsection (4)(b) or when it is withdrawn by the landlord, whichever is earlier.

(5A) Where a landlord raises proceedings under this section, the landlord must give notice of the raising of the proceedings to the local authority in whose area the house in question is situated, unless the landlord is that local authority.

(5B) Notice under subsection (5A) is to be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (asp 10).

(6) In this section and section 15, “qualifying occupier” means a person who occupies the house as that person’s only or principal home and who is—

(a) a member of the tenant’s family aged at least 16 years,

(b) a person to whom the tenant has, with the landlord’s consent under section 32(1), assigned, sublet or otherwise given up possession of the house or any part of it, or

(c) a person whom the tenant has, with such consent, taken in as a lodger.

14A Pre-action requirements where grounds for possession include rent arrears

(1) The pre-action requirements referred to in section 14(2A) are set out in subsections (2) to (7) below.

(2) The landlord must provide the tenant with clear information about—

(a) the terms of the tenancy agreement, and

(b) outstanding rent and any other outstanding financial obligation of the tenancy.

(3) The landlord must make reasonable efforts to provide the tenant with advice and assistance on the tenant’s eligibility to receive—

(a) housing benefit, and

(b) other types of financial assistance (for example, other benefits or grants).

(4) The landlord must provide the tenant with information about sources of advice and assistance in relation to management of debt.

(5) The landlord must make reasonable efforts to agree with the tenant a reasonable plan for future payments to the landlord, such plan to include proposals in respect of—

(a) future payments of rent, and

(b) outstanding rent and any other outstanding financial obligation of the tenancy.

(6) The landlord must not serve a notice under section 14(2) if—

(a) an application for housing benefit for the tenant—

(i) has been made but has not yet been determined, and

(ii) is, in the opinion of the landlord, likely to result in the benefit being paid at a level allowing the tenant to pay, or reduce by an amount acceptable to the landlord, the outstanding rent and any other outstanding financial obligation of the tenancy,

(b) the tenant is taking other steps which, in the opinion of the landlord, are likely to result in the payment to the landlord within a reasonable time of—

(i) the outstanding rent, and

(ii) any other outstanding financial obligation of the tenancy, or

(c) the tenant is complying with the terms of a plan agreed to in accordance with subsection (5).

(7) The landlord, unless it is a local authority landlord, must encourage the tenant to contact the local authority in whose area the house is situated.

(8) In complying with the pre-action requirements the landlord must have regard to any guidance issued by the Scottish Ministers.

(9) The Scottish Ministers may by order make further provision about the pre-action requirements, including provision—

(a) specifying particular steps to be taken, or not to be taken, by a landlord in complying with any requirement;

(b) modifying or removing any requirement.

(10) In this section, “housing benefit” has the same meaning as in section 123 of the Social Security Contributions and Benefits Act 1992 (c.4).

15 Rights of qualifying occupiers in possession proceedings

Where a qualifying occupier applies to the court to be sisted as a party to proceedings under section 14, the court must grant the application.

16 Powers of court in possession proceedings

(1) The court may, as it thinks fit, adjourn proceedings under section 14 on a ground set out in any of paragraphs 1 to 7 and 15 of schedule 2 for a period or periods, with or without imposing conditions as to payment of outstanding rent or otherwise.

(2) Subject to subsection (1), in proceedings under section 14 the court must make an order for recovery of possession if it appears to the court—

(a) that—

(i) the landlord has a ground for recovery of possession set out in any of paragraphs 1 to 7 of that schedule and specified in the notice required by section 14, and

(ii) it is reasonable to make the order,

(b) that—

(i) the landlord has a ground for recovery of possession set out in any of paragraphs 8 to 14 of that schedule and so specified, and

(ii) other suitable accommodation will be available for the tenant when the order takes effect, or

(c) that—

(i) the landlord has a ground for recovery of possession set out in paragraph 15 of that schedule and so specified,

(ii) it is reasonable to make the order, and

(iii) other suitable accommodation will be available for the tenant when the order takes effect.

(3) For the purposes of subsection (2)(a)(ii) the court is to have regard, in particular, to—

(a) the nature, frequency and duration of—

(i) where the ground for recovery of possession is one set out in any of paragraphs 1 and 3 to 7 of schedule 2, the conduct taken into account by the court in concluding that the ground is established,

(ii) where the ground for recovery of possession is that set out in paragraph 2 of that schedule, the conduct in respect of which the person in question was convicted,

(b) the extent to which that conduct is or was conduct of, or a consequence of acts or omissions of, persons other than the tenant,

(c) the effect which that conduct has had, is having and is likely to have on any person other than the tenant, and

(d) any action taken by the landlord, before raising the proceedings, with a view to securing the cessation of that conduct.

(4) Part 2 of schedule 2 has effect to determine whether accommodation is suitable for the purposes of subsection (2)(b) or (c).

(5) An order under subsection (2) must appoint a date for recovery of possession and has the effect of—

(a) terminating the tenancy, and

(b) giving the landlord the right to recover possession of the house,

at that date.

(5A) Where an order is made under subsection (2) in proceedings under section 14 on the ground that rent lawfully due from the tenant has not been paid (as set out in paragraph 1 of schedule 2) or on grounds including that ground—

(a) subsection (5)(a) does not apply,

(b) the tenancy is terminated only if the landlord recovers possession of the house in pursuance of the order,

(c) the order must specify the period for which the landlord's right to recover possession of the house is to have effect (being no longer than any maximum period which the Scottish Ministers by order prescribe), and

(d) the landlord must have regard to any guidance issued by the Scottish Ministers about recovery of possession in pursuance of the order.

(5B) Before making an order under subsection (5A)(c) or issuing guidance under subsection (5A)(d), the Scottish Ministers must consult—

(a) such bodies representing local authorities,

(b) such registered social landlords or bodies representing them,

(c) such bodies representing tenants' interests, and

(d) such other persons,

as they think fit.

(6) Where, in proceedings under section 14 on the ground set out in paragraph 10 of schedule 2, it appears to the court that the landlord intends that—

(a) substantial work will be carried out on the building (or a part of the building) which comprises or includes the house, and

(b) the tenant should return to the house after the work is completed,

the court must make an order that the tenant is entitled to return to the house after the work is completed; and subsection (5)(a) does not apply in such a case.

THE SCOTTISH SECURE TENANCIES (PROCEEDINGS FOR POSSESSION) (PRE-ACTION REQUIREMENTS) ORDER 2012

Requirement to provide information

2.—(1) In providing the tenant with clear information for the purposes of section 14A(2) (requirement to provide information) of the 2001 Act the landlord must include—

(a) a description of the rent and any other financial obligations of the tenant under the tenancy agreement; and

(b) information about the amount due to the landlord under the tenancy agreement, which must be broken down so as to show—

(i) the total amount of outstanding rent and of any other outstanding financial obligations of the tenancy; and

(ii) a description of any charges which the landlord anticipates will be incurred if the arrears of rent or any other financial obligation of the tenancy are not paid.

(2) In paragraph (1)(b)(ii), "charges" means any future charges detailed in the tenancy agreement resulting from arrears of rent and any other outstanding financial obligation of the tenancy, and any illustrative indication of legal expenses which may be incurred in relation to such obligations.

(3) The landlord must provide the information required by section 14A(2) of the 2001 Act and this article as soon as the landlord considers reasonably practicable after the tenant enters into arrears.

Requirement to make reasonable efforts to provide advice and assistance

3. In complying with the pre-action requirement contained in section 14A(3) (requirement to make reasonable efforts to provide advice and assistance) of the 2001 Act the landlord must—

(a) make reasonable efforts to contact the tenant in order to identify whether the tenant requires advice and assistance on the tenant's eligibility to receive housing benefit and other types of financial assistance;

(b) provide the tenant with details of persons or bodies who may be able to provide the tenant with such advice and assistance; and

(c) provide the tenant with reasonable assistance with claiming housing benefit, if requested to do so by the tenant.

Requirement to make reasonable efforts to agree a plan

4.—(1) In complying with the pre-action requirement contained in section 14A(5) (requirement to make reasonable efforts to agree a reasonable plan including proposals for future payments of rent and outstanding debt) of the 2001 Act the landlord must—

(a) make prompt and reasonable attempts to contact the tenant to discuss the arrears with a view to agreeing a plan for future payments of rent and repayment of the arrears and any other outstanding financial obligation of the tenancy;

(b) encourage the tenant to provide the landlord with all relevant information on the tenant's financial circumstances;

(c) advise the tenant to seek assistance from an appropriate debt advice agency where the tenant makes the landlord aware that they have debts in addition to those related to the tenancy;

(d) provide the tenant with details of any plan proposed by the landlord for the purposes of that section, set out in such a way as to allow the tenant to consider the proposal;

(e) allow the tenant time to consider any such plan proposed by the landlord;

(f) consider the affordability of any such plan for the tenant taking into account, where known to the landlord, the tenant's personal and financial circumstances; and

(g) provide the tenant with a copy of any such plan agreed for the purposes of that section.

(2) Where a plan is proposed by the tenant for the purposes of section 14A(5) of the 2001 Act which the landlord rejects, the landlord must provide reasons for rejecting the plan in writing.

Applications for housing benefit

5.—(1) In complying with the requirement contained in section 14A(6)(a) (applications for housing benefit) of the 2001 Act the landlord must encourage a tenant who has made a housing benefit application to provide written authority to allow the landlord to discuss that housing benefit application with the relevant housing benefit staff.

(2) If the landlord has written authority from the tenant to discuss a housing benefit application made by the tenant with the relevant housing benefit staff the landlord must take such steps as are reasonable to—

(a) confirm that a housing benefit application has been made;

(b) establish when a determination on the application is likely to be made;

(c) establish whether the tenant has provided all of the necessary evidence and verification to support the application, or is within the permitted period for providing such evidence or verification; and

(d) establish the likely outcome of the housing benefit application.

(3) If the tenant does not provide the landlord with such written authority the landlord must take such steps as it can to establish the likely outcome of the housing benefit application.

(4) The landlord must consider the results of the steps taken under paragraphs (2) or (3) in arriving at a decision as to the effect that the decision on the housing benefit claim will have on the outstanding rent and any other outstanding financial obligation of the tenancy.

(5) Where a landlord has made reasonable efforts to comply with the steps set out in this article and is unable to arrive at a decision as to the likely outcome of a housing benefit application the landlord must make reasonable efforts to agree a plan in accordance with section 14A(5) of the 2001 Act and article 4.

Steps which are likely to result in a payment within a reasonable time

6. In determining if steps taken by the tenant are steps with the meaning of section 14A(6)(b) (payment within a reasonable time) the landlord must—

(a) attempt to establish whether the tenant is taking other steps to pay the outstanding rent and any other outstanding financial obligation of the tenancy, in addition to meeting their ongoing rental obligations;

(b) consider all evidence available to the landlord of steps taken by the tenant to pay the outstanding rent and any other outstanding financial obligations of the tenancy, including evidence of a claim for benefits, grants, or lump sum payments due; and

(c) assess whether any of the steps that the landlord ascertains are being taken by the tenant in paragraphs (a) and (b) are likely to result in payment within a reasonable time of the outstanding rent and any other outstanding financial obligation of the tenancy.

Compliance with agreed repayment plan

7. In complying with the requirement contained in section 14A(6)(c) (compliance with agreed plan) of the 2001 Act the landlord must—

(a) promptly take reasonable steps to establish the reason for any default or shortfall in respect of an agreed payment;

(b) consider whether the plan agreed for the purposes of section 14A(5) of that Act (“the agreed plan”) continues to be affordable to the tenant taking into account any information of the tenant’s personal and financial circumstances known to the landlord;

(c) review the agreed plan where the landlord considers it is no longer affordable for the tenant; and

(d) allow the tenant reasonable time to—

(i) make repayments within the terms of the agreed plan, including repayment of any shortfall or missed payment; or

(ii) enter into a new plan agreed for the purposes of section 14A(5) of that Act.

ANNEX C

SCHEDULE 2 OF THE SCOTTISH SECURE TENANCIES (PROCEEDINGS FOR POSSESSION) (FORM OF NOTICE) REGULATIONS 2012

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.

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.

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

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 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.**]***

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:

* *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*

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