

Draft Order laid before the Scottish Parliament under section 109(6) of the Housing (Scotland) Act 2001 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2012 No.

HOUSING

The Scottish Secure Tenancies (Proceedings for Possession) (Pre-Action Requirements) Order 2012

Made - - - -

Coming into force - - *1st August 2012*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 14A(9) of the Housing (Scotland) Act 2001⁽¹⁾ and all other powers enabling them to do so. In accordance with section 109(6) of that Act⁽²⁾, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Scottish Secure Tenancies (Proceedings for Possession) (Pre-Action Requirements) Order 2012 and comes into force on 1st August 2012.

(2) In this Order—

“the 2001 Act” means the Housing (Scotland) Act 2001; and

“any other outstanding financial obligations” refers to any financial obligation of the tenancy other than the obligation to pay rent.

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—

⁽¹⁾ 2001 asp 10; section 14A was inserted by section 155(b) of the Housing (Scotland) Act 2010 (asp 17).

⁽²⁾ Section 109(6) was amended by section 155(c) of the Housing (Scotland) Act 2010 (asp 17) and has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

- (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.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in relation to the pre-action requirements set out in section 14A of the Housing (Scotland) Act 2001 (“the 2001 Act”).

Landlords are required to comply with these pre-action requirements before making an application to the court for recovery of possession of a property (under section 14(2) of the 2001 Act).

Article 2 makes further provision about in relation to the requirement of a landlord to provide a tenant with certain information about the rent arrears and any other outstanding financial obligation of the tenancy.

Article 3 makes further provision in relation to the requirement of a landlord to make reasonable efforts to provide the tenant with information about sources of advice and assistance in relation to housing benefit and other sources of financial assistance.

Article 4 makes further provision in relation to the steps a landlord must take in complying with the requirement to make reasonable efforts to agree a plan for future payments.

Article 5 makes further provision in relation to the steps a landlord must take in considering the effects of any likely housing benefit entitlement on the outstanding rent and any other outstanding financial obligation of the tenancy.

Article 6 makes further provision in relation to the steps a landlord must take in determining whether steps taken by the tenant are steps which are likely to result in payment within a reasonable time.

Article 7 makes further provision in relation to the steps a landlord must take in dealing with any failure by the tenant to comply with the terms of a plan agreed for the purposes of section 14A(5) of the 2001 Act.