



# **STREAMLINED EVICTION PROCESS – CRIMINAL OR ANTISOCIAL BEHAVIOUR**

## **STATUTORY GUIDANCE FOR SOCIAL LANDLORDS**

HOUSING (SCOTLAND) ACT 2014



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# CONTENTS

	Page
<b>1. Introduction and Background</b>	<b>2</b>
<b>2. Streamlined Eviction Process - Legislation</b>	<b>3</b>
<b>3. Purpose and Use of the Streamlined Eviction Process</b>	<b>4</b>
<b>4. Steps to Be Taken Before Using the Streamlined Eviction Process</b>	<b>5</b>
Verifying Information	5
Other Factors Which Landlords Should Consider	6
The Nature and Seriousness of the Criminal Offence	6
Who Has Been Convicted and their Connection to the Property	7
Where the Offence was Committed	7
Whether and To What Extent the Offence has Affected Household Members, Neighbours or Others in the Community	7
Positive Change	8
Impact of Eviction on Household Members	8
Other Steps Taken/Which Could be Taken to Address the Antisocial or Criminal Behaviour	8
Policy and Practice	8
Notifying Tenants of the Landlord's Decision to Take Eviction Action	9
<b>5. Serving a Notice</b>	<b>9</b>
<b>6. Court Action and Repossession</b>	<b>10</b>
Raising Proceedings	10
Court Action	10
<b>ANNEX A - Consolidated Legislation</b>	<b>11</b>

# 1. INTRODUCTION AND BACKGROUND

1.1 Tenancy agreements should set out the level of behaviour expected from tenants, members of their household or visitors to their home, and make it clear to tenants that they are responsible for the behaviour of others in, or visiting their home. The tenancy agreement and other tenancy information such as tenant handbooks should also make it clear to tenants that breaking their tenancy agreement as a result of antisocial behaviour may result in legal action to evict them. Tenants are responsible for ensuring that they keep to the conditions of their tenancy agreement.

1.2 Antisocial behaviour can have a serious impact on individuals and communities. Antisocial behaviour needs to be clearly defined and identified, and tackled quickly and effectively when it arises. How it will be addressed should be set out in each social landlord's Antisocial Behaviour Strategy/Policy. Early identification and close working arrangements between partners such as the police, local authorities, registered social landlords, and voluntary sector organisations can help to prevent antisocial and criminal behaviour escalating, and eliminate the need for costly court action at a later stage.

1.3 The Antisocial Behaviour etc. (Scotland) Act 2004 and the Housing (Scotland) Act 2001 ('the 2001 Act') set out a range of measures that landlords and their partner agencies can take to help address antisocial behaviour. [The Scottish Social Housing Charter](#) also contains an outcome that covers the role of landlords in working with others to tackle antisocial behaviour.

1.4 To complement the existing measures available to landlords to address antisocial behaviour in, or in the locality of a social housing tenancy, a number of new provisions were introduced in [the Housing \(Scotland\) Act 2014](#) ('the 2014 Act'). These measures include:

- a new short Scottish secure tenancy for antisocial behaviour (section 7 of the 2014 Act) (Further information on this can be found in the guidance on '[Short Scottish Secure Tenancies for Antisocial Behaviour and Other Miscellaneous Changes to Short Scottish Secure Tenancies](#)');
- a power for landlords to extend the term of some short Scottish secure tenancies by six months, including those related to previous antisocial behaviour, where housing support services are being provided (section 10 of the 2014 Act) (Further information on this can be found in the guidance on '[Short Scottish Secure Tenancies for Antisocial Behaviour and Other Miscellaneous Changes to Short Scottish Secure Tenancies](#)'); and
- a new streamlined eviction process where there has been a recent criminal conviction punishable by imprisonment for tenancy related antisocial or criminal behaviour (section 14 of the 2014 Act) within the previous 12 months.

1.5 This statutory guidance will help landlords to use the new streamlined eviction process contained in section 16(2)(aa) of the 2001 Act inserted by section 14(2) of the 2014 Act. The legislation is shown in a consolidated way in [Annex A](#) (including amendments made by the Housing (Scotland) Act 2010).

1.6 This new provision gives landlords the flexibility to choose whether to use a streamlined process for eviction in certain cases where a tenant (or any one of joint tenants), a person living in, or lodging in the house, a subtenant or a person visiting the house has been convicted of an offence punishable by imprisonment within the previous 12 months.

1.7. There is also secondary legislation which landlords must follow when using the streamlined eviction process. These are:

- [The Scottish Secure Tenancies \(Proceedings for Possession\) \(Form of Notice\) Regulations 2012](#);
- [The Scottish Secure Tenancies \(Proceedings for Possession\) \(Form of Notice\) Amendment Regulations 2018](#) which amend [The Scottish Secure Tenancies \(Proceedings for Possession\) \(Form of Notice\) Regulations 2012](#) to reflect the terms of section 16(2)(aa) of the 2001 Act<sup>1</sup>; and
- [The Housing \(Scotland\) Act 2014 \(Commencement No. 8, Savings, Transitional and Supplemental Provisions\) Order 2018](#) which sets 1 May 2019 as the date the streamlined eviction provision comes into force. The Order also makes a savings provision where a court action has commenced or a notice has been served before that date so that the powers available to the court to make an order for recovery of possession are those that existed prior to the commencement of section 14(2)(a) of the 2014 Act.

1.8 This guidance and this new provision will take effect from 1 May 2019. The new streamlined eviction process does not apply where landlords have already served a notice on a tenant before 1 May 2019 and which is in force on the date that court action is raised.

## 2. STREAMLINED EVICTION PROCESS – LEGISLATION

2.1 Section 14(2) of the 2014 Act amends section 16 of the 2001 Act to alter the powers of the court in possession proceedings in certain cases where there has been a conviction for an offence punishable by imprisonment. Section 16 is shown in a consolidated way at [Annex A](#).

2.2 Section 16(2)(aa) of the 2001 Act removes the requirement that the court considers whether it is reasonable to make an eviction order, in cases where the landlord has a ground for recovery of possession set out in paragraph 2 of schedule 2 of the 2001 Act and a notice of proceedings under section 14(2) of that Act has been served before the specified day.

2.3 The grounds for recovery of possession set out in paragraph 2 of schedule 2 are as follows: 'The tenant (or any one of joint tenants), a person residing or lodging in the house with, or subtenant of, the tenant, or a person visiting the house has been convicted of:

- a) using the house or allowing it to be used for immoral or illegal purposes; or
- b) an offence punishable by imprisonment committed in, or in the locality of, the house.'

2.4 An 'offence punishable by imprisonment' means that the offence carries imprisonment as a possible penalty but does not require that a custodial sentence was imposed as the penalty in the particular case.

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<sup>1</sup> Inserted by section 14(2)(a) of the Housing Scotland Act 2014

2.5 The landlord must have served the tenant with a notice of proceedings before the specified day which is 12 months after:

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

2.6 In summary, this means that where a court has convicted a tenant (or subtenant, or someone living with the tenant or visiting the house) of using the house for immoral or illegal purposes or of a criminal offence punishable by imprisonment, committed in, or in the locality of the house, and the landlord has served a notice of proceedings on the tenant under section 14(2) within 12 months of the conviction or the dismissal or abandonment of an appeal, the court must make an order for recovery of possession of the house without considering whether the court thinks it is reasonable to do so.

2.7 Section 16(3A) of the 2001 Act provides that the requirement placed on the court to make an order for repossession in any proceedings brought under these grounds does not override any other rights that a tenant has<sup>2</sup>. This includes any arguments regarding proportionality in terms of article 8 of ECHR<sup>3</sup>. [Section 4](#) of this guidance provides more details of the factors landlords should consider before raising streamlined eviction action.

### 3. PURPOSE AND USE OF THE STREAMLINED EVICTION PROCESS

3.1 The purpose of the streamlined eviction process is to help landlords to take action on serious antisocial or criminal behaviour more quickly in some cases to help reduce the harm that is caused to individuals and communities.

3.2 The streamlined eviction process is intended to help to speed up eviction in cases where:

- serious antisocial or criminal behaviour has already been proven in court;
- the behaviour which led to the conviction was in, or in the locality of the tenant's house; and
- the landlord considers that eviction action is appropriate, such as to protect neighbours and other people living or working in or near a social housing property from harm.

3.3 The process requires a notice of proceedings to be served before the first anniversary of the date of the conviction, or where that conviction was appealed, the day on which the appeal was dismissed or abandoned. In considering whether to serve such a notice in that timescale, the landlord should consider the content of [Section 4](#) of this guidance. Landlords will also want to ensure that their Antisocial Behaviour Strategy/Policy covers this measure.

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2 <https://www.equalityhumanrights.com/en/publication-download/human-rights-home-guidance-social-housing-providers>

3 ECHR Article 8: 'right to respect for private and family life'.

3.4 In those antisocial or criminal behaviour cases where the notice of proceedings has not been served in the required timescale, or where the landlord does not consider the streamlined eviction process is appropriate, they can continue to use the ground set out in paragraph 2 of schedule 2 of the 2001 Act, either in its own right or combined with any of the other conduct grounds in schedule 2 to raise eviction proceedings. The statutory test of reasonableness at section 16(2)(a) of the 2001 Act will however continue to apply to those cases where the streamlined eviction process has not been asked for by the landlord in the statement of claim section of the court writ when raising court action.

## **4. STEPS TO BE TAKEN BEFORE USING THE STREAMLINED EVICTION PROCESS**

### **Verifying Information**

4.1 In cases where a landlord is considering taking eviction action following information about a relevant criminal conviction, the landlord will wish to take legal advice to identify whether and how the ground required for raising an eviction action under the streamlined eviction process can be satisfied.

4.2 Consideration of how the ground can be satisfied will include the evidence of the criminal conviction available and whether the criminal offence is one which concerns using the house for immoral or illegal purposes or carried imprisonment as a possible penalty. A prison sentence does not need to have been imposed. For example, a community payback order may be given by the criminal court as an alternative to a prison sentence.

4.3 Landlords could consider obtaining an extract conviction from the court as evidence of the conviction. Where an extract conviction is available, this should be lodged as part of the sheriff court application if the case is taken to court.

4.4 An extract conviction cannot however be issued by the court until either:

- the expiry of the appeal period where no appeal is lodged; or
- the disposal of any appeal lodged.

4.5 The court will let the landlord know if they are unable to issue an extract conviction and the reasons for this. Landlords are however not prevented from raising eviction action under ground 2 of schedule 2 of the 2001 Act, including streamlined eviction action, simply because an extract conviction cannot be provided by the court.

4.6 Information on the current procedures for obtaining extract convictions can be obtained from the Scottish Courts and Tribunals Service.

4.7 If eviction action is being taken under ground 2 of schedule 2 of the 2001 Act only, pre action requirements do not have to be satisfied. If landlords are taking action on combined grounds which include rent arrears, pre action requirements will have to be satisfied.

## **Other Factors Which Landlords Should Consider**

4.8 There are a range of factors which landlords should consider in deciding whether raising eviction action using the streamlined eviction process is both appropriate and proportionate. Some examples of this could include:

- the nature and seriousness of the offence, including any recurring nature of convictions or cumulative effect of several incidents, or the potential seriousness of a one off offence;
- who has been convicted of the offence and their connection to the property;
- where the offence was committed and the connection to the social housing tenancy;
- whether, and to what extent the offence has affected other household members, neighbours or others in the community, including the impact on neighbours and communities over time and the impact on the stability of the community;
- what action, if any, the person convicted of the offence is taking to make positive change;
- impact of eviction on household members;
- other steps taken/which could be taken by the landlord or partner agencies to address the antisocial or criminal behaviour.

4.9 In some situations it is likely to be very difficult to demonstrate to the court that eviction action is proportionate. An example of this could be where a criminal conviction is given for an isolated offence such as possession of a small amount of illegal drugs and the behaviour of the tenant has caused no harm to neighbours or others in the community. Another example could be where a person has been convicted of a breach of the peace that had little local impact. The nature and seriousness of the offence should be considered, along with any other relevant factors or circumstances.

## **The Nature and Seriousness of the Criminal Offence**

4.10 The type of criminal convictions that allow use of the streamlined eviction process are only those for offences 'punishable by imprisonment committed in, or in the locality of, the house'. There are a range of serious criminal offences punishable by imprisonment which could be committed in social housing or in the locality and which may have a serious impact on others, including neighbours or others in the community. Some examples of this could include: breach of an ASBO, closure order or dispersal order, threatening and abusive behaviour, murder, rape, other violent offences, offences related to domestic abuse, offences related to the use of offensive weapons, and serious drug related offences.

4.11 There are however no specific offences where the landlord should invariably seek to use the streamlined eviction process. The nature and severity of the offence is only one of the factors which landlords should consider as part of their assessment of whether eviction action using this process is appropriate and proportionate.



## **Who Has Been Convicted and their Connection to the Property**

4.12 In some cases, it may for example, be a visitor to the house, an abusive partner/ex-partner, or someone who lives at the property from time to time who has been given a criminal conviction. In such cases landlords may have limited information about the convicted person's connection to the property and will be investigating this and determining what impact the behaviour leading to the conviction has had on neighbours and the community. There will be situations where others, including neighbours or members of the community, are afraid to speak out. In other cases, the tenant may be unable, despite their best efforts, to prevent a person with a criminal conviction from returning to the property where, for example, the tenant fears for their own safety. When considering this type of case, landlords may wish to consider factors such as:

- how frequently the person visits or lives in the property;
- any action the tenant is taking to stop the person returning to the property;
- whether it is reasonable in the circumstances for the tenant to try to prevent the person returning to the property.

## **Where the Offence was Committed**

4.13 The streamlined eviction process can only be used where the criminal conviction in question is related to the social housing tenancy. The criminal conviction must either be committed in the house or committed in the locality of the house. Landlords will already be used to exercising their judgement when defining 'locality' and will need to make a decision based on the circumstances of the individual case. Where the criminal offence was committed elsewhere, landlords cannot use the streamlined eviction process, as the ground for raising eviction proceedings at paragraph 2 of schedule 2 of the 2001 Act will not be met. Landlords will need to use other grounds to proceed with eviction action<sup>4</sup>.

## **Whether and To What Extent the Offence has Affected Household Members, Neighbours or Others in the Community**

4.14 Eviction action under the new streamlined eviction process should only be considered where there is evidence that the behaviour leading to the conviction has had, or is likely to have had, a serious impact on other household members, neighbours or others in the community. This could, for example, include domestic abuse towards a partner/ex-partner, threatening and abusive behaviour towards neighbours or significant disruption to their lives.

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<sup>4</sup> Section 14 and schedule 2 of the Housing (Scotland) Act 2001.

## Positive Change

4.15 Sustainable and secure housing is a key factor in preventing re-offending. Landlords have a role to play in helping people to sustain tenancies and prevent re-offending. There will be situations when the person who has received a conviction has changed their behaviour. Some examples of this could be:

- the behaviour has stopped, for example there have been no repeat offences, convictions, disturbances or complaints;
- engagement in training/employment;
- participating in a rehabilitation programme for drug/alcohol dependency or treatment for mental health issues;
- regular and meaningful engagement with support services to change behaviour in a positive way.

These examples may indicate positive change and landlords should consider the impact that eviction action may have on preventing ongoing positive change and the potential for re-offending in such cases. Landlords will however also want to be satisfied that they consider any positive change in behaviour is sufficient and is likely to be maintained in the long term.

## Impact of Eviction on Household Members

4.16 As with all eviction action, the impact on the other members of the household should also be considered. Landlords should ensure that communication with other relevant services has taken place to establish potential benefits and/or risks to other household members. This should however be balanced against the impact of the behaviour on the wellbeing of neighbours and the local community.

## Other Steps Taken/Which Could be Taken to Address the Antisocial or Criminal Behaviour

4.17 In some situations, other measures may be more appropriate to address the impact of the behaviour on others, such as a short Scottish secure tenancy with support, other housing management procedures, or joint working with partner agencies. Landlords will also need to carefully assess what other steps have been taken, or could be taken to address the behaviour when balancing the rights of tenants and their household against those of neighbours and the wider community.

## Policy and Practice

4.18 Decisions on using the streamlined eviction process should be consistent, balanced and transparent, therefore it is suggested that landlords identify factors they will consider. Landlords will also want to ensure that the introduction and use of the streamlined process and the factors that will be considered are referred to in its Tenancy Management and Antisocial Behaviour policies and procedures, and in any information they provide on dealing with antisocial behaviour.

## Notifying Tenants of the Landlord's Decision to Take Eviction Action

4.19 Landlords should ensure that they communicate clearly with their tenants. When legal action is to be taken, it is particularly important that the tenant concerned is notified of:

- the action to be taken and what will happen;
- the timescales for the action;
- why this action has been taken, including reference to the legislation and the tenancy agreement;
- who they can contact for advice and assistance, for example. Shelter Scotland, Citizens Advice and getting independent legal advice.

4.20 A tenant who disagrees with a decision taken by the landlord to raise court proceedings could seek judicial review of the landlord's decision to seek a court order, and/or defend the repossession action.

## 5. SERVING A NOTICE

5.1 Once landlords have decided to consider taking action to recover possession of a tenancy under the new streamlined eviction process, landlords must serve a notice on the tenant(s) that explains that they may raise proceedings for possession of the property and sets out the grounds for doing so. [The Scottish Secure Tenancies \(Proceedings for Possession\) \(Form of Notice\) Amendment Regulations 2018](#) make changes to the form of notice to be used by the landlord when notifying a tenant and any qualifying occupier under a Scottish secure tenancy (or short Scottish secure tenancy where section 14 of the 2001 Act is being used) that the landlord may raise proceedings in court to repossess the house.

5.2 The 2018 Amendment Regulations make changes to the Guidance Notes to each of the forms of notice contained in Schedule 1 and Schedule 2 of [The Scottish Secure Tenancies \(Proceedings for Possession\) \(Form of Notice\) Regulations 2012](#) to provide an explanation of the court process in cases where the streamlined eviction process is used.

5.3 Landlords should 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. The landlord should include only the appropriate text for either a tenant or a qualifying occupier. In cases where the ground(s) specified by the landlord in the notice include ground 2, the landlord should include the text provided for ground 2, along with any other appropriate text, depending on the circumstances of the case.

## 6. COURT ACTION AND REPOSSESSION

### Raising Proceedings

6.1 Once a case has been received by the court, the court will identify which cases the landlord wants the streamlined eviction process to apply to from the details of the grounds for repossession given in the statement of claim section of the court writ. The landlord can however choose to raise proceedings on more than one ground, if they wish to do so. There are no changes to the procedure up to the point when the case calls in court (see 6.3).

6.2 What evidence landlords submit to the court for cases where proceedings are being raised under the streamlined eviction process is a decision for them. Where an appropriate extract conviction has been obtained, this should however be included. There is no requirement at this stage for landlords to supply the court with any other specific evidence. Landlords may, however, have to give further evidence during court action (see 6.5).

### Court Action

6.3 The streamlined eviction process removes the ability of the court to consider whether it is reasonable to grant an eviction order. The court must grant an eviction order where it is satisfied that:

- the landlord has a ground for recovery of possession set out in paragraph 2 of schedule 2 to the 2001 Act; and
- the notice of proceedings was served on the tenant before the first anniversary of either, the date of the conviction, or where that conviction was appealed, the date on which the appeal was dismissed or abandoned.

6.4 In cases where the court is not satisfied that the criteria for streamlined eviction is satisfied, the court will then consider any other grounds for recovery of possession of the house raised by the landlord in the statement of claim section of the court writ.

6.5 If tenants or their representatives challenge the proportionality of a streamlined eviction action on human rights grounds, then the court may consider the reasons for such a challenge before reaching a decision. Landlords may need to give evidence on the reasons for the eviction action if such a challenge is raised and the sheriff decides that the challenge has sufficient basis to be considered.

# ANNEX A

## CONSOLIDATED LEGISLATION

### Housing (Scotland) Act 2001 – Section 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,

(aa) whether or not paragraph (a) applies, that–

- (i) the landlord has a ground for recovery of possession set out in paragraph 2 of that schedule and so specified, and
- (ii) the landlord served the notice under section 14(2) before the day which is 12 months after–
  - (A) the day on which the person was convicted of the offence forming the ground for recovery of possession, or
  - (B) where that conviction was appealed, the day on which the appeal is dismissed or abandoned,

(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.

(3A) Subsection (2) does not affect any other rights that the tenant may have by virtue of any other enactment or rule of law.

(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.



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