

# **Housing (Scotland) Bill - Introduction of Pre-Action Requirements**

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## Background

- PARs introduced in Home Owner & Debtor Protection (Scotland) Act 2010 for mortgage repossession actions
- Do homeowners have greater level of protection than tenants against court action and losing home?
- Section 142C of Housing (Scotland) Bill amends Section 14 of Housing (Scotland) Act 2001

## Aims

- Build on existing good practice by social landlords
- Guide social landlords towards greater degree of consistency
- Avoid court actions being used as rent management
- Facilitate discussion between landlord and tenant at early stage
- Resolve issues of rent arrears without court actions being raised
- Reduce number of court actions raised
- Guide courts towards greater degree of consistency

## In Practice – Pre-Court Action

- Only applies to cases where ground of possession is rent arrears
- Notice of Proceedings cannot be issued unless landlord has complied with PARs
- Court action cannot be raised unless landlord confirms to court has complied with PARs

## Pre- Action Requirements

- Landlord must provide tenant with clear information about terms of tenancy agreement, outstanding rent and any other outstanding financial obligation
- Landlord must make reasonable efforts to provide tenant with advice and assistance on tenant's eligibility to receive housing benefit and other financial assistance
- Landlord must provide tenant with information about sources of advice and assistance in relation to debt management
- Landlord must make reasonable efforts to agree with tenant a reasonable payment plan to include future and outstanding rent

## Pre-Action Requirements (Cont)

- Landlord must not serve NOP if outstanding housing benefit application is, in opinion of landlord, likely to result in benefit being paid at a level allowing tenant to pay or reduce, by an amount acceptable to the landlord, the outstanding rent; or
- Tenant is taking steps which, in opinion of landlord, are likely to result in payment of rent within a reasonable period of time; or
- Tenant is complying with a payment agreement

## Pre-Action Requirements (Cont)

- Landlord, if not local authority, must encourage tenant to contact local authority in whose area the property is situated
- Landlord must have regard to guidance issued by Scottish Ministers
- May be secondary legislation to expand on PARs

## In Practice – Raising Court Action

- When summons lodged landlord must confirm having complied with PARs
- Tenant should receive copy summons and copy certificate of compliance
- Actions will continue to call for first hearing on calling date



## In Practice – Court Hearing

- Sheriff should look into and consider whether PARs complied with, whether or not tenant is present
- Reasonableness test still applies
- PARs add to existing process – 2 distinct issues to be considered by Sheriff
- PARs not a fast track to decree of eviction
- Remaining court procedure unchanged

## Implementation

- Secondary legislation to be drafted
- Scottish Ministers guidance to be drafted
- Social landlords can consider and revise existing policies and practices
- Transitional arrangements when Act implemented