



# Action for Recovery of Possession Procedure

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<b>Owner:</b>	Fiona Ross	<b>Job Title:</b>	Head of Housing Services
<b>To be issued to:</b>		Housing and Property Staff	
<b>Method of Delivery:</b>		Email Procedure	

## Version Control

Date	Owner	Version	Reason for Change
Nov 2020	Fiona Ross	V3.0	3 yearly review

## Summary of Changes

Section	Change
All	Change to new format
Throughout	Roles of Housing Services Assistant (HSA) and Senior Housing Services (SHSO) added in. Maintenance Officer (MO) changed to Property Officer (PO)
S2.1	New section– provides information about the pre-action requirements
S2.2	Information added about “ish” dates
S2.7-2.8	Recommendation to Sub-Committee – removed. We only evict when we have to and on average this is 1 or less tenants/annum. We do not approach this lightly and therefore we do not think that a Sub should recommend that we do not proceed with an eviction

# Action for Recovery of Possession Procedure

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## 1.0 Introduction

This procedure describes:

- How we will initiate legal action for recovery of possession of a property, on any of the grounds listed in the Housing (Scotland) Act 2001, for Ark housing tenants;
- How we will carry out an eviction;
- The action we will take following the granting of a decree for possession by the Sheriff Court, where we decide not to proceed with the eviction.

The most common reasons for seeking a decree for possession will be the non-payment of rent or serious anti-social behaviour. Under the Act there are a total of 15 grounds on which action can be taken. We will ensure that we clearly specify which ground(s) we are basing our action on, in any communication with the tenant.

We will only consider legal action as a last resort. Even after starting legal action we will maintain contact with the tenant, seeking to achieve a satisfactory resolution of the issues before the case reaches court to avoid the ultimate sanction of eviction.

## 2.0 Starting Legal Action

### 2.1 Pre-Action Requirements

If Ark wants to evict a tenant because of rent arrears we have to follow a set of pre-action requirements before we can start any eviction action. The steps we must follow are as follows:

- **give the tenant clear information** – about the terms of their tenancy agreement, the rent they pay, or any other cost they owe Ark;
- **offer the tenant help and advice** – we have to make reasonable efforts to give the tenant help and advice regarding housing benefit or other forms of financial help;
- **help the tenant with debt management** – we should give the tenant information on where to get help with managing their debts;
- **Try to agree a payment plan** – we should try to agree a payment plan with the tenant.

Ark should not start an eviction action before considering the following:

- **any housing benefit/universal credit housing cost applications** – and whether this will help the tenant to pay off their arrears;

- **the tenants actions** - steps that the tenant is taking which could result in them paying off their arrears in a reasonable time;
- **any payment plan** - whether the tenant is sticking to the terms of any agreed repayment plan;
- **Encourage the tenant to contact the council** - Ark should make the tenant aware of what help is available from their council.

## 2.2 Notice of Proceedings

When legal action has to be initiated, the Housing Services Officer (HSO) will issue the tenant, and any other qualifying occupier, with the appropriate Notice of Proceedings (NOP) and explanatory notes depending on whether the notice is to be served due to rent arrears with the requirement to detail the pre-action requirements that have been taken (Appendix 1) or any other reason (Appendix 2). Particular attention needs to be paid to the appropriate guidance regarding 'ish' dates (Appendix 3).

The HSO will ensure that the relevant ground for seeking a decree, as specified in the Housing (Scotland) Act 2001, is entered on the NOP together with any other details

The guidance notes must provide an explanation of the court process in cases where a streamlined eviction process is used; and this will ensure that the court no longer has to consider whether it is reasonable to make an order for eviction in cases where the landlord has a ground for recovery of possession set out in the guidance note.

The HSO will arrange for the NOP to be hand delivered by:

- Two members of staff, including Care and Support staff in the local area, who will complete the Record of Delivery form for retention by the HSO (Appendix 4); or
- Sheriff Officers if two members of staff cannot be present to deliver the notice,

The NOP may also be served by Recorded Delivery, where the HSO assesses that the tenant will be present to sign for it, or will be willing to collect it from their local Post Office.

Sheriff Officers will be instructed by either the HSO, or by Ark's solicitors. The HSO will receive email confirmation that the NOP has been delivered. The HSO will ensure the notes in the Housing Management System are updated.

The NOP will be valid for a period of 6 months starting from a specified date, which is usually 1 month after the date it is delivered. If no further action is taken within that time the NOP will lapse

After the NOP expires, a further NOP must be issued before any application to the Sheriff Court can be made.

At the same time as issuing the NOP the HSO will send the relevant local authority a 'Section 11' notice (Appendix 5) to advise them of the action which may result in the eviction of the tenant and their household.

If the NOP was delivered by Sheriff Officers, whoever instructed them (the HSO or our solicitors) will issue the Section 11 notice to the local authority.

### 2.3 Court Action

Once the decision to proceed with court action is confirmed, the HSO will write to the tenant to advise them of the main reason(s) for the decision, e.g. they have made no attempt to reduce their arrears or change their anti-social behaviour, or they have failed to keep to an agreed payment arrangement etc.

The HSO will provide Ark's solicitors with the required information to enable them to lodge an application for a decree for recovery of possession. Depending on the tenant's location, Ark's solicitors may act through local agents.

When a date for court action has been set, the solicitors will serve the relevant papers on the tenant and will email the HSO. Ark's solicitors will notify the local authority in which the tenant lives that court proceedings are being taken to recover possession of the property. The HSO will notify the Senior Housing Services Officer (SHSO) and Head of Housing Services (HoHS) and ensure all notes on the Housing Management System are updated. The HSO will confirm to the tenant that they have been advised of the court date, and will use the contact as another opportunity to resolve the issue, e.g. by agreeing an acceptable payment arrangement with the tenant if they owe arrears of rent.

When the case calls in court there will be four possible outcomes:

- a) The case can be **dismissed** if the issue has been resolved, e.g. the arrears have been cleared.
- b) The case can be **continued**, e.g. to monitor a payment arrangement that has been agreed, normally where the arrangement aims to pay off the arrears within several weeks.
- c) The case can be **sisted**, e.g. where a payment arrangement over a longer period is being followed successfully.

- d) A **decree for possession** can be requested, e.g. if the tenant has made no attempt to resolve the issue.

### 3.0 Action Following Court Decision

Ark's solicitors will normally confirm the decision to the HSO or HoHS within 1 or 2 days of the Sheriff's decision. The HSO will confirm and update the SHSO and Housing Services Assistant (HSA) of the outcome.

#### 3.1 Initial Contact and Follow-up with Tenant

Where the tenant is still occupying the property the HSO will attempt to contact the tenant by email and / or phone.

If a decree has been awarded, the HSO will advise the tenant that if the issue is not resolved, Ark will proceed with the eviction and repossession of the property.

Where the case is continued or sisted, the HSO will advise that if the tenant fails to adhere to any arrangement or agreement, the case will be recalled at court and a decree sought.

The HSO will follow up by writing to confirm the position and potential action.

#### 3.2 Action Following Receipt of Decree

Depending on the location, the extract decree will normally be received between 2 – 4 weeks following the court hearing, with a specified date from which it can be actioned.

During the period from decree being granted and the date of action, the HSO will seek to maintain contact with the tenant, aiming to resolve the issue to avoid eviction. The HSO will record details of all contacts on the Housing Management System.

Following receipt of the decree, the HSO will write to the tenant to advise that their tenancy has ended with effect from the date the decree was granted and that, pending an eviction date being set, any payments they make will be recorded as payments toward their arrears and will not be recorded as rent.

Receipts will be issued by the HSA for any payments received after the tenancy end date. The HSA will ensure that any payments received are **not** recorded as rent, as this will have the effect of creating a new tenancy.

### 3.3 Eviction Postponed or Cancelled

If the tenant makes contact before the eviction date, the HSO should make it clear that all arrears must be cleared to prevent the eviction. If arrears are cleared in full, the HSO will submit a recommendation to the HoHS via email that the eviction should be postponed or cancelled.

Following the HoHS's decision, a note of the recommendation and decision will be added to the Housing Management system and saved copy of all documents to the relevant tenancy file on the server.

**[Note:** Even if a satisfactory payment arrangement is kept to, we may still choose to proceed with the eviction if there are other serious negative factors relating to the tenancy.]

If the arrears are paid in full and/or any other issues are resolved satisfactorily the HoHS may approve the granting of a new tenancy. If this decision is made, the HSO will liaise with the tenant to finalise the signing of a new Tenancy Agreement etc. in accordance with current procedures.

### 3.4 Proceeding with Eviction

If the tenant does not respond, or if any agreement to clear the arrears is not adhered to, Ark will proceed with eviction.

Once a date for eviction has been agreed the HSO will:

- arrange for the attendance of Sheriff Officers, the Property Officer (PO) and a joiner to carry out a lock change;
- write to the tenant to advise them of the eviction date and time, and if appropriate advise that they may still have an opportunity to prevent the eviction if they pay the arrears due in full before the eviction date;
- Advise the appropriate Council Homeless section of the proposed date and time for the eviction.

If the HSO believes that an occupant of the property may pose a risk to any officer in attendance at the eviction, they must advise the Police of the time and place, and request their attendance.

The Sheriff Officers should be the first people to enter the property. If it appears that the property has been vacated, the joiner in attendance will force access to allow entry. The joiner will change the locks and give the keys to the PO.

Following the eviction, the HSO and PO will record the condition of the property, taking photographs as required. If there are items of furniture or other personal possessions remaining, a decision will be taken on their storage or disposal, depending on their assessed value. A full inventory of the items in the property and the decision to dispose or store must be kept and saved to the former tenancy file on the server.

### 3.5 Rent Arrears – Payment at Eviction

If the tenant offers to pay the arrears at the time of eviction, the HSO will discuss the amount and terms in which the tenant is proposing. The HSO will contact the SHSO or HoHS to discuss and make a final decision. If the amount the tenant is proposing to pay is acceptable and can be paid immediately, the eviction may be postponed or cancelled.

If the amount offered is unacceptable or the tenant cannot demonstrate how they are going to pay then the eviction must go ahead.

## 4.0 Implementation and Review

### 4.1 Implementation

The Head of Housing Services is responsible for ensuring that this procedure is implemented.

### 4.2 Review

The Head of Housing Services will ensure that this procedure is reviewed at least every 3 years.



## Appendix 1 - Notice of Possession (Rent Arrears)

SCHEDULE 2 Regulation 3(2)

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

(a) This notice is to inform you, **TENANTS NAME** that Ark Housing Association being the landlord of the dwellinghouse at **ADDRESS** may, at any time during the period of 6 months beginning on **DATE** (see Guidance Notes), raise proceedings for possession of that dwellinghouse on the following ground(s):

Grounds for NOP to be stipulated

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 **AMOUNT** and for the following additional reasons (if any):

ADDITIONAL REASONS

(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.

[Text for all notices other than on ground 2:

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 all the specific criteria set out in section 16 of the Housing (Scotland) Act 2001 which are broadly as follows:

- the nature, frequency and duration of the conduct leading to the eviction proceedings;
- how far the tenant was personally responsible for the conduct leading to the eviction proceedings or whether it was the consequence of acts or omissions by others;
- the effect of the conduct on others, for example whether there are serious adverse consequences for other local residents; and
- whether the landlord has considered and, if appropriate, tried other courses of action to stop the conduct before opting for eviction.

The sheriff may decide not to grant a possession order, or may delay the decision or impose conditions which must be complied with. If a possession order is granted, the landlord will be able to evict you. If the landlord evicts you, it will not be under any obligation to re-house you. You should not assume that you will be entitled to be re-housed by the landlord or a local authority.]\*

[Text for all notices including ground 2:

If this notice is served on you before the day which is 12 months after-

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

and the landlord does take court action for possession then the sheriff will be concerned whether the facts of the case are correct and whether you have any other rights. If satisfied, the sheriff must grant a possession order.

If this notice is served on you on or after that day then the sheriff will not only be concerned whether the facts of the case are correct but also 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 all the specific criteria set out in section 16 of the Housing (Scotland) Act 2001 which are broadly as follows:

- the nature, frequency and duration of the conduct for which the tenant, a person residing or lodging with them or a subtenant has been convicted;

- how far the tenant was personally responsible for the conduct leading to the eviction proceedings or whether it was the consequence of acts or omissions by others;
- the effect of the conduct on others, for example whether there are serious adverse consequences for other local residents; and
- Whether the landlord has considered and, if appropriate, tried other courses of action to stop the conduct before opting for eviction.

The sheriff may decide not to grant a possession order, or may delay the decision or impose conditions which must be complied with. If a possession order is granted, the landlord will be able to evict you. If the landlord evicts you, it will not be under any obligation to re-house you. You should not assume that you will be entitled to be re-housed by the landlord or a local authority.]\*;

\* Delete where not applicable

## Appendix 2 - Notice of Possession (Other Grounds)

HOUSING (SCOTLAND) ACT 2001 – SECTION 14

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

This notice is to inform you, # (*Tenant/Qualifying Occupier*), that # Housing Association Limited being the landlord of the dwellinghouse at # 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):

### Ground 1

Rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy has been broken.

### Ground 2

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.

### Ground 3

(1)The condition of the house or of any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant (or any one of joint tenants) or any person residing or lodging with, or any subtenant of, the tenant; and in the case of acts of waste by, or the neglect or default of, a person residing or lodging with, or subtenant of, a tenant, the tenant has not, before the making of the order in question, taken such steps as the tenant ought reasonably to have taken for the removal of that person.

(2)In sub-paragraph (1), “the common parts” means any part of a building containing the house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other houses.

#### Ground 4

The condition of any furniture provided for use under the tenancy, or for use in any of the common parts (within the meaning given in paragraph 3(2)), has deteriorated owing to ill-treatment by the tenant (or any one of joint tenants) or any person residing or lodging with, or any subtenant of, the tenant; and in the case of ill-treatment by a person residing or lodging with, or subtenant of, a tenant, the tenant has not, before the making of the order in question, taken such steps as the tenant ought reasonably to have taken for the removal of that person.

#### Ground 5

The tenant and—

(a) The tenant's spouse or civil partner, or

(b) any person with whom the tenant has, for a period of at least 6 months immediately prior to the commencement of the period referred to below, been living in the house as husband and wife or in a relationship which has the characteristics of the relationship between civil partners,

have been absent from the house without reasonable cause for a continuous period exceeding 6 months or have ceased to occupy the house as their principal home.

#### Ground 6

The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by the tenant.

#### Ground 7

(1) The tenant (or any one of joint tenants), a person residing or lodging in the house with, or any subtenant of, the tenant, or a person visiting the house has—

(a) acted in an anti-social manner in relation to a person residing in, visiting or otherwise engaged in lawful activity in the locality, or

(b) pursued a course of conduct amounting to harassment of such a person, or a course of conduct which is otherwise anti-social conduct in relation to such a person,

and it is not reasonable in all the circumstances that the landlord should be required to make other accommodation available to the tenant.

(2) In sub-paragraph (1)—

- "anti-social", in relation to an action or course of conduct, means causing or likely to cause alarm, distress, nuisance or annoyance,
- "conduct" includes speech, and a course of conduct must involve conduct on at least two occasions,
- "harassment" is to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40).



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

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

# detail breach of tenancy/ clauses/ ASB/ conviction etc

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

Signed:

Date:

# use guidance notes as required tenant/qualifying occupier

GUIDANCE NOTES

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

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

The date given in the notice is the earliest date on which the landlord can start court action for possession. After that date the landlord is allowed to start court action at any time during the following 6 months. If the landlord does not start court action in that 6 month period they would have to serve another one of these notices on you before they could start court action. The law sets out the grounds on which the sheriff may order recovery of possession of your house. The landlord has explained in the notice the reason or reasons why they are considering taking court action and which paragraph(s) of Part 1 of schedule 2 to the Housing (Scotland) Act 2001 applies/apply.

Text for all notices to a tenant:

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

Text for all notices on ground 2:

If this notice is served on you before the day which is 12 months after—

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

and the landlord does take court action for possession then the sheriff will be concerned whether the facts of the case are correct and whether you have any other rights. If satisfied, the sheriff must grant a possession order.

If this notice is served on you on or after that day, then the sheriff will not only be concerned whether the facts of the case are correct but also 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 all the specific criteria set out in section 16 of the Housing (Scotland) Act 2001, which are broadly as follows:

- the nature, frequency and duration of the conduct for which the tenant, a person residing or lodging with them or a subtenant has been convicted;
- how far the tenant was personally responsible for the conduct leading to the eviction proceedings or whether it was the consequence of acts or omissions by others;
- the effect of the conduct on others, for example whether there are serious adverse consequences for other local residents; and
- whether the landlord has considered and, if appropriate, tried other courses of action to stop the conduct before opting for eviction.

The sheriff may decide not to grant a possession order, or may delay the decision or impose conditions which must be complied with. If a possession order is granted, the landlord will be able to evict you. If the landlord evicts you, it will not be under any obligation to re-house you. You should not assume that you will be entitled to be re-housed by the landlord or a local authority.

[Text for all notices on grounds 1 and 3 to 7:

If the landlord does take court action for possession, the sheriff will be concerned with whether the facts of the case are correct and if so, whether it is reasonable that you should be evicted. In deciding whether it is reasonable, the sheriff must take into account all the circumstances of the case. The sheriff must also take into account all the specific criteria set out in section 16 of the Housing (Scotland) Act 2001, which are broadly as follows:

- the nature, frequency and duration of the conduct leading to the eviction proceedings;
- 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;
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- whether the landlord has considered and, if appropriate, tried other courses of action to stop the conduct before opting for eviction.

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

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Text for all notices to a qualifying occupier:

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

Text for all notices on ground 2:

If this notice is served on you before the day which is 12 months after—

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

and the landlord does take court action for possession then the sheriff will be concerned whether the facts of the case are correct and whether you have any other rights. If satisfied, the sheriff must grant a possession order.

If this notice is served on you on or after that day, then the sheriff will not only be concerned whether the facts of the case are correct but also 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 all the specific criteria set out in section 16 of the Housing (Scotland) Act 2001, which are broadly as follows:

- the nature, frequency and duration of the conduct for which the tenant, a person residing or lodging with them or a subtenant has been convicted;
- how far the tenant was personally responsible for the conduct leading to the eviction proceedings or whether it was the consequence of acts or omissions by others;
- the effect of the conduct on others, for example whether there are serious adverse consequences for other local residents; and
- whether the landlord has considered and, if appropriate, tried other courses of action to stop the conduct before opting for eviction.

The sheriff may decide not to grant a possession order, or may delay the decision or impose conditions which must be complied with. If a possession order is granted, the landlord will be able to evict you. If the landlord evicts you, it will not be under any obligation to re-house you. You should not assume that you will be entitled to be re-housed by the landlord or a local authority.

[Text for all notices on grounds 1 and 3 to 7:

If the landlord does take court action for possession, the sheriff will be concerned with whether the facts of the case are correct and if so, whether it is reasonable that you should be evicted. In deciding whether it is reasonable, the sheriff must take into account all the circumstances of the case. The sheriff must also take into account all the specific criteria set out in section 16 of the Housing (Scotland) Act 2001, which are broadly as follows:

- the nature, frequency and duration of the conduct leading to the eviction proceedings;
- how far the tenant was personally responsible for the conduct leading to the eviction proceedings or whether it was the consequence of acts or omissions by others;
- the effect of the conduct on others, for example whether there are serious adverse consequences for other local residents; and
- whether the landlord has considered and, if appropriate, tried other courses of action to stop the conduct before opting for eviction.

The sheriff may decide not to grant a possession order, or may delay the decision or impose conditions which must be complied with. If a possession order is granted, the landlord will be able to evict you. If the landlord evicts you, it will not be under any obligation to re-house you. You should not assume that you will be entitled to be re-housed by the landlord or a local authority.]\*”.

## Appendix 3 - Notice of Possession Guidance

### NOP Dates - TC Young, May 2020

#### **What is the tenancy 'ish'?**

Every tenancy agreement will specify a term. This is usually stipulated at the start of the tenancy agreement. Tenancies usually operate for an initial specified period of time, then continue on a monthly/weekly/4-weekly period thereafter. The 'ish' date is the date on which the tenancy continues or renews.

#### **For example,**

"Clause 1.4 - The tenancy will start on *23 February 2019* (the entry date). This is regardless of the date on which the tenancy agreement was signed. This Agreement will continue from the entry date until *28 February 2019* and after that on a calendar monthly basis."

In this example, the initial term of the tenancy is until the 28th of the month. Thereafter, the tenancy continues on a calendar monthly basis from the 28th of each month. Therefore, the ish of the tenancy is the 28th of the month as that is the date the tenancy renews.

#### **The NOP live date and service**

Every Notice of Proceedings will specify a date by which court action can be raised- we call this a 'live' date. Court action can only be raised in the 6 month period following this live date.

Section 14(4)(b) of the Housing (Scotland) Act 2001 stipulates that the live date on Notice of Proceedings must be :

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

This means that:

- 1) the Notice must be served at least 4 weeks before the live date; **and**
- 2) the live date must coincide with (or be later than) than the tenancy ish date.

It's important to remember that 4 weeks in this situation means **28 clear** days. There needs to be 28 clear days between service of the NOP and the NOP live date.

#### **Example 1:**

The tenancy ish is the 28th of the month.

A Notice is served on 24 February 2019 with a live date of 28 March 2019.

This situation meets legislative requirements as there are 28 clear days between the date of service and the live date **and** the live date is not earlier than the ish.

**Example 2:**

The tenancy ish is the 28th of the month.

A notice is served on 24 February 2019 with a live date of 25 March 2019.

There is an issue with the live date here. Whilst 28 days' notice has been given, the live date used is earlier than the ish. Remember that both 4 weeks' notice and a live date coinciding with (or being later than) the ish date is required.

**Example 3:**

The tenancy ish is the 28th of the month.

A notice is served on 31 January 2019 with a live date of 28 February 2019.

There is an issue with the live date here. Whilst the live date coincides with the ish date, the notice period does not provide 28 **clear** days.

**Why it's important to get it right**

If the NOP does not contain a live date in line with the timescales set out in the legislation, this can form the basis of a challenge in any subsequent court action.

The tenant's solicitor can argue that the tenant was not provided with sufficient notice and, therefore, the NOP is incompetent and invalid. As a result, the whole court action can fall and incur non-recoverable expenses for the Association. In such a situation, the NOP will need to be served again and the process restarted.



## Appendix 4 - Record of Delivery Form

NOTICE OF POSSESSION RECORD OF DELIVERY

NAME AND ADDRESS OF TENANT/ QUALIFYING OCCUPIER

Hand Delivered by (Name):

Designation: Housing Services Officer

Signature: .....

Date: .....

Witnessed by (Name):

Designation: Maintenance Officer

Signature: .....

Date: .....

## Appendix 5 - Section 11 Notice for Local Authority

HOMELESSNESS ETC (SCOTLAND) ACT 2003

SECTION 11 NOTICE BY LANDLORD OF PROCEEDINGS FOR POSSESSION

To: **AREA** Council

Take note that proceedings have been raised as detailed below.

Name and address of landlord who has raised proceedings: **Ark Housing Association Limited**, the Priory, Canaan Lane, Edinburgh, EH10 4SG

Name and address of landlord's legal representatives: T C Young, Melrose House, 69a George Street, Edinburgh, EH2 2JG

Contact telephone number of landlord: 0131 478 8146

Landlord registration reference: Not applicable

Name of tenant/s against whom proceedings have been raised: **Name of Tenant**

Full postal address of property that is the subject of proceedings: **Address of tenant**

Start date of the tenancy: **Date**

Date of raising of proceedings: **Date**

Court in which proceedings raised: **Town Sheriff Court**

The legislation under which proceedings are being notified: Box No: 3 below

(Various statutes require notice to be given to a local authority where a landlord has raised proceedings for possession of a house. The table below lists some of the legislation under which such proceedings might be raise for possession of a house; please tick in the appropriate box below which describes the proceedings you have raised)

(1)	Section 12A(1) (notice to local authority of proceedings for possession of a dwelling-house let on a protected tenancy or subject to a statutory tenancy) of the Rent (Scotland) Act 1984 (c.58). <i>Tick this box if you have raised proceedings to recover possession of a dwellinghouse let on a protected tenancy or subject to a statutory tenancy.</i>
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(2)	Section 19A(1) (notice to local authority of proceedings for possession of a house let on an assured tenancy) of the Housing (Scotland) 1988 (c.43). <i>Tick this box if you have raised proceedings to recover possession of a dwellinghouse let on an assured tenancy.</i>
(3)	Section 14(5A) (notice to local authority of proceedings for possession of a house let on a Scottish secure tenancy) of the Housing (Scotland) Act 2001 (asp 10). <i>Tick this box if you have raised proceedings to recover possession of a dwellinghouse let on a Scottish secure tenancy.</i>
(4)	Section 36(6A) (notice to local authority of proceedings for possession of a house let on short Scottish secure tenancy) of the Housing (Scotland) Act 2001 (asp 10). <i>Tick this box if you have raised proceedings to recover possession of a dwellinghouse let on a short Scottish secure tenancy).</i>
(5)	Other proceedings for possession of a dwellinghouse. Tick this box if you have raised proceedings to recover possession of a dwellinghouse and none of the above boxes are appropriate. For these purposes a dwellinghouse is any building or part of a building, which is occupied or intended to be occupied as a separate dwelling, and in particular includes a flat.