POLICY NOTE

THE REMOVING FROM HERITABLE PROPERTY (FORM OF CHARGE) AMENDMENT (SCOTLAND) REGULATIONS 2025

SSI 2025/402

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 216(6) of the Bankruptcy and Diligence etc. (Scotland) Act 2007(**1**) and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

These Regulations provide a Form of Charge for recovery of possession, or termination of a joint tenant's interest, on grounds of domestic abuse.

Policy Objectives

The overarching policy objectives of Part 2 of the Domestic Abuse (Protection) (Scotland) Act 2021 are to to improve the immediate and longer term housing outcomes of domestic abuse victims living in social housing who wish to continue living in the family home, including through helping to avoid homelessness.

These Regulations amend the Removing from Heritable Property (Form of Charge) (Scotland) Regulations 2011 which prescribe the Form of Charge required to be served by an officer of the court before removing a person from heritable property by virtue of a court decree or warrant. The Regulations provide a specific Form of Charge for recovery of possession, or termination of a joint tenant's interest, on grounds of domestic abuse.

The new Form of Charge prescribed by these Regulations makes it clear that the defender is only charged with removing others who derive a right from them to occupy the premises if those others are named in the decree. This differs from the existing Form of Charge which charges the defender to remove any sub-tenants, dependants and others deriving a right to occupy the premises from them. The new Form of Charge is necessary where decrees are granted on the ground set out in paragraph 15A of schedule 2 of the 2001 Act to ensure that the defender is not charged with removing their partner or ex-partner and any children who will be remaining in the property.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Removing from Heritable Property (Form of Charge) Amendment (Scotland) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

(**1**) 2007 asp 3. Section 216 is amended by section 152(3) of the Housing Scotland Act 2010 (asp 17), by paragraph 24 of schedule 4 of the Public Services Reform (Scotland) Act 2010 (asp 8), by paragraph 10 of schedule 4 of the Private Housing (Tenancies) (Scotland) Act 2016 (asp 19), by paragraph 92 of schedule 5 of the Criminal Finances Act 2017, and by paragraph 4 of regulation 6 of S.S.I. 2019/51.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

We have consulted with key stakeholders including the Chartered Institute of Housing, Scotland, the Society of Local Authority Lawyers and Administrators, the Scottish Courts and Tribunals Service, Scottish Women's Aid and a small number of social landlords on a draft of these regulations. No changes were subsequently proposed by these stakeholders to these draft regulations.

Impact Assessments

A range of impact assessments were carried out for the Domestic Abuse (Protection) (Scotland) Bill 2020 including an Equality Impact Assessment and a Child Rights and Wellbeing Impact Assessment. The impacts as set out in these assessments remain relevant and we are not publishing updated assessments, other than for Child Rights and Wellbeing Impact Assessment at this time.

Financial Effects

The Cabinet Secretary for Housing confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Better Homes Directorate

9 December 2025