

Social Justice and Social Security Committee  
Thursday 29 January 2026  
4th Meeting, 2026 (Session 6)

## Note by the Clerk on the Removing from Heritable Property (Form of Charge) Amendment (Scotland) Regulations 2025 (SSI 2025/402)

### Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 11 February 2026. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

**Title of instrument:** [The Removing from Heritable Property \(Form of Charge\) Amendment \(Scotland\) Regulations 2025](#)

**Laid under:** Bankruptcy and Diligence etc. (Scotland) Act 2007

**Laid on:** 18 December 2025

**Procedure:** Negative

**Deadline for committee consideration:** 9 February 2026

**Deadline for Chamber consideration:** 11 February 2026

**Commencement:** 1 August 2026

### Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).
6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

## **Delegated Powers and Law Reform Committee consideration**

7. The DPLR Committee considered the instrument on [13 January 2026](#) and reported on it in its [6th Report, 2026](#). The Committee made no recommendations in relation to the instrument.

## **Purpose of the instrument**

8. These Regulations amend the Removing from Heritable Property (Form of Charge) (Scotland) Regulations 2011 governing the Form of Charge used to remove individuals from heritable property. They introduce a specific Form of Charge for cases involving recovery of possession or termination of a joint tenant's interest on domestic abuse grounds.
9. 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 Housing (Scotland) Act 2001 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.
10. The [Policy Note](#) accompanying the instrument is included in Annexe A. No formal consultation was required to be carried out in relation to these Regulations.

## **Committee consideration**

11. So far, no motion recommending annulment has been lodged.
12. The Cabinet Secretary for Housing is attending the meeting to give evidence on this instrument.
13. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
  - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or

- inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

14. If Members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
15. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

**Clerks to the Committee**  
**January 2026**

## 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<sup>(1)</sup> 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 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.

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<sup>1</sup> 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.

## **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.

## **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