

POLICY NOTE

THE HOUSING (SCOTLAND) ACT 2014 (COMMENCEMENT NO.8, SAVINGS, TRANSITIONAL AND SUPPLEMENTAL PROVISIONS) ORDER 2018

SSI 2018/153 (C. 14)

The above instrument was made in exercise of the powers conferred by sections 102(1) and 104(3) and (5) of the Housing (Scotland) Act 2014 (“the 2014 Act”) and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Background

The 2014 Act received Royal Assent on 1 August 2014. This Order forms part of the implementation package for Part 2 of the 2014 Act, which concerns social housing. This Order brings into force the provisions of Part 2, so far as not already in force. Some provisions were commenced previously, for the purposes of allowing Scottish Ministers to consult on and issue guidance. This Order also commences the provision in section 99 in Part 7 of the 2014 Act which repeals the defective designation provisions in Part 14 of the Housing (Scotland) Act 1987. This Order also makes savings, transitional and supplemental provisions.

Policy Objectives

The overarching policy objectives of Part 2 of the 2014 Act are to allow more flexibility in social housing allocations and management, to enable landlords to make the best use of their housing and to give landlords more tools to tackle antisocial behaviour. The policy objectives of this Order are to commence Part 2 of the 2014 Act, where not already commenced, and to provide a smooth transition between the previous legislation and the revised legislation introduced by the 2014 Act.

The policy objective of the repeal in section 99 in Part 7 of the 2014 Act is to remove an obsolete provision.

Appointed Day

This Order commences section 99 on 30 July 2018.

This Order commences sections 3-6 on 1 May 2019. The period between the Order coming into force and the provisions in the 2014 Act coming into force will give social landlords time to review their allocation policies, consult certain groups such as applicants and tenants, which they are required to do, and make any amendments to their allocation policies before the new provisions come into force.

This Order also commences sections 7-11 and 14 and 15 on 1 May 2019. The period between the Order coming into force and the provisions in the 2014 Act coming into force will give social landlords and other stakeholders enough time to prepare for the changes being introduced by the legislation. This will include landlords amending their policies and procedures to take account of the new provisions and changing certain current statutory notice forms for Scottish secure and short Scottish secure tenancies on their IT systems.

This Order commences sections 12 and 13, which sections relate to assignment, subletting, joint tenancies and succession, from 1 November 2019.

Saving Provision: sections 7(4)(b), 9(1) and (2), 10 and 11(d) of the 2014 Act

Article 3 allows for the transition between the legislation in place before 1 May 2019 and the legislation in force from 1 May 2019 onwards. Where a notice for a short Scottish secure tenancy is served under section 34(4) of the Housing (Scotland) Act 2001 (“the 2001 Act”) prior to 1 May 2019, sections 7(4)(b), 9(1) and (2), 10 and 11(d) of the 2014 Act will not apply and the terms of that short Scottish secure tenancy will be those that were in place at the time the notice was issued, even if the short Scottish secure tenancy itself is granted on or after 1 May 2019.

Saving Provision: section 11(a) and (b) of the 2014 Act

Article 4 makes provision for the transition between the legislation in place before 1 May 2019 and the legislation from 1 May 2019. Where a landlord serves a notice under section 36(2) of the 2001 Act, seeking recovery of possession of a house let under a short Scottish secure tenancy prior to 1 May 2019 the amendments made by section 11(a) and (b) of the 2014 Act around the information to be provided in the notice, do not apply. This article ensures that an action for recovery of possession may be raised and proceed on the basis of such a notice. The requirement in section 36(2)(c) of the 2001 Act that the notice must be in force at the time the proceedings are raised still applies.

Saving Provision: sections 11(e) and (f), 14(2)(a) and 15 of the 2014 Act

Article 5 makes further provision for the transition between the legislation in place before 1 May 2019 and the legislation from 1 May 2019.

Where a landlord serves a notice under section 14(2)(a) of the 2001 Act, seeking recovery of possession of a house let under a short Scottish secure tenancy prior to 1 May 2019 the amendments made by section 11(e) and (f), 14(2)(a) and 15 of the 2014 Act will not apply.

The date to be specified by the landlord in the notice will be the date which applied at section 14(4)(b) of the 2001 Act prior to 1 May 2019. Article 5 ensures that an action for recovery of possession may be raised and proceed on the basis of such a notice. The requirement in section 14(2)(c) of the 2001 Act that the notice must be in force at the time the proceedings are raised still applies.

Section 14(2)(a) of the 2014 Act amends section 16 of the 2001 Act to remove a requirement that the court considers whether it is reasonable to make an order for eviction, in certain prescribed circumstances. The revised power is not available to the court where the notice of proceedings was served prior to 1 May 2019.

Section 15 of the 2014 Act amends paragraphs 11 and 12 of schedule 2 of the 2001 Act to allow landlords to seek recovery of possession of an adapted property where it has been allocated to persons who do not need the adaptation and where it is required for a person who does need the adaptation. Where a landlord seeks recovery of possession of a property in these circumstances, if the notice for recovery of possession is served prior to 1 May 2019

and is in force on the date court action is raised, the legislation in place prior to 1 May 2019 will apply to the recovery of possession process, even if the proceedings continue until or beyond 1 May 2019.

Transitional Provisions

Articles 6, 7 and 8 contain transitional provisions relating to notifying landlords of household members for the purposes of assignation, subletting, joint tenancies and succession.

Sections 12 and 13 of the 2014 Act amend the 2001 Act to introduce new residency requirements for assignation, subletting, joint tenancies and succession. In order to be eligible for certain rights, tenants, or in certain cases people living in the household, must have notified the landlord that an individual is living in the household, 12 months before the right can be exercised. Articles 6, 7 and 8 mean that any notification made to a landlord by the appropriate person before 1 November 2019 (the date sections 12 and 13 of the 2014 Act come into force) shall be accepted as valid.

Supplemental Provision

Article 12 requires social landlords to notify tenants with a Scottish secure tenancy or a short Scottish secure tenancy of the changes that will be made to their tenancy agreement as a result of the commencement of Part 2 of the 2014 Act. This notification must be made before 1 November 2018.

Consultation

There was extensive consultation on the policy objectives prior to the introduction of the Housing (Scotland) Bill 2013, in addition to the consideration of the relevant provisions during the passage of the Bill in 2014.

There has also been discussion with social landlords about the timescale for bringing the provisions into force, including the time required to amend their policies and processes prior to the legislation coming into force and the commencement dates reflect this.

The Scottish Government wrote to stakeholders on 19 October 2012 to seek their views on a repeal of Part 14 of the 1987 Act.

Impact Assessments

An Equality Impact Assessment (EQIA) was carried out on the social housing provisions in the Bill. It is not considered that the existing EQIA need be repeated for this Order. For the EQIA that was undertaken for the Bill, please see: <http://www.gov.scot/Publications/2013/11/8851>.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) on social housing was completed prior to the Bill's passage through the Scottish Parliament. No additional financial impact is foreseen as a consequence of this Order. For the BRIA that was undertaken for the Bill, please see:

<https://www.webarchive.org.uk/wayback/archive/20160411155202/http://www.gov.scot/Resource/0043/00437647.pdf> .

The impact of the repeal of the defective designation was considered in a separate BRIA. No immediate impact on mortgage lending is foreseen. The Scottish Government made a commitment to publish additional guidance for lenders and home owners to support decisions in connection to properties affected by the designation. This has been prepared in draft and will be published before the repeal of section 99 of the 2014 Act comes into effect. For the BRIA on this, please see: <http://www.gov.scot/Resource/0043/00438766.pdf>.

Scottish Government
Housing and Social Justice Directorate

14 May 2018