

CORONAVIRUS (SCOTLAND) ACT 2020

EXPLANATORY NOTES

DETAIL ABOUT PROVISIONS

Schedule 1 – eviction for dwelling-houses

Private residential tenancies: eviction grounds to be discretionary

18. Subparagraph 1 of paragraph 1 of schedule 1 provides that the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) applies, in relation to a notice to leave within the meaning of section 62 of the 2016 Act, as modified by paragraphs 1 and 2 of schedule 1 during the period that the Coronavirus (Scotland) Act 2020 is in force (“the relevant period”). Subparagraph 2 of paragraph 1 modifies paragraph 51(2) of the 2016 Act to provide that the grounds for eviction under schedule 3 of the 2016 Act are each to be made discretionary during the relevant period. Subparagraph (3) makes changes to existing mandatory grounds of eviction to enable the Tribunal to consider the reasonableness of making an eviction order in each case during the relevant period.

Private residential tenancies: extension of notice periods

19. Paragraph 2 provides that during the relevant period, the length of time that a landlord must give a tenant when issuing a notice to leave under paragraph 62 of the 2016 Act is extended. The exact length of notice will depend on the grounds for repossession used by the landlord.
20. Subparagraph (2) of paragraph 2 inserts new subsections (2), (3) and (3A) into section 54 of the 2016 Act during the relevant period. Accordingly, during the relevant period, the period of notice in relation to a notice to leave under the 2016 Act is either 28 days, three months or six months. The period begins on the day on which the tenant receives the notice from the landlord. Subparagraph (3) provides that if the only ground stated is that the tenant is not occupying the let property then the 28 days’ notice will apply.
21. In terms of subsection (3A), a notice period of 3 months applies if only a ground or grounds listed in that subsection are stated in the notice to leave or where a ground or grounds listed in that subsection are stated in the notice to leave alongside the ground that the tenant is not occupying the let property as their home. The grounds listed in subsection (3A) are that the property is being repossessed because the landlord or a family member intends to live in the let property; the tenant has a relevant conviction, engaged in antisocial behaviour, or the tenant associates with a person who has done so; the landlord is not registered with a relevant local authority or does not hold a House in Multiple Occupation license. Where neither subsection (3) nor (3A) applies, the notice period will be six months.
22. Subparagraph (3) of paragraph 2 substitutes section 64 of the 2016 during the relevant period. The substituted section 64 provides that with the exception of the references to six months in section 59 in the 2016 Act, any reference to a period of six months or three months in Part V of the 2016 Act means either the same day six months after the month in which it began or, if the month in which the period ends has no such day, the final

day of that month. For example if the start of the six month period was 4 February the last day of the six month period would be 4 August, and if the start date was 31 August the last day would be 28 or 29 February, depending on whether or not it was a leap year.

Assured tenancies: eviction grounds to be discretionary

23. Paragraph 3 modifies the Housing (Scotland) Act 1988 (“the 1988 Act”) during the relevant period and provides that a notice under section 19 (notice of proceedings for possession) of section 33(1)(d) (notice of recovery of possession of short assured tenancy) of that Act has effect as if the 1988 Act was modified in accordance with this paragraph.
24. Subparagraphs (2) and (3) of paragraph 3 make modifications to the 1988 Act to provide that during the relevant period the Tribunal is to consider the reasonableness of making an eviction order in relation to all grounds for repossession. Subparagraph 4 of paragraph 3 modifies section 33 of the 1988 Act in relation to recovery of possession on termination of a short assured tenancy to provide repossession is discretionary and that the Tribunal is to consider the reasonableness of making an eviction order in the relevant period.

Assured tenancies: extension of notice periods

25. Paragraph 4 modifies the Housing (Scotland) Act 1988 during the relevant period and provides that a notice under section 19 (notice of proceedings for possession) or section 33(1)(d) (notice of recovery of possession of short assured tenancy) of that Act has effect as if the 1998 Act was modified in accordance with this paragraph.
26. Subparagraph (2) of paragraph 4 modifies section 19 of the 1988 Act during the relevant period. In terms of the substituted section 19(4), the notice of proceedings for possession must be served two months, three months or, as the case may be, six months before proceedings commence. The minimum period of notice which will apply will depend on the grounds for repossession used by the landlord, as outlined in substituted section 19(4).
27. Subparagraph (3) of paragraph 4 modifies section 33 of the 1988 Act to provide that, during the relevant period, a notice of recovery of possession in relation to a short assured tenancy is required to be given to the tenant by the landlord at least six months before the Tribunal may make an order for possession.

Tenancies under the Rent (Scotland) Act 1984: eviction grounds to be discretionary

28. Paragraph 5 modifies the Rent (Scotland) Act 1984 (“the 1984 Act”) during the relevant period and provides that a notice under section 112 (notice to quit) of that Act has effect as if that Act was modified in accordance with this paragraph. Subparagraphs (2) to (4) make modifications to the 1984 Act to provide that during the relevant period the Tribunal is to consider the reasonableness of making an eviction order in relation to all grounds for repossession.

Tenancies under the Rent (Scotland) Act 1984: extension of notice periods

29. Paragraph 6 modifies the Rent (Scotland) Act 1984 during the relevant period and provides that a notice under section 112 (notice to quit) of that Act has effect as if that Act was modified in accordance with this paragraph.
30. Subparagraph (2) of paragraph 6 modifies section 14 of the 1984 Act during the relevant period to amend the time frame within which the landlord can make an application for repossession in relation to a short tenancy under the 1984 Act. Such an application can be made not less than six, nor more than nine, months after the landlord has served a notice of intention to apply for repossession.

*These notes relate to the Coronavirus (Scotland) Act
2020 (asp 7) which received Royal Assent on 6 April 2020*

31. Subparagraph (3) of paragraph 6 modifies section 112 of the 1984 Act during the relevant period. In terms of modified section 112, a notice to quit given by the landlord must be given to the tenant not less than the specified amount of time before the date on which it is to take effect. The specified amount of time depends and will be either 4 weeks, 3 months or 6 months depending on what basis the landlord issues the notice to quit, as outlined in new subsections (1A) to (1E), inserted into section 112 of the 1984 Act by subparagraph 3(b) of paragraph 6.

Scottish secure tenancies: extension of notice periods

32. Paragraph 7 sets out the provisions in the Housing (Scotland) Act 2001 (“the 2001 Act”) which are modified in relation to a notice of proceedings form issued under section 14(2)(a) or section 36(2)(a) of that Act during the relevant period.
33. Subparagraph (2) of paragraph 7 changes the earliest date that proceedings for recovery of possession can be raised under section 14(4)(b)(i) of the 2001 Act from 4 weeks from the date of service of the notice to a date calculated in accordance with subsections (4A), (4B) or (4C) subject to which section 14 of the 2001 Act is to have effect.
34. Subparagraph (2) provides that the 2001 Act is to be read as if a new subsection (4A) were inserted into section 14 of the 2001 Act during the relevant period. New subsection (4A) modifies the earliest date on which proceedings for recovery of possession can be raised from the current 4 weeks after the date a notice of proceedings is served to 3 months where the ground for recovery of possession is specified in paragraph 2, 6, 7 or 8 of schedule 2 of the 2001 Act. Where paragraph 5 of schedule 2 is also specified in the notice the earliest date proceedings can be raised is 3 months. It also has the effect of modifying the earliest date on which proceedings for recovery of possession can be raised from the current 4 weeks after the date a notice of proceedings is served to 6 months in cases where the ground for recovery of possession is set out in paragraph 1, 3, 4 or 9 to 12 of schedule 2 of the 2001 Act. The 6 month date applies whether or not any other grounds are also specified in the notice.
35. Subparagraph (3) of paragraph 7 modifies section 36 of the 2001 Act during the relevant period. It has the effect of modifying the earliest date that proceedings for recovery of possession can be raised under section 36 for short Scottish secure tenancies which are at the end of their term from the current 2 months to a date calculated in accordance with section 36(3A), (3B) and (3C) subject to which section 36 the 2001 Act is to have effect.
36. Subparagraph (3) provides that the 2001 Act is to be read as if a new subsection (3A) were inserted into section 36 and which modifies the date on which proceedings for recovery of possession can be raised from the current 2 weeks after the date a notice of proceedings is served to 6 months where the tenancy was given under one of the grounds at paragraphs 3 to 7A of schedule 6 of the 2001 Act. The date on which proceedings for recovery of possession can be raised for short Scottish secure tenancies given under section 35, or paragraphs 1, 2 or 2A of schedule 6 of the 2001 Act remains at 2 months.
37. Subparagraph (3) also modifies section 36(8) of the 2001 Act during the relevant period to provide that the date that proceedings for recovery of possession can be raised for a short Scottish secure tenancy when section 14(4) of the 2001 Act is being used to recover possession is equivalent to the timescales which apply in accordance with the modifications for Scottish secure tenancies.

Power to modify notice periods

38. Paragraph 8 provides a power for the Scottish Ministers, exercisable by negative procedure, to modify the length of any period of notice specified to apply during the relevant period. In exercising this power, the Scottish Ministers cannot specify a notice period which is longer than 6 months.

Consequential modifications in relation to prescribed forms

39. Paragraph 9 makes consequential modifications to prescribed forms as a result of the changes made by paragraphs 1 to 8 which will apply during the relevant period. Consequential modifications are made to the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 ([S.S.I. 2017/297](#)), the Rent Regulation and Assured Tenancies (Forms) (Scotland) Regulations 2017 ([S.S.I. 2017/349](#)) and the Short Scottish Secure Tenancies (Proceedings for Possession) Regulations 2018 ([S.S.I. 2018/155](#)).

Errors in notices

40. Paragraph 10 provides that where a landlord has completed a notice which does not take proper account of paragraphs 1 to 9 and therefore relies on the wrong notice period, such notice is not invalid but can only be relied upon by that landlord to seek eviction in accordance with the correct notice period. Subparagraph (2) provides that the period for which that notice remains in force is also calculated with reference to the correct notice period. Subparagraph (3) specifies the notices to which paragraph 10 applies.