

CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) ACT 2022

EXPLANATORY NOTES

THE ACT: OVERVIEW

Part 4: Tenancies

Pre-action protocol in respect of evictions relating to rent arrears

Section 46: Private residential tenancies: pre-action protocol

174. This section puts on a permanent footing the temporary changes made by paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020. It amends the 2016 Tenancies Act to allow for the implementation, on a permanent basis, of a pre-action protocol which will apply in relation to any attempt by a landlord to end a private residential tenancy on the ground of rent arrears.
175. The section gives the Scottish Ministers a regulation-making power (subject to the affirmative procedure) to stipulate a pre-action protocol which will apply in such cases. While compliance with this protocol will not be compulsory, the First-tier Tribunal will be required, when considering whether it is reasonable to grant an application for an eviction order on the ground of rent arrears, to take into account the extent to which the landlord has complied with the protocol.
176. As the change is to be a permanent one, any pre-action protocol that is imposed will apply regardless of why the rent arrears have arisen, so it will not matter whether or not they arose during the period of the coronavirus pandemic. This contrasts with the Coronavirus (Scotland) (No.2) Act 2020 where the legislation required there to be a link.
177. The terms which have been imposed using the comparable power under the Coronavirus (Scotland) (No.2) Act 2020 are set out in the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 ([SSI 2020 No. 304](#)). These regulations require the Tribunal to consider matters such as whether the landlord has provided the tenant with clear information on how to access advice on their rent arrears, whether the landlord has made reasonable efforts to agree a reasonable payment plan, and whether the landlord has given reasonable consideration to the steps taken by the tenant and the tenant's circumstances.

Section 47: Assured tenancies: pre-action protocol

178. This section puts on a permanent footing, subject to a minor modification, the temporary changes made by paragraph 4 of schedule 1 of the Coronavirus (Scotland) (No.2) Act 2020. It amends the 1988 Act to allow for the implementation, on a permanent basis, of a pre-action protocol which will apply in relation to any attempt by a landlord to end an assured tenancy (including a short assured tenancy) on a ground relating to rent arrears.

*These notes relate to the Coronavirus (Recovery and Reform) (Scotland)
Act 2022 (asp 8) which received Royal Assent on 10 August 2022*

179. The section gives the Scottish Ministers the same regulation-making power (subject to the affirmative procedure) in respect of assured tenancies that they are given in relation to private residential tenancies under section 46.
180. The 1988 Act contains more than one eviction ground relating to rent arrears. Grounds 8 and 12 require there to be arrears on a particular date, whereas ground 11 can apply where the rent has persistently been paid late regardless of whether or not it is in arrears on a particular date. However, ground 8, which required the arrears to be of a specified amount, is now being repealed under section 44 (as any eviction that would otherwise have been sought under it can be sought under ground 12 instead, given that there is now no distinction in terms of Tribunal discretion). While the Coronavirus (Scotland) (No.2) Act 2020 applied the ability to put in place a pre-action protocol only to cases where the arrears met the threshold for ground 8, it is now applied to all of the rent-related grounds remaining in the 1988 Act.