

*Draft Regulations laid before the Scottish Parliament under section 18(11) of the Housing (Scotland) Act 1988 and section 77(3) of the Private Housing (Tenancies) (Scotland) Act 2016 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2020 No.**

**HOUSING**

**The Rent Arrears Pre-Action Requirements (Coronavirus)  
(Scotland) Regulations 2020**

<i>Made</i>	- - - -	2020
<i>Coming into force</i>	- -	2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 18(9) and 53(3) of the Housing (Scotland) Act 1988(a), section 76(1) and paragraph 12(6) of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016(b) and all other powers enabling them to do so.

In accordance with section 18(11) of the Housing (Scotland) Act 1988 and section 77(3) of the Private Housing (Tenancies) (Scotland) Act 2016, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament(c).

**Commencement, citation and expiry**

**1.**—(1) These Regulations may be cited as the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020 and come into force on the day after the day on which it is made.

(2) Regulation 3 expires on the day on which paragraph 3 of schedule 1 of the Coronavirus (Scotland) Act 2020(d) expires.

(3) Regulation 4 expires on the day on which paragraph 1 of schedule 1 of the Coronavirus (Scotland) Act 2020 expires.

**Interpretation**

**2.** In these Regulations—

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- (a) 1988 c.43. Paragraph 4 of schedule 1 of the Coronavirus (Scotland) (No. 2) Act 2020 (asp 10) modifies section 18 so that section 18 is to be read as if subsection (9) were inserted. The function of the Secretary of State under section 53(3) was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
  - (b) 2016 asp 19. Paragraph 5 of schedule 1 of the Coronavirus (Scotland) (No. 2) Act 2020 modifies paragraph 12 so that it is to be read as if sub-paragraph (6) were inserted.
  - (c) The powers to make these Regulations are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). These Regulations are subject to the affirmative procedure by virtue of section 33(3) of that Act.
  - (d) 2020 asp 7. Section 12(1) provides that the Act expires on 30 September 2020. Section 12(3) provides that the Scottish Ministers may, by regulations, amend section 12(1) so that the Act expires on 31 March 2021 or 30 September 2021.

“the 1988 Act” means the Housing (Scotland) Act 1988, and

“the 2016 Act” means the Private Housing (Tenancies) (Scotland) Act 2016.

### **Pre-action requirements for assured and short assured tenancies**

**3.**—(1) For the purposes of section 18(3C) of the 1988 Act(a), the Scottish Ministers specify the pre-action requirements set out in paragraphs 2 to 4.

(2) The provision by the landlord to the tenant of clear information relating to—

- (a) the terms of the tenancy agreement,
- (b) the amount of rent for which the tenant is in arrears,
- (c) the tenant’s rights in relation to proceedings for possession of a house (including the pre-action requirements set out in this regulation), and
- (d) how the tenant may access information and advice on financial support and debt management.

(3) The making by the landlord of reasonable efforts to agree with the tenant a reasonable plan to make payments to the landlord of—

- (a) future payments of rent, and
- (b) the rent for which the tenant is in arrears.

(4) The reasonable consideration by the landlord of—

- (a) any steps being taken by the tenant which may affect the ability of the tenant to make payment to the landlord of the rent for which the tenant is in arrears within a reasonable time,
- (b) the extent to which the tenant has complied with the terms of any plan agreed to in accordance with paragraph (3), and
- (c) any changes to the tenant’s circumstances which are likely to impact on the extent to which the tenant complies with the terms of a plan agreed to in accordance with paragraph (3).

### **Pre-action requirements for private residential tenancies**

**4.**—(1) For the purposes of paragraph 12(3B) of schedule 3 of the 2016 Act(b), the Scottish Ministers specify the pre-action requirements set out in paragraphs 2 to 4.

(2) The provision by the landlord to the tenant of clear information relating to—

- (a) the terms of the tenancy agreement,
- (b) the amount of rent for which the tenant is in arrears,
- (c) the tenant’s rights in relation to proceedings for eviction (including the pre-action requirements set out in this regulation), and
- (d) how the tenant may access information and advice on financial support and debt management.

(3) The making by the landlord of reasonable efforts to agree with the tenant a reasonable plan to make payments to the landlord of—

- (a) future payments of rent, and
- (b) the rent for which the tenant is in arrears.

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(a) Paragraph 4(2)(a) of schedule 1 of the Coronavirus (Scotland) (No. 2) Act 2020 modifies section 18 so that it is to be read as if subsection 3C were inserted.

(b) Paragraph 5(2)(a) of schedule 1 of the Coronavirus (Scotland) (No. 2) Act 2020 modifies paragraph 12 so that it is to be read as if subsection 3B were inserted.

- (4) The reasonable consideration by the landlord of—
- (a) any steps being taken by the tenant which may affect the ability of the tenant to make payment to the landlord of the rent for which the tenant is in arrears within a reasonable time,
  - (b) the extent to which the tenant has complied with the terms of any plan agreed to in accordance with paragraph (3), and
  - (c) any changes to the tenant’s circumstances which are likely to impact on the extent to which the tenant complies with the terms of a plan agreed to in accordance with paragraph (3).

**Transitional arrangements: assured and short assured tenancies**

5. The pre-action requirements specified under regulation 3 apply to proceedings before the First-tier Tribunal for Scotland for the order for possession of a house let on an assured tenancy under section 18 of the 1988 Act which are raised by the landlord on or after 6 October 2020.

**Transitional arrangements: private residential tenancies**

6. The pre-action requirements specified under regulation 4 apply to an application to the First-tier Tribunal for Scotland for an eviction order under section 51 of the 2016 Act which is made by the landlord on or after 6 October 2020.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations introduce pre-action requirements for (1) proceedings for possession of a house let on an assured or short assured tenancy (created under the Housing (Scotland) Act 1988) and (2) an application for an eviction order against the tenant under a private residential tenancy (created under the Private Housing (Tenancies) (Scotland) Act 2016).

Section 18(3C) of the 1988 Act requires the First-tier Tribunal, in considering whether it is reasonable to make an order against the tenant, to consider the extent to which the landlord has complied with pre-action requirements before raising the proceedings for possession.

Paragraph 12(3B) of schedule 3 of the 2016 Act requires the First-tier Tribunal, in considering for the purposes whether it is reasonable to issue an eviction order against the tenant, to consider the extent to which the landlord has complied with pre-action requirements before applying for the eviction order.

Regulations 3 and 4 specify the pre-action requirements.

Regulations 5 and 6 specify that the pre-action requirements apply to proceedings for recovery of possession or to applications for an eviction order which are commenced by the landlord on or after 6 October 2020.

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