

POLICY NOTE

THE PRIVATE HOUSING (TENANCIES) (SCOTLAND) ACT 2016 (COMMENCEMENT NO. 3, AMENDMENT, SAVING PROVISION AND REVOCATION) REGULATIONS 2017

SSI 2017/346 (C. 26)

The above instrument was made in exercise of the powers conferred by section 79(2), (3) and (4) of the Private Housing (Tenancies) (Scotland) Act 2016 (the Act).

Policy Objectives

This instrument revokes and replaces the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 2 and Saving Provision) Regulations 2017 to meet a commitment to the Delegated Powers and Law Reform Committee to include the amendments to primary legislation enabled by the power in section 79(4). It brings into force the remaining provisions of the Act, with the exception of one consequential amendment, amends primary legislation to insert the date when section 1 of the Act comes into force, and makes a saving provision for existing short assured tenancies.

Regulation 2 and the schedule bring into force on 1st December 2017 the remaining sections of the Act, with the exception of paragraph 5 in schedule 4. We have not commenced paragraph 5 because this amendment adds eviction in certain circumstances under the Act to the grounds of eviction under which housing benefit could be lost in section 130B of the Social Security Contributions and Benefits Act 1992.

Sections 130B -130G of the Social Security Contributions and Benefits Act were inserted by section 31(1) of the Welfare Reform Act 2007 from 1 November 2007 and provide for the reduction or non-payment of housing benefit following eviction for anti-social behaviour in certain circumstances. However, section 31(3) limited the duration of the powers in section 31 so that they have no effect after 31 December 2010. Given that these social security provisions are no longer in effect, the consequential amendment in paragraph 5 in schedule 4 is no longer required.

Regulation 3 inserts a provision which amends section 3B(1)(a) of the Rent (Scotland) Act 1984 so that, instead of referring to the day on which section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 comes into force, it specifies 1st December 2017 as the day on which section 3B(1)(a) of the Rent (Scotland) Act 1984 comes into force.

Regulation 4 inserts a provision which amends sections 12(1A) and 31A(1)(a) of the Housing (Scotland) Act 1988 so that, instead of referring to the day on which section 1 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) comes into force, it specifies 1st December 2017 as the day on which sections 12(1A) and 31A(1)(a) of the Housing (Scotland) Act 1988 come into force.

Regulation 5 repeals section 8(5) of the 2016 Act, which is a transitional provision in relation to consultation during the period prior to section 1 coming into force.

Regulation 6 is a saving provision for short assured tenancies (created under section 32(1) of the Housing (Scotland) Act 1988) which have been entered into prior to the Act coming into force on 1st December 2017. The saving provision provides that any short assured tenancy

which began before 1st December 2017 can continue to operate after that date, regardless of whether or not that short assured tenancy is continuing by tacit relocation or renewing at regular intervals (under section 32(3)(a) or (b) of the Housing (Scotland) Act 1988, respectively). This saving provision is required in order to meet the Scottish Government's stated aim of introducing a new private residential tenancy for future lets. It was not the Scottish Government's intention that the new tenancy would affect those short assured tenancies which are already in operation on the date of commencement.

Regulation 7 revokes the Private Housing (Tenancies) (Scotland) Act 2016 (Commencement No. 2 and Saving Provision) Regulations 2017.

Consultation

The Scottish Government has been clear from the outset when developing the new private residential tenancy that it will apply only to future property lets and not current lets. Stakeholders, including members of the Act Implementation Group are well aware of this.

Impact Assessments

An Equality Impact Assessment and a Children's Rights and Welfare Impact Assessment were undertaken in relation to the provisions in Private Housing (Tenancies) (Scotland) Bill prior to its introduction to the Scottish Parliament.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was undertaken in relation to the provisions in Private Housing (Tenancies) (Scotland) Bill prior to its introduction to the Scottish Parliament.

Directorate for Housing And Social Justice
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