

POLICY NOTE

THE CORONAVIRUS (SCOTLAND) ACT 2020 (EVICTION FROM DWELLING-HOUSES) (NOTICE PERIODS) MODIFICATION REGULATIONS 2020

SSI 2020/270

The above instrument was made in exercise of the powers conferred by section 10 and paragraph 8(1) of schedule 1 of the Coronavirus (Scotland) Act 2020(1) and all other powers enabling them to do so. This instrument is subject to the negative procedure.

The purpose of this instrument is to reduce the extended notice periods introduced by Schedule 1 of the Coronavirus (Scotland) Act 2020 for eviction grounds relating to antisocial behaviour and criminality to 28 days across all private and social tenancies.

Legislative Background

1. The Coronavirus (Scotland) Act 2020 came into force on 7 April 2020. The Act provided powers and measures which have helped to protect the public, maintain essential public services and support the economy in the face of the unprecedented and ongoing public health and economic challenges created by the pandemic.
 2. In recognition of the severe impact that the “lockdown” restrictions caused in relation to widespread closure of businesses across Scotland and the reduction in income many tenants in both the private and social rented sectors faced, the original provisions within Schedule 1 of the Coronavirus (Scotland) Act 2020 aimed to support tenants to stay in their homes and restrict their movements, to ensure that they have time to apply for and receive the available support so they can pay their bills in the short term and, if necessary, to give them time to plan for the longer term over this unprecedented crisis.
 3. Provisions in the Act did so by:
 - i. temporarily extending the notice periods for all evictions, except where a landlord is looking to regain possession of a property where it has been abandoned by a tenant. The extended notice periods are either for 6 months (in most cases) or 3 months for certain tenant conduct grounds relating to antisocial or criminal behaviour and where a landlord or their family member need to move into the property. No change was made in relation to where eviction is sought on the ground that a property is vacant as it had no impact on dealing with the current crisis.
 - ii. temporarily changing all private rented sector repossession cases going before the First-Tier Tribunal (Housing and Property Chamber) to be considered on a discretionary basis. This ensures the Tribunal is able to take all circumstances of a case into account when determining whether to grant an eviction order and so allows for the individual financial circumstances of the tenant to be taken account of during this crisis; and
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- iii. making provision for Scottish Ministers to extend the period these changes apply to and giving them the necessary flexibility in relation to the application of these provisions to respond to the uncertainty around the duration of the pandemic.

The extended notice periods applied to notices issued after the commencement of the Act and applied across the board, for all statutory tenancies currently in existence in the private and social rented sectors until 30 September 2020. Scottish Ministers have laid draft regulations under section 12 of the Coronavirus (Scotland) Act 2020 to extend most of the provisions of the Act, including the provisions extending notice periods for evictions, until 31 March 2021.

Policy Objectives

4. Antisocial and criminal behaviour can have a devastating impact on individuals and communities. As we emerge from the emergency lockdown restrictions put in place at the outset of the Covid-19 pandemic and move through Scotland's route map to recovery, consideration has to be given to the detrimental impact of a landlord not being able to take action to resolve serious cases of antisocial or criminal behaviour by a tenant.

5. Both social and private landlords have expressed significant concern about the impact this behaviour is having on the safety and wellbeing of neighbours and wider communities. Therefore, these regulations will ensure that where landlords have clear evidence of antisocial or criminal behaviour, that cannot be resolved by other means, then they are able to take the necessary action to end the tenancy.

6. This will mean returning to a 28 day notice period – across all private and social tenancies - for antisocial and criminal eviction grounds only.

Consultation

7. A formal public consultation exercise has not been undertaken in relation to this instrument due to the timescales in which decisions on extension of the Scottish Acts and expiry of provisions not to be covered by an extension have had to be made.

8. However, the Scottish Government has informally consulted with stakeholders on the extension of the provisions relating to eviction from dwelling houses, which has helped inform their drafting.

Impact Assessments

9. No impact assessments have been completed for this instrument, however as part of the assessment of continued necessity of the provisions beyond the 30 September 2020 expiry date of Part 1 of the Coronavirus (Scotland) Act 2020, assessment of the rights and equality impacts of extension has been undertaken.

10. The Scottish Government has acknowledged in its two-monthly reporting on the Coronavirus Acts, that some provisions have more significant impacts on rights and equality than others, including the provisions relating to eviction from dwelling houses. Therefore, as part of the assessment of continued necessity of the provisions beyond the 30 September 2020 expiry date of Part 1 of both Scottish Acts, an assessment of the rights and equality impacts of extension has been undertaken.

11. Equality Impact Assessments and Child Rights and Wellbeing Impact Assessments were undertaken for the Coronavirus (Scotland) Act 2020 as part of the development of the Bill which was introduced to Parliament on 31 March.

12. The human rights impacts were summarised in the Policy Memorandums for the Act. For other provisions, including those related to eviction from dwelling houses, a review of the original impact assessments has been carried out as part of determining the proposed approach to extension. Detail of this is set out in the Statement of Reasons made in relation to The Coronavirus (Scotland) (Acts) (Amendment of Expiry Dates) Regulations 2020.

Financial Effects

13. The Minister for Local Government, Housing and Planning confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government

Directorate for Housing and Social Justice

September 2020