

# **Private Rented Sector – Pre-Action Requirements for Orders for Possession or Eviction on Grounds of Rent Arrears**

## **Final Business and Regulatory Impact Assessment**

### **Title of Proposal**

1. The Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020
2. This BRIA lays out considerations in relation to the development of the pre-actions and sets out the proposed approach.

### **Purpose and Intended Effect**

#### **Background**

3. Under the terms of the Housing (Scotland) Act 1988 and the Private Housing (Tenancies) (Scotland) Act 2016, in relation to cases for repossession on the grounds of rent arrears, the First-tier Tribunal for Scotland (Housing and Property Chamber) must find that the ground for repossession applies if the level of arrears set in the legislation is met.
4. There is currently no requirement for landlords to undertake any actions in conjunction with the tenant to manage arrears prior to commencing proceedings for repossession on the grounds of rent arrears.
5. The Coronavirus (Scotland) Act 2020 temporarily makes all grounds for repossession in the private rented sector discretionary, including those related to rent arrears. This changes the current position and ensures that the Tribunal considers the reasonableness of making an order during the coronavirus outbreak.
6. The Coronavirus (Scotland) (No.2) Act 2020, provided Scottish Ministers with a regulation making power to temporarily introduce pre-action requirements that will apply where a landlord pursues a repossession order on the grounds of rent arrears, where all or part of these arrears have originated in the period during which paragraphs 4 and 5 of schedule 1 of the Act are in force. It also includes a provision that requires the First-tier Tribunal for Scotland (Housing and Property Chamber) to take into account the extent to which a landlord has complied with these pre-action requirements when deciding whether it is reasonable to grant a repossession order.
7. The proposed Regulations will set the pre-action requirements that will apply in such cases, which will be taken account of by the First-tier Tribunal for Scotland (Housing and Property Chamber) when determining whether to grant a repossession order on the basis that the tenant is in rent arrears
8. Overall, the objective is to encourage sustainment of tenancies during the coronavirus outbreak by ensuring that, prior to seeking repossession of a property on the grounds of rent arrears, landlords make reasonable efforts to work with tenants to manage arrears.

#### **Objective**

9. The objective fits with the Scottish Government's strategic 'Safer and Stronger Scotland' objective, helping local communities to flourish, becoming stronger, safer places to live, offering improved opportunities and a better quality of life.

## **Rationale for Government intervention**

10. The Scottish Government have been clear that no landlord should evict a tenant because they have suffered financial hardship due to coronavirus and we expect landlords to be flexible with tenants facing financial hardship and signpost them to the sources of financial support available.

12. In recognition of the severity of the situation, the Scottish Government has passed emergency legislation to protect renters in Scotland during the coronavirus outbreak. The Coronavirus (Scotland) Act 2020 protects tenants in Scotland from eviction action for up to 6 months. This ensures the position is absolutely clear for all landlords and tenants in Scotland.

13. The legislation temporarily extends the amount of notice landlords must give when ending a tenancy. In most cases landlords will now need to give tenants 6 months' notice, unless they are ending the tenancy for particular reasons, including antisocial and criminal behaviour by the tenant, or where the landlord or their family need to move into the property where the notice period is 3 months.

14. The legislation also temporarily makes all grounds for eviction in the private rented sector discretionary, ensuring that the First-Tier Tribunal will be able to use discretion and take all factors relating to the impact of the coronavirus outbreak on both the landlord and tenant into account before deciding whether to issue an eviction order or not.

15. The introduction of the pre-action requirements will ensure additional protection for tenants through consideration of their circumstances, with compliance forming part of the discretionary consideration by the First-Tier Tribunal.

16. The introduction of the requirements contributes to the objectives of the National Performance Framework in respect of the national outcomes:

- We tackle poverty by sharing opportunities, wealth and power more equally
- We live in communities that are inclusive, empowered, resilient and safe

## **Consultation**

### **Within Government**

17. We have consulted with a number of relevant Scottish Government Directorates including Better Homes, More Homes, Housing and Communities Analytical and Legal colleagues in order to inform the development of the pre-action requirements.

### **Public Consultation**

18. Whilst there is no statutory requirement to conduct a full public consultation, the Scottish Government has engaged with a range of stakeholders through the Private Rented Sector Resilience Group which has been set up to provide input to the response to the coronavirus outbreak and also the Homelessness and Rough Sleeping Action Group. The PRS Resilience Group has a broad membership intended to represent the interests of those who will be affected by the implementation of the pre- action protocol.

## **Business**

19. The Scottish Government has engaged with business representation groups on the development of the pre-action requirements. Discussions have taken place with:

- ARLA Propertymark;
- Scottish Association of Landlords;
- UK Finance

## **Options**

20. Two options have been considered:

Option 1: Introduction of Regulations to establish the pre-actions on a statutory basis

Option 2: Encourage landlords to adopt the pre-actions through guidance and engagement with industry bodies

A third option of taking no action in relation to the actions landlords should take prior to seeking repossession of a property will also be examined within this Business Regulatory Impact Assessment.

## **Sectors and groups affected**

21. All options would affect PRS landlords in relation to the operation and management of their rental premises.

## **Benefits**

### **Option 1**

*Introduction of Regulations to establish the pre-actions on a statutory basis*

22. Introduction of Regulations establish the pre-action requirements on a statutory basis ensures that all landlords are required to take steps to engage with their tenants and work with them to manage arrears prior to seeking a repossession order. This provides additional protection for tenants facing financial difficulty as a result of the coronavirus outbreak and establishes a clear set of actions that landlords must adopt which should deliver a more consistent standard of approach across the sector.

### **Option 2**

*Encourage landlords to adopt the pre-actions through targeted guidance, communication and engagement with industry bodies*

23. Seeking adoption of the pre-action requirements through encouragement would continue to give landlords flexibility in deciding what action they take in relation to managing arrears through the period affected by the coronavirus outbreak. Information and advice to support landlords to adopt the pre-actions could be made available and promoted to the sector through continued work with landlord industry bodies.

24. Taking no action would offer no additional protection to PRS tenants during the coronavirus outbreak.

## Costs

25. The introduction of the requirements on a voluntary or statutory basis will not place any new, direct costs on landlords in relation to seeking repossession on the grounds of rent arrears, given the procedure for making such an application to the First-Tier Tribunal will remain unchanged.

26. At the current time, there is no requirement for a landlord to undertake any specific actions prior to lodging an application for repossession. Engagement with landlord representative bodies suggests that many landlords will already work with tenants in accordance with the proposed pre-action requirements where rent arrears occur. As such, the introduction of the requirements will act to formalise existing good-practice that many landlords are already adopting and create a more consistent approach across the sector.

27. The pre-action requirements are focused on ensuring landlords communicate effectively with tenants and seek to work jointly to manage any arrears. The pre-actions require landlords to take account of a tenants circumstances and the steps being taken that will affect repayment of any arrears, with a view to agreeing a repayment plan that helps avoid the need for a repossession order. It is not considered that the introduction of the pre-action requirements will necessitate landlords to undertake significant actions that generate any specific, additional costs beyond that they may occur in relation to seeking repossession of a property.

28. Landlords are always encouraged to engage with tenants at the earliest opportunity when rent arrears occur, in order to avoid the need for to seek repossession of a rented property. There may be a concern amongst landlords that the pre-action requirements will increase the time period in which a tenant accumulates arrears. It is, however, considered that the notice period prior to the landlord being able to apply to the First-Tier Tribunal for a repossession order presents a reasonable opportunity for landlords to engage with tenants in accordance with the requirements.

29. A high-level analysis of the statistics on repossession cases indicates that:

- In 2019, the First-tier Tribunal (Housing and Property Chamber) received 1,770 applications from landlords for an eviction order in respect of all tenancy types (Private Residential Tenancy, Short Assured Tenancy and Assured Tenancy);
- In the year to the end of February 2020 there were approximately 950 cases that progressed to a Case Management Discussion (CMD) where the Tribunal made an eviction ruling and published their decision;

30. At the current time, it is not clear whether the coronavirus outbreak will affect the level of applications to the First-tier Tribunal in respect of rent arrears. There are indications that private renters are concerned about the impact of coronavirus on their ability to pay rent, with almost half of tenants (45%) having seen a drop in their incomes since March 2020 and four in 10 (42%) worried about their ability to pay rent after lockdown is lifted.<sup>1</sup>

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<sup>1</sup> <https://www.jrf.org.uk/press/almost-third-scots%E2%80%99-incomes-have-reduced-lockdown-half-affected-renters-worried-about-paying>

## **Scottish Firms Impact Test**

31. As part of our engagement to develop the pre-action requirements, the Scottish Government have held discussions with a number of key stakeholders. This enabled us to seek feedback on the proposed requirements to understand the impact, benefits or difficulties each option could present to PRS landlords in Scotland.

We asked:

- What was their view of the proposed requirements?
- What information would landlords require to help them meet the requirements?

32. This feedback has helped inform consideration of the draft requirements and the guidance that will support landlords to implement them.

## **Competition Assessment**

33. The introduction of the pre-action requirements will affect all private landlords and we do not expect that the changes will distort any competition in the affected markets. The wider policy intention of the requirements is to support sustainable tenancies in the private rented sector during the period impacted by the coronavirus outbreak. The Regulations will provide clarity for landlords on the actions they are expected to take advance of seeking repossession in cases of rent arrears and set a level playing field for all landlords in the management of such cases.

34. Full consideration has been given to the Office of Fair Trading's Competition Assessment criteria in relation to the pre-action requirements.

35. The exact impact of the pre-action requirements will depend on the circumstances in respect of each individual tenancy that is affected but, given that the requirements will apply in all cases where the rent arrears have occurred, we do not envisage that it will:

- directly limit the number or range of suppliers;
- indirectly limit the number of range of supplies;
- limit the ability of suppliers to compete; or
- reduce suppliers' incentives to compete vigorously.

## **Consumer Assessment**

36. The nature of the introduction of the requirements is unlikely to impact on consumers. The following consumer assessment questions have been considered and it is felt unlikely that the introduction of the pre-action requirements will have a significant impact on consumers:

- Does the Guidance affect the quality, availability or price of any goods or services in a market?
- Does the Guidance affect the essential services market, such as energy or water?
- Does the Guidance involve storage or increased use of consumer data?
- Does the Guidance increase opportunities for unscrupulous suppliers to target consumers?

- Does the Guidance impact the information available to consumers on either goods or services, or their rights in relation to these?
- Does the Guidance affect routes for consumers to seek advice or raise complaints on consumer issues?

37. Our view is that the introduction of the pre-action requirements at this time will provide additional protection for tenants.

### **Test run of business forms**

38. The requirements will not introduce any additional statutory forms.

### **Digital Impact Test**

39. The introduction of the pre-action requirements will not materially change the processes for landlords seeking a repossession order. Changes in terms of processes are not anticipated in the period when the requirements will be in place but, should any occur, then they will do so in the context of the wider processes.

40. The introduction of the pre-actions do not place any specific requirements on landlords in terms of how they should engage with tenants.

### **Legal Aid Impact Test**

41. It is considered that the introduction of the pre-action requirements will have a minimal impact on the Scottish Legal Aid fund, given that it will not create a new procedure or right of appeal to a court or tribunal.

### **Enforcement, sanctions and monitoring**

42. The First-tier Tribunal will take compliance with the requirements into account when deciding whether it is reasonable to grant a repossession order.

43. The impact of the requirements on the outcome of applications for repossession will be monitored through the publically reported decisions of the Tribunal.

### **Implementation and delivery plan**

44. The Regulations are scheduled to come into force in September 2020 and will be supported by guidance that provides detailed information to support landlords in meeting the pre-action requirements.

### **Post-implementation review**

45. The measures are being introduced on a temporary basis as part of the response to the coronavirus outbreak and will remain in place in accordance with the relevant provisions of the Coronavirus (Scotland) Act 2020. The Scottish Government will keep the measures under review as part of the ongoing response to the outbreak.

## **Summary and recommendation**

46. Based on consideration of the options, the Scottish Government will introduce Regulations to establish the pre-actions on a statutory basis (Option 1).

## **Summary costs and benefits**

47. Overall the introduction of Regulations to establish the pre-actions on a statutory basis will provide additional protection for private rental tenants during the coronavirus outbreak but will not result in significant additional costs for landlords.

## **Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

## **Signed: Kevin Stewart**

Kevin Stewart MSP, Minister for Local Government and Housing

**Date: 31<sup>st</sup> July 2020**

## **Scottish Government Contact point:**

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