

EXPLANATORY MEMORANDUM TO
THE ASSURED TENANCIES AND AGRICULTURAL OCCUPANCIES (FORMS)
(ENGLAND) (AMENDMENT) AND SUSPENSION (CORONAVIRUS)
REGULATIONS 2021

2021 No. 562

AND

THE CORONAVIRUS ACT 2020 (RESIDENTIAL TENANCIES: PROTECTION
FROM EVICTION) (AMENDMENT) (ENGLAND) (NO. 2) REGULATIONS 2021

2021 No. 564

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) (No. 2) Regulations 2021 amends Schedule 29 of the Coronavirus Act 2020, which introduced emergency measures to delay when social and private tenants can be evicted by requiring landlords to provide longer notice periods of their intention to seek possession. These measures were introduced to protect tenants from eviction by delaying when landlords could begin possession proceedings. This was in recognition of the impact of the coronavirus pandemic on tenants, the public health risk in relation to the spread of infection and of the need to reduce pressure on public services. This instrument:
 - Extends the ‘relevant period’ in Schedule 29 so that these measures will be in force until 30 September 2021.
 - Tapers down the lengths of the required notice periods which are currently at six months to four months from 1 June (and subsequently to two months from 1 August, for some claims brought on the basis of rent arrears). This is to ensure that the measures remain proportionate to the public health risks, and to mitigate the risk of a cliff-edge in protections that could encourage a spike in possession claims and create pressures for public services.
 - Reduces the threshold for what is considered ‘serious arrears’ from where more than six months is owed to where four months or more of rent is owed.
 - Maintains ‘egregious’ grounds that have already been returned to their pre-COVID lengths at their pre-COVID lengths, and newly return two additional grounds to their pre-COVID lengths (death of a tenant and no right to rent).
 - Allows local authorities using specialised tenancies more access to shorter notice periods for egregious grounds.

- It also makes consequential changes to notice period requirements in the prescribed forms for giving notice as modified by Schedule 29.
- 2.2 The Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) and Suspension (Coronavirus) Regulations 2021 makes consequential changes to the notice period requirements in the prescribed form for serving notice of a property let on an assured tenancy or an assured agricultural occupancy (Form 3) and under Section 21 of the Housing Act 1988 (Form 6A).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) (No. 2) Regulations 2021 instrument is subject to the negative resolution procedure and comes into force on 31 May 2021. It is laid 19 days before commencement.
- 3.2 The Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) and Suspension (Coronavirus) Regulations 2021 is subject to the negative resolution procedure and comes into force on 1 June 2021. It is laid 20 days before commencement.
- 3.3 While the Ministry acknowledges the general desirability of observing the “21-day rule”, the breach is necessary to avoid laying the instrument during the prorogation of Parliament from 28 April 2021 until the Queen’s Speech on 11 May 2021, and to ensure the regulations come into force by 31 May 2021.
- 3.4 It is not possible to observe the 21-day rule when laying the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) (No. 2) Regulations 2021 after Parliament’s return. The instrument amends the “relevant date” for which the amended notice period provisions in Schedule 29 to the Coronavirus Act 2020 apply. The instrument needs to come into force no later than 31 of May. This is because the power to amend the “relevant date” in Schedule 29 expires on 31 May 2021. If the instrument is not laid in time it will be nugatory (as would amendments made by the Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) and Suspension (Coronavirus) Regulations 2021 which are consequential on the changes made to Schedule 29 of the Coronavirus Act 2020). All notice periods amended under the Act would revert to their pre-COVID levels on 1 June 2021. We do not think this would be appropriate to the public health situation, and it would undermine the policy aim of reducing incentives for landlords to serve notice at particular points. The alternative would have been to lay the instrument while Parliament was prorogued. The Ministry’s view is therefore that breach of the 21-day rule is justified.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.5 As the instruments are subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) (No. 2) Regulations 2021 instrument is England and Wales.
- 4.2 The territorial extent of the Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) and Suspension (Coronavirus) Regulations 2021 is England.
- 4.3 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 The Minister of State for Housing has made the following statement regarding Human Rights:

“In my view the provisions of the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations are compatible with the Convention rights.”

- 5.2 As the Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) and Suspension (Coronavirus) Regulations 2021 are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The provisions made by Schedule 29 to the Coronavirus Act 2020 were introduced for a defined period of time, in response to the new and urgent circumstances presented by the coronavirus pandemic in March 2020. They were brought into force for an initial period of six months, until 30 September 2020. A Statutory Instrument laid on 28 August 2020 extended the measures so that they were in force until 31 March 2021. A subsequent Statutory Instrument laid on 10 March 2021 extended the measures so that they are in force until 31 May 2021.
- 6.2 The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) (No. 2) Regulations 2021 extends the relevant period in which Schedule 29 is in force to retain the protections for tenants for a further reasonable and defined period of time, until 30 September 2021. Allowing all notice periods to return to their pre-COVID levels from 1 June 2021 would create a steep drop-off from the current level, which may lead to a surge in landlords serving notice and possibly a spike in homelessness – increasing the public health risk associated with movement and homelessness if alternative accommodation is not available. It also risks increasing the burden on local authorities who have a duty to help prevent homelessness and other essential public services.

7. Policy background

What is being done and why?

- 7.1 The measures in Schedule 29 to the Coronavirus Act introduced emergency measures in response to COVID-19, to delay when social and private tenants can be evicted by requiring landlords to provide longer notice of their intention to seek possession. For notices issued between 26 March to 28 August 2020, the required notice period was three months. These measures were introduced to provide tenants with additional protections from being evicted at a time when their income streams may have been vulnerable and they were worried about the health and well-being of themselves and

their loved ones. The Ministry was also aware of the need to prevent displacement and homelessness, in the light of the public health risk this poses in relation to the spread of infection, and to reduce pressures on essential public services during this time.

- 7.2 A statutory instrument (The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020) was laid on 28 August 2020 extending these measures, in response to the continuing circumstances of the pandemic. It extended the relevant period during which Schedule 29 applies so the measures were in force until 31 March 2021. Recognising that forecasts suggested cases would increase during Winter, and to protect public health and reduce the burden on essential services during this time, the instrument also lengthened the required notice period to six months, save in relation to serious cases. Finally, it reduced the length of notice periods required for cases where a shorter period was considered justified because of the strain those cases place on other tenants, landlords and wider communities. These cases include: anti-social behaviour, rioting, domestic abuse in the social sector, false statement, where a tenant has passed away, where a tenant has no right to rent in the UK and serious rent arrears of more than six months.
- 7.3 A subsequent statutory instrument (The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction (Amendment) (England) Regulations 2021) was laid on 10 March 2021 extending the measures in the August instrument for a further two months, until 31 May 2021. This was considered necessary to protect public health and minimise the impact of transmission and homelessness on essential services while some level of national restrictions remained in place.
- 7.4 The Ministry has considered what the best approach is for both tenants and landlords beyond 31 May 2021 in line with the wider roadmap, and the roll out of the vaccination programme.
- 7.5 We consider that some reduction in notice periods as previously extended is appropriate from 1 June 2021 in line with the easing of national restrictions that has already happened through the Roadmap. However, we will continue to need measures protecting public health, as well to avoid sharp drops in requirements that could incentivise the service of notice and create pressures for public services. This instrument therefore tapers the length of notice required down from the existing six months to four months from 1 June 2021.
- 7.6 In the case of non-serious rent arrears cases only, it introduces a further reduction from four to two months' notice on 1 August. This is in light of the particularly steep drop between current and pre-COVID notice periods for non-serious rent arrears (six months and two weeks, respectively) and the need to mitigate the risk of this creating spikes in the service of notice and pressure on services.
- 7.7 This instrument also reduces the threshold for what is considered 'serious rent arrears' from where more than six months is owed to where four months or more of rent is owed from 1 June. This takes into account the pressure that rent arrears place on landlords while recognising the need to give both tenants and landlords time to adapt before the threshold returns to normal. The majority of tenants will remain protected as data shows that most tenants are up to date with their rent and a majority of those who are in arrears have arrears of less than two months.
- 7.8 It will still be necessary for landlords to progress some case more quickly, because of the impact they have on other residents, landlords and local communities. This

instrument does not change the provisions in Schedule 29 that already allow landlords to provide shorter notice periods for serious cases. The instrument will return notice periods for two additional grounds to their pre-COVID lengths: where the tenant does not have the right to rent under immigration legislation, returning to its pre-COVID level of two weeks, and the ground permitting possession in the event the tenant has died, which will return to its pre-COVID level of two months. It is appropriate that notice period requirements for these grounds return to their pre-COVID length, because they are not widely used and the reduction should not create pressures for public services. Possession claims brought on ‘death of a tenant’ ground should, by definition, not result in an eviction – but can present significant strain on a landlord. The legislation now has the effect of allowing landlords to provide pre-COVID length notice periods in relation to those cases involving: anti-social behaviour, rioting, domestic abuse in the social sector, false statement, where a tenant has passed away and where a tenant has no right to rent in the UK under immigration legislation.

7.9 Therefore, the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) (No. 2) Regulations 2021 modifies the length of notice required in the following ways, so that:

- Notice periods for rent arrears grounds will be amended so that from 1 June 2021 landlords will be required to provide four weeks' notice if at least four months of rent arrears are due, and four months' notice if less than four months' rent is due. This will taper down again from 1 August 2021, so that landlords will be required to provide two months' notice if less than four months' rent is due. The Government considers this amount of unpaid rent and these notice periods to be appropriate for balancing the interests of landlords and tenants.
- Notice periods for grounds where the tenant is unlawfully present in the UK in breach of immigration rules (known as the ‘Right to Rent’) will reduce to the pre-COVID level of two weeks and remain at this level for the duration that this instrument is in force. The notice period for the ground for possession in the event of the tenant’s death will also reduce to its pre-COVID level of two months and remain at this level for the duration that the instrument is in force. This reflects the need for landlords to be able to respond to these cases.
- Notice periods for Introductory Tenancies and Demoted Tenancies (used by Local Authorities) will be amended so that from 1 June 2021 cases relating to serious rent arrears (where at least four months' rent is due), anti-social behaviour, domestic abuse, rioting and false statement will be four weeks. Otherwise, landlords serving notice for these tenancies must provide four months’ notice, in line with most other grounds. As above, there will be an additional tapering from 1 August 2021, so that notice periods relating to rent arrears where less than four months’ rent is due will be two months. This makes notice periods for these specialist tenancies more in line with the proposed notice periods for egregious cases set out in paragraphs 7.7 and 7.8 and reflects areas that social landlords have identified are key issues.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate.

10. Consultation outcome

10.1 It has not been possible to formally consult on this instrument, due to the evolving nature of the pandemic and the need to ensure these measures begin promptly on 1 June. However, the Ministry has engaged widely with stakeholders representing landlords, tenants and letting agents during the course of the pandemic on the impact of these and previous similar instruments. We have drawn on the information provided on the impact on the sector to inform the policy in the drafting of the instrument, balancing the need to protect public health and tenants, with landlords' needs to regain possession of their properties.

11. Guidance

11.1 The Ministry published public guidance¹ on the original measures in the Coronavirus Act in March 2020. This is for tenants, landlords and local authorities, and sets out what changes were brought in by the Coronavirus Act and how this affects the rights and responsibilities of the key parties. The Ministry has also published detailed guidance for all parties on the possession action process in court, which clearly sets out the changed process for possession proceedings in court now that new court rules are in place². The Ministry will continue to update these so that they provide accurate and technical guidance for landlords, tenants and other key parties such as Local Authorities and letting agents.

12. Impact

12.1 This instrument will apply to landlords that are charities (where they issue tenancies), such as housing association charities.

12.2 Local Authorities where they provide social housing or operate as a Local Authority Housing Company and landlords who operate as small businesses. It will require them to provide an extended period of notice when seeking possession of a property in most cases, subject to certain exceptions as set out above. This could have a financial impact where a landlord has to wait longer before they can gain possession of (and subsequently re-let) a property. However, the instrument also allows landlords quicker access to justice for egregious cases, including anti-social behaviour or serious rent arrears where over four months of rent is due. This will assist landlords in dealing with the most serious and urgent cases. The policy implemented by this SI reduces the burden placed on landlords compared to the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2021 or the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020.

12.3 An Impact Assessment has not been prepared for this instrument because this is a temporary measure lasting less than 12 months as part of the Government's

¹ <https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities>

² <https://www.gov.uk/government/publications/understanding-the-possession-action-process-guidance-for-landlords-and-tenants>

Coronavirus emergency response and so requirements for a formal Regulatory Impact Assessment do not apply.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses such as landlords. The policy intention is to protect tenants and public services, and the Ministry acknowledges that this may act to the detriment of some small businesses in the short-term, as these are temporary measures.
- 13.2 Given the temporary and urgent nature of the instrument, and the policy intention, no specific action is proposed to minimise regulatory burdens on small businesses. The Government has put in place a financial support package, including support for businesses to pay staff salaries through the Coronavirus Job Retention Scheme. This will help support renters to continue to pay their rent and mitigate the impact on landlords.

14. Monitoring & review

- 14.1 As this is a temporary measure, it would not be proportionate to include a statutory review clause for this individual instrument. The Coronavirus Act 2020 contains requirements for all measures to be reviewed at certain points and the Ministry will comply with these requirements. This includes reviewal by the Bill Minister every two months and by Parliament every six months.

15. Contact

- 15.1 Tashi Warr at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 4782 or email: tashi.warr@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rebecca Perks, Deputy Director for the Private Rented Sector, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Christopher Pincher, Minister of State for Housing at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.