EXPLANATORY MEMORANDUM TO

THE CORONAVIRUS ACT 2020 (RESIDENTIAL TENANCIES AND NOTICES) (AMENDMENT AND SUSPENSION) (ENGLAND) REGULATIONS 2021

2021 No. 994

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.

2. Purpose of the instrument

2.1 This instrument extends the 'relevant period' in Schedule 29 of the Coronavirus Act 2020 and suspends the operation of various provisions in Schedule 29. The effect of this is that requirements relating to the notice of intention landlords are required to give to seek possession of property under various statutory tenancy types revert to the pre-Coronavirus Act position but the power for the Government to impose longer notice periods as an emergency measure is retained until 25 March 2022. This instrument also prescribes new versions of Form 3, being the form for giving notice seeking possession on one or more of the statutory grounds pursuant to section 8 Housing Act 1988, and Form 6A, being the form for giving notice requiring possession under section 21 Housing Act 1988, and the Part 2 notice of seeking termination of a fixed term tenancy and recovery of possession under section 83 Housing Act 1985.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 The Minister for Rough Sleeping and Housing has made the following statement regarding Human Rights:

"In my view the provisions of the Coronavirus Act 2020 (Residential Tenancies) and Assured Tenancies Etc. (Forms) (Amendment and Suspension) (England) Regulations 2021 are compatible with the Convention rights".

6. Legislative Context

6.1 Schedule 29 to the Coronavirus Act 2020 modifies various statutory requirements relating to the notice of intention landlords are required to give to seek possession of property under various types of statutory tenancies, with the effect that, in most cases, landlords have been required to give longer periods of notice to tenants before

commencing proceedings for possession than was the case prior to the enactment of the Coronavirus Act 2020. The provision made by Schedule 29 to the Coronavirus Act 2020 was introduced for an initial period of six months, in response to the new and urgent circumstances presented by the COVID-19 pandemic in March 2020. Since Schedule 29 was enacted it has been amended to (a) alter the periods of notice required in various cases and (b) extend the "relevant period" of the application of Schedule 29. (Amending instruments applicable in relation to England are S.I. 2020/914, 2021/284 and 2021/564.)

7. Policy background

What is being done and why?

7.1 Schedule 29 to the Coronavirus Act 2020 introduced, from 26 March 2020, emergency measures in response to COVID-19 that required landlords to provide longer notice of their intention to seek possession of property let under various statutory tenancy types (applicable in both the social rented and private rented sectors). These measures were introduced to provide tenants with more time to seek to resolve the issue or find alternative accommodation safely and 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 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. As originally enacted, Schedule 29 required relevant landlords to give three months' notice, however in August 2020 Schedule 29 was amended by S.I.2020/914 to increase notice requirements, in all but the most serious cases, to six months.

7.2 As national restrictions eased in 2021, and thanks to the progress of the vaccination programme, the provision in Schedule 29 was amended to gradually reduce required notice periods in light of the lower public health risk and reduced pressure on essential public services. From 1 June 2021, landlords have been required to serve four months' notice in all but the most serious cases. Additionally, from 1 August 2021, notice periods in cases of 'non-serious' rent arrears have reduced a second time to two months' notice. (As of 1 June 2021, the definition of 'non-serious' arrears included any case where less than four months' rent is due.)

7.3 In advance of making this instrument the Ministry has considered what the best approach is for both tenants and landlords beyond 30 September 2021 following the move to Step 4 of the Roadmap in July 2021, the roll out of the vaccination programme and the current public health situation. It has concluded that, in the current context, it is appropriate and proportionate to return notice periods to the position that existed prior to the modifications made by Schedule 29 of the Coronavirus Act 2020. This is what this instrument achieves. Rather than merely allowing the Schedule to lapse at this stage, however, we have retained, until 25 March 2022, the flexibility to re-impose longer notice periods. This is to ensure that the Ministry is able to respond swiftly to reintroduce longer notice periods should there be any future need to do so. This power would only be used if there was a clear need to do so either in light of a public health risk or to reduce pressures on essential public services owing to the COVID-19 pandemic.

7.4 This instrument also makes provision to prescribe certain relevant forms of notice under three statutory provisions, sections 8 and 21 Housing Act 1988, and section 83

Housing Act 1985 as it relates to fixed term tenancies. In most cases, increased notice periods were achieved through temporary modifications to existing forms, but in these three cases new prescribed forms reflecting the longer notice periods were issued. Those forms now need to be replaced to return notice provisions to the pre-pandemic position. We have also taken the opportunity to make minor improvements to the forms, moving the notes from Form 3 onto a separate document which will be uploaded alongside Form 3 onto gov.uk (as has already been done for Form 6A) and including information for the tenant at the start of the forms. Alongside this, we have removed the statutory review clause as the provision is below the required threshold.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 Prior to this instrument, emergency legislation meant that landlords were required to serve at least four months' notice before commencing proceedings, unless those proceedings were being taken on grounds of rent arrears or on other grounds involving serious fault on the part of the tenant before this emergency provision was due to expire on 30 September 2021.

Why is it being changed?

7.6 The Ministry believes that, in the context of the improving public health situation, success of the vaccination rollout and the move to Step 4 of the national roadmap, returning required periods of notice of intention to seek possession to their pre-COVID lengths most appropriately strikes the balance between the interests of landlords and of tenants. The normal processes for lawful eviction must still be followed by landlords, helping mitigate the risk to public health, and balance landlords' and tenants' rights.

What will it now do?

7.7 The law will now revert to the pre-COVID position for notice of intention to seek possession from 1 October 2021. However, we have extended the relevant period in order to retain the power to reimpose longer periods of notice if necessary. Alongside this, this instrument prescribes the relevant forms of notice under section 8 and 21 Housing Act 1988, and under section 83 Housing Act 1985 in relation to fixed term tenancies, which is necessary as the currently prescribed forms refer to the extended notice period requirements.

8. European Union Withdrawal and Future Relationship

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 There has been no formal public consultation on this instrument, however, the Ministry has engaged widely with stakeholders representing landlords, tenants and letting agents during the course of the pandemic on the impact of this and previous instruments amending Schedule 29. We have drawn on the information provided regarding the impact on the sector to inform the policy, balancing the need to protect

public health and tenants, with landlords' needs to regain possession of their properties.

11. Guidance

11.1 Guidance on the possession process for Assured Shorthold Tenancies or Assured Tenancies and those who are renting a house or flat from a local authority or a Private Registered Provider of Social Housing or Registered Social Landlord is available on gov.uk[1] and will be updated to reflect the changes made by this instrument.

12. Impact

12.1 The instrument returns notice periods to the pre-Coronavirus Act 2020 position bringing the temporary longer notice periods to an end. The impact on tenants, private and social landlords is to revert to the pre-pandemic position. It allows landlords to exercise their right to repossess their property in a timely manner and subject to due process as they could prior to the pandemic.

12.2 Private and social landlords who wish to issue notices will need to familiarise themselves with the new versions of the respective forms. This familiarisation cost to private and social landlords has been estimated as small and substantially below the £5million per annum threshold requiring a full impact assessment.

12.3 A full impact assessment has not been produced as the instrument returns the notice periods to the pre-pandemic position and the familiarisation costs relating to the revised forms are small.

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 return notice period lengths to the pre-COVID lengths and, as such, allows landlords to exercise their right to repossess their property where necessary. The Ministry believes that this will therefore reduce the impact on some small businesses.

14. Monitoring & review

14.1 As the provisions of this instrument revert to the pre-pandemic position and the familiarisation costs relating to the revised forms are small, a statutory review clause has not been included in this instrument and clauses to review other related forms have been revoked. Government will be monitoring the situation and has retained the power to impose longer notice periods as emergency measure until 25 March 2022.

15. Contact

15.1 Michael Marshall at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2082 or email: michael.marshall2@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.

[1] https://www.gov.uk/government/publications/understanding-the-possession-action-process-guidance-for-landlords-and-tenants

15.3 Eddie Hughes at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.