EXPLANATORY MEMORANDUM TO

THE CORONAVIRUS ACT 2020 (RESIDENTIAL TENANCIES: PROTECTION FROM EVICTION) (AMENDMENT) (ENGLAND) REGULATIONS 2021

2021 No. 284

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 This instrument 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 so these measures will be in force until 31 May 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is subject to the negative resolution procedure and comes into force on 31 March 2021.

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)

3.2 As the instrument is 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 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 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 2021 are compatible with the Convention rights."

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 initially brought into force until 30 September 2020. A Statutory Instrument laid on 28 August 2020 extended the measures so they are in force until 31 March 2021. This instrument extends the relevant period in which Schedule 29 is in force to retain the protections for tenants for another reasonable and defined period of time, until 31 May 2021. This is due to the ongoing public health risks arising from the pandemic and the continued need to minimise pressure on public services.

7. Policy background

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 Government 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 would be 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 is considered justified because of the strain they place on other tenants, landlords and the wider community. 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 under immigration legislation and serious rent arrears of more than 6 months.

7.3 The primary aim is to protect public health and to continue to minimise the impact of transmission and homelessness on essential services. As some level of national restrictions in response to the Coronavirus pandemic will remain in place in Spring 2021 – particularly until at least May for much of the hospitality sector, where a large number of renters are employed - the Government considers that it is proportionate to keep these measures in place for another two months, until the end of May 2021. This

will mean that private and social landlords will still be required to provide six months' notice when seeking possession in most circumstances.

7.4 It will still be necessary for landlords to progress some cases more quickly, because of the impact they have on other tenants, landlords and local communities. This instrument therefore does not change the circumstances in which landlords can provide shorter notice periods for serious cases. This has the effect of allowing landlords to continue to provide shorter 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, where a tenant has no right to rent in the UK under immigration legislation and serious rent arrears of more than 6 months.

7.5 The Government will consider the public health context carefully when considering next steps after 31 May 2021.

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 / trigger the statement requirements under the European Union (Withdrawal) Act.

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 fast-paced circumstances of the pandemic and the need to ensure these measures begin promptly on 1 April. However, the Ministry has engaged widely with stakeholders during the course of the pandemic and has drawn on the information provided to inform the policy in the drafting of the instrument.

11. Guidance

11.1 The Ministry published public guidance[1] on the original measures in the Coronavirus Act in March 2020. This is for tenants, landlords and local authorities, and sets out the changes brought in by the Coronavirus Act and the impact of these on 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 following the introduction of new court rules and arrangements to respond to the pandemic in September 2020[2]. 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 or voluntary bodies where they issue tenancies, such as housing association charities, local authorities where they provide social housing or operate as a Local Authority Housing Company and

[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

landlords who operate as small businesses. It will require them to continue 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 does not interfere with existing provisions in Schedule 29 that allow landlords quicker access to justice for the egregious cases, including anti-social behaviour or serious rent arrears where at least 6 months of rent is due. This will assist landlords in dealing with the most serious and urgent cases.

12.2 The impact on business, charities or voluntary bodies is described in paragraph 12.1.

12.3 The impact on the public sector is described in paragraph 12.1.

12.4 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 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 may be 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 Eleanor Millington at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2395 or email: Eleanor.millington@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Stephanie Kvam, 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.