POLICY NOTE

THE RENT ARREARS PRE-ACTION REQUIREMENTS (CORONAVIRUS) (SCOTLAND) REGULATIONS 2020

SSI 2020/

The above instrument was made in exercise of the power conferred by sections 18(9) and 53(3) of the Housing (Scotland) Act 1988 and section 76(1) and paragraph 12(6) of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The instrument is subject to affirmative procedure.

The Coronavirus (Scotland) (No.2) Act 2020 ("the Act") temporarily amends the Housing (Scotland) Act 1988 and the Private Housing (Tenancies) (Scotland) Act 2016 in respect of applications for repossession of a property by a landlord in cases of rent arrears. They provide for the temporary introduction of pre-action requirements that will apply where a landlord pursues a repossession order on the grounds of rent arrears, where all or part of those arrears have originated in the period during which paragraph 4 of schedule 1 of the Act is in force. Compliance with these pre-action requirements will be taken into account by the First-tier Tribunal for Scotland (Housing and Property Chamber) when deciding whether it is reasonable to grant a repossession order in such cases. This instrument specifies those pre-action requirements.

Legislative background

1. Prior to the coming into force of the Coronavirus (Scotland) Act 2020, 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.

2. There is currently no requirement in the private rented sector 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.

3. The Coronavirus (Scotland) Act 2020 makes most grounds for repossession in the private rented sector discretionary, including those related to rent arrears. This changed the previous position, described in paragraph 1, and ensures that the Tribunal considers the reasonableness of making an order during the Covid-19 outbreak.

4. The Act 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 paragraph 4 of schedule 1 of the Act is 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.

5. These Regulations set out the pre-action requirements that will apply in cases where a repossession application has been made by a landlord in respect of rent arrears that have occurred during the period during which paragraph 4 of schedule 1 of the Act is in force. Compliance with these pre-action requirements will be taken into account by the First-tier Tribunal for Scotland (Housing and Property Chamber) when determining whether to grant a repossession order in cases where the Regulations apply.

Policy Objectives

6. 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.

Commencement

7. These Regulations will come into force on 19 September 2020.

Consultation

8. There has been no public consultation in relation to this instrument. The Scottish Government has consulted 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. The PRS Resilience Group has a broad membership intended to represent the interests of those who will be affected by the introduction of the requirements in these Regulations.

Impact Assessments

9. An Equality Impact Assessment and a Business and Regulatory Impact Assessment have been completed and are attached. We have also looked at the impacts of the Regulations in terms of Fairer Scotland and Child Rights and Wellbeing considerations and will report these considerations in due course.

Financial Effects

10. The Business and Regulatory Impact Assessment (BRIA) showed that overall the introduction of the Regulations should not result in significant additional cost to landlords in relation to pursuing repossession cases for rent arrears during the coronavirus outbreak.

Scottish Government
Directorate for Housing and Social Justice
August 2020