

EXPLANATORY MEMORANDUM TO THE PRIVATE TENANCIES (CORONAVIRUS MODIFICATIONS) REGULATIONS 2020

S.R. 2020 No. 192

1. Introduction.

1.1 This Explanatory Memorandum has been prepared by the Department for Communities and makes a Statutory Rule by the negative resolution procedure under powers conferred as a consequence of the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland) 2020. The Act was approved by the NI Executive, received Royal Assent on 4 May and was introduced on 5 May. This imposed the requirement for landlords to provide tenants with a 12 weeks' notice to quit a dwelling house let under a private tenancy during the emergency period ending on 30 September 2020.

2. Purpose

2.1. The Private Tenancies (Coronavirus Modifications) Act (NI) 2020 responds to the present outbreak of coronavirus in Northern Ireland and protects tenants from eviction during the present emergency period. Given the current public health emergency and uncertainty surrounding the coronavirus pandemic the Department now wishes to further extend “the emergency period” by 6 months to 31 March 2021. Due to the coronavirus emergency it has been necessary for the Department to take steps to introduce measures to help prevent or reduce significant numbers of households in NI becoming or being under threat of being homeless at a time of national crisis when housing, health and other public services are under extreme pressure and where there is significant risk to individuals to health and wellbeing as a result.

2.2 The World Health Organisation reports that we are still in the midst of an accelerating, intense and very serious pandemic. Economists have warned that the full effect of the pandemic on the jobs market may not be felt until the end of the furlough scheme in October.

2.3 This extension recognises the impacts of employees temporarily being out of work, others being furloughed, rising unemployment amongst those living in the private rented sector as a result of Covid-19 particularly when their income streams may be vulnerable, and many may be at risk of losing their tenancies.

2.4 The Department has the option to extend the emergency period up to 5 May 2022. Therefore to extend for 6 months would seem prudent in order to better understand both the public health and economic situation as it develops in late 2020 and early 2021. It should be noted that the Department can shorten the period. Officials will carry out a review of the situation and consultation in January 2021, ahead of the end of the extension.

2.5 Should the emergency period end on 30 September without an extension, the Department will no longer have the power to extend the Private Tenancies (Coronavirus Modifications) Act

2020. If a further deterioration of the public health situation was to occur, the Department would have to take new emergency primary legislation to reintroduce the protections.

3. Discussion and consultation

3.1 The UK has announced it is in recession for the first time in 11 years as the economy begins to feel the effects of the lockdown. This confirms that the consequences of the coronavirus pandemic will be both to the health of the public, but also economic. It will undoubtedly lead to financial pressure on many households, both now and in the future. Recent data has underlined the continuing threat from Covid-19 with virus transmission in NI increasing markedly since the beginning of July¹. Experience in different parts of Great Britain and the Republic of Ireland have also emphasised the ongoing risk of infections spiking.

3.2 The Department for Communities has carried out research and consultation with stakeholders including recent engagement with Housing Rights, landlords and tenants in order to consider an extension to the emergency period. It is clear that both landlords and tenants are experiencing the financial impact of Covid-19.

3.3 The Department recognises the difficulties and challenges which families are facing to pay their rent many having been laid off or furloughed since the pandemic. Allowing for an extension to 31 March 2021 is taking account of the present uncertainties with the pandemic. This decision to extend the emergency period has been informed by discussions with stakeholders and findings from the recent survey carried out by the Department to assess the impacts of Covid-19 on the sector.

3.4 Housing Rights have voiced their support for the continuation of the 12 weeks' notice to quit period beyond the 30 September. It is seen as an essential protection to renters in the private rented sector to afford those renters similar protection to the social sector. The evidence provided shows that this extra time allows for renters and landlords to come to an arrangement regarding rent due etc. The Department funds the Housing Rights' Helpline for Tenants along with a Landlord Advice Helpline and a Mediation Pilot aimed at resolving problems between landlords and tenants. There have been some instance of landlords giving 12 weeks' notice to quit but pressurising tenants to leave earlier. The Renters Voice Steering Group are also heavily behind a continuation of this emergency legislation.

3.5 Landlords broadly are supportive of the idea of an extension however a small number have indicated they have been adversely affected by this temporary legislation as courts have been closed and there is a lot of uncertainty about the practical implications of this. Nearly two thirds of those landlords who responded to the survey (312) advised that none of their tenants had fallen into arrears in the period April to June 2020. Some landlords have been adversely affected during this period with tenants refusing to pay rent. However, it is difficult to say with any certainty whether this is directly a result of the new legislation or whether this is just bad behaviour from a tenant.

¹. Source – DoH Covid 19 dashboard 20 August 2020

<https://app.powerbi.com/view?r=eyJrIjoicjZGYxNjYzNmUtOTlmZS00ODAxLWE1YTEtMjA0NjZhMzlmN2JmIiwidCI6IjIjOWEzMGRILWQ4ZDctNGFhNC05NjAwLTRiZTc2MjVmZjZjNSIsImMiOjh9>

3.6 This extension is necessary to ensure that tenants in the private rented sector continue to be protected during this crisis. This is the fastest growing housing tenure accounting for approximately 17% of the total housing stock with approximately 136,000 properties. Private renters continue to be a group facing significant concerns and anxiety during this period in particular due to loss of employment. Data shows that private renters are more likely to be younger, relatively less well paid, working (a higher proportion work than owner occupiers) and less likely to be retired². As a high number of people will struggle to pay their rent and given the results from the recent survey some are reporting that their landlords are considering issuing notices to quit as many tenants have lost their jobs and are unable to pay their rent.

3.7 In terms of public health, shielding has ended and while incidences of Covid-19 are low, there have been local outbreaks and the possibility of a second wave remains. This could see the reintroduction of controls and restrictions, and possibly the reintroduction of shielding. The track and trace process and quarantine for travellers means that it will still be important that people have a safe place to stay inside if required to self-isolate.

3.8 There are other factors to be considered. Courts are reopening and planning to hear possession cases from the end of August, so landlords will again have a route to regain control of their properties. The housing market has re-opened and the restriction on movement for those wishing to move house has been lifted, which will allow tenants with reduced income to move to a house they can better afford.

3.9 One of the most important objectives of this temporary legislation was to ensure private renters did not end up homeless as a result of Covid-19. Evidence from the Northern Ireland Housing Executive indicate a marked decrease ranging from a 50% to 66% reduction in cases presenting as homeless through loss of rented accommodation since April 2020. While it is difficult to say that this is a direct result of the 12 weeks' notice to quit period being introduced, it does point to the fact that less people are losing their homes during this period.

3.91. There is a lot of uncertainty regarding the current health crisis, and the possibility of a second wave of the virus cannot be ruled out. The end of furlough scheme at the end of October and the planned winding down of other economic supports should also be borne in mind, and it would therefore appear prudent to extend the emergency period beyond the 30 September to 31 March 2021. By and large, the public health crisis is not over and as anticipated large numbers of people in the private rented sector will face the very real prospect of losing their homes. The continuation of the emergency legislation up to 31 March 2021 provides time for a more settled picture and affords the tenants in the private rented sector with the extra protection required at this time.

4. Human Rights and Equality Impact

4.1 The regulations do not engage any Convention rights. An Equality Impact Assessment was carried out on this aspect of the Private Tenancies (Coronavirus Modifications) Act 2020.

² NI House Condition Survey – 2016 - <https://www.nihe.gov.uk/Documents/Research/HCS-2016-Main-Reports/HCS-Main-Report-2016.aspx>

Consideration has again been given to compliance with section 75 of the Northern Ireland Act 1998 and no further equality issues relating to designation have been identified.

4.2 Any interference with a landlord's rights under Article 1 Protocol 1 is justified and proportionate having regards to the emergency circumstances generated by coronavirus. Human rights protections need also to be afforded to tenants in these uncertain times with the loss of jobs and the potential to lose their accommodation. Courts are reopening and planning to hear possession cases from the end of August, so landlords will again have a route to regain control of their properties if the need arises.

4.3 The furlough scheme, which is due to end at the end of October, has had the effect of delaying some of the economic effects of the pandemic. Private renters are more likely to be younger, have lower incomes and have less secure employment. While many businesses are reopening, a considerable number of employees remain on furlough and the recovery in many sectors is fragile³. Younger workers, and those in lower paid sectors such as retail and hospitality, are more likely to be furloughed. It is therefore reasonable to assume that the economic disruption that coincided with the pandemic had a disproportionate impact on renters with large numbers put on furlough at risk of unemployment, or losing employment.

4.4 The dual threats of a second wave and uncertainties over Brexit are concerning and it is not clear at present what the overall impact will be on the economy with job losses, business closures and a slowdown in investment. It is expected that the priority will be to provide support for those parts of the economy hardest hit by the crisis and supporting those being made redundant with little prospects of gaining new employment as recovery remains remote.

5. Regulatory Impact Assessment

5.1 The Private Tenancies (Coronavirus Modifications) Regulations (Northern Ireland) 2020 will not have a direct or indirect impact on businesses. The majority of landlords in Northern Ireland operate on a small scale, evidenced by research undertaken by the University of Ulster in 2011 on behalf of the Northern Ireland Housing Executive which indicates that approximately 70% of responses were small scale landlords owning 5 properties or less. Therefore the proposed new regulatory regime is proportionate and should have no major impact on small businesses.

6. Additional Information

6.1 After the regulations are made the primary will read that the emergency period ends will be the 31 March 2021. This textual amendment to the Act makes it clear from the face of the Act when the emergency period ends.

6.2 This extension is intended to be for a limited period of 6 months which will be reviewed in January 2021. Any cases that are in train where a notice to quit has been served before the passing of this Act, will continue as usual.

³ <https://www.gov.uk/government/collections/hmrc-coronavirus-covid-19-statistics>

