

## Policy Note

### **The Health Protection (Coronavirus) (Protection from Eviction) (Scotland) Regulations 2020**

#### **SSI 2020/425**

The above instrument was made by Scottish Ministers in exercise of the power conferred by paragraph 1(1) of schedule 19 of the Coronavirus Act 2020 (“the Act”) and all other powers enabling them to do so.

These Regulations are made in response to the serious and imminent threat to public health which is posed by the incidence and spread of coronavirus in Scotland.

The Scottish Ministers consider that the restrictions and requirements imposed by these Regulations are proportionate to what they seek to achieve, which is a public health response to that threat.

These Regulations prevent, except in specified circumstances, attendance at a dwelling house for the purpose of serving or executing a charge for removing or for executing a decree for removing from heritable property.

The specified circumstances are where possession of the dwelling house is sought on the basis of nuisance, annoyance or conviction for using the house for immoral or illegal purposes, anti-social behaviour, certain convictions or association with person who has relevant conviction or engaged in relevant anti-social behaviour.

The Regulations came into force on 11 December 2020 and will expire on 22 January 2021.

### **Legislative Background**

1. The Coronavirus Act 2020 received Royal Assent on 25 March 2020. The Scottish Government is using powers conferred by paragraph 1 of schedule 19 of that Act to make these Regulations. The Regulations include “the imposition of a special restriction or requirement” (they provide for restrictions, in relation to a person, as to where the person may go or with whom the person has contact as described in paragraph 4(2)(j) of schedule 19) and, as required by paragraph 2(4) of schedule 19, are being made in response to a serious and imminent threat to public health. For the purposes of paragraph 2(1) of schedule 19, the Scottish Government considers that the restriction on evictions imposed by the Regulations is a proportionate response to the pandemic.

### **Policy Objectives**

2. The regulations set out that no person may attend at a dwelling house for the purpose of serving a charge for removing, or executing a charge for removing or for executing a decree for removing from heritable property from 11 December 2020 to 22 January 2021.

3. The only exceptions relate to where the eviction order has been granted in relation to antisocial or criminal behaviour. The relevant eviction grounds relating to this are as follows:

- case 2 (nuisance, annoyance or conviction for using the house for immoral or illegal purposes) in schedule 2 of the Rent (Scotland) Act 1984(1);
- ground 15 (conviction for certain offences, acting in an anti-social manner or pursuing a course of anti-social conduct) in schedule 5 of the Housing (Scotland) Act 1988(2);
- paragraphs 2 (conviction for certain offences), 7 (anti-social behaviour or harassment) or 8 (nuisance, annoyance or harassment) of schedule 2 of the Housing (Scotland) Act 2001(3); or
- grounds 13 (criminal behaviour), 14 (anti-social behaviour) or 15 (association with person who has relevant conviction or engaged in relevant anti-social behaviour) in schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016(4).

### *Public Health Justification*

4. There are already a number of protections against eviction in place for renters in Scotland. For example, the Private Housing (Tenancies) (Scotland) Act 2016 provided significantly increased levels of protection for private renters, including:

- the removal of the previous ‘no-fault ground’ for eviction, with a landlord only being able to use one of the 18 grounds for repossession; and
- strict legal processes that a landlord must follow to evict a tenant and the ability for a tenant to challenge via the First-tier Tribunal (Housing and Property Chamber).

5. In the social housing sector pre-action requirements were introduced in 2012 to strengthen protection for tenants from eviction for rent arrears. Before an eviction order is granted, landlords must satisfy the court that they have given tenants every opportunity to take up help to manage their debts and to agree an affordable and sustainable repayment plan. This means that social landlords must have exhausted all attempts to resolve rent arrears with their tenant before taking action to evict. All social housing eviction cases in the Sheriff Court, with the exception of streamlined cases for criminal conviction, are also subject to a reasonableness test.

6. However, additional protections are needed as a result of the Covid-19 pandemic. Given the temporary relaxation of rules with regards to the mixing of households over the festive period and the potential that this could lead to people needing to self-isolate safely at home, the Scottish Government have brought forward regulations to introduce a temporary ban on the enforcement of eviction orders – across both the private and social rented sectors – from 11 December to 22 January. The only exceptions to this are the most serious circumstances, such as: illegal occupation, antisocial or criminal behaviour and domestic abuse.

7. This temporary action is in direct response to the continued need to protect public health during the unprecedented times that we continue to face. The timeframe of no evictions taking place between 11 December and 22 January will help prevent additional burdens being placed on health and housing services, which are always stretched over the festive period but even more so this year due to the impact of the pandemic with staff having to work from home or self-isolate.

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(1) 1984 c.58.

(2) 1988 c.43. Ground 15 was substituted by section 23(4) of the Crime and Disorder Act 1998 (c.37).

(3) 2001 asp 10.

(4) 2016 asp 19.

8. This would enable any tenants who have taken the opportunity to mix with other households over the festive period - due to the relaxed restrictions - time to effectively self-isolate should they come into contact with a positive person and then make plans for moving where necessary

9. We also know that the pandemic has already had a negative impact on mental health, in particular on children, so reducing stress and allowing time for families to gather (following the guidance) is important this year more than any other. An eviction during this time could put that in jeopardy so this proposal supports mental health.

#### *Expiry of Regulations*

10. The regulations came into force on 11 December 2020 and will expire on 22 January 2021.

#### **Consultation**

11. Due to the urgency of the situation, there has been no public consultation in relation to this instrument. Where possible, the Scottish Government has informally consulted with public bodies and other relevant stakeholders affected by the Regulations.

#### **Impact Assessments**

12. Impact Assessments have not been prepared in relation to this instrument. The provisions are however subject to strict obligations on the Scottish Government to review their necessity.

#### **Scottish Government**

Housing and Social Justice Directorate  
December 2020