

## POLICY NOTE

### THE CORONAVIRUS (SCOTLAND) ACTS (EARLY EXPIRY OF PROVISIONS) REGULATIONS 2022

SSI 2022/64

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 13(1) of the Coronavirus (Scotland) Act 2020<sup>1</sup> (“the First Scottish Act”) and section 10(1) of the Coronavirus (Scotland) (No. 2) Act 2020<sup>2</sup> (“the Second Scottish Act”) (together – “the Acts”), and all other powers enabling them to do so. The instrument is subject to the negative procedure.

#### **Purpose of the instrument**

To expire early certain provisions in the Coronavirus (Scotland) Act 2020 and the Coronavirus (Scotland) (No.2) Act 2020 on 30 March 2022. Part 1 of each of the Acts expires at the end of 31 March 2022. The Scottish Ministers have laid a draft of the Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2022 seeking to amend each expiry date to the end of 30 September 2022. This would have the effect that Part 1 of each of the Acts, other than the provisions that have been expired, would then expire at the end of 30 September 2022.

#### **Legislative background**

2. The First Scottish Act came into force on 7 April 2020 (except for one provision) and the Second Scottish Act came into force on 27 May 2020. The Acts have provided powers and measures which have helped to protect the public, maintain essential public services and support the economy in the face of the unprecedented and ongoing public health and economic challenges created by the pandemic. This included protections for individuals in areas such as housing, measures to support the ongoing operation of the justice system, and support for public bodies in their response to Covid such as adjustments to deadlines for reports.

3. As set out under section 12 of the First Scottish Act, and section 9 of the Second Scottish Act, Part 1 of each of the Acts were due to expire on 30 September 2020, with the potential to be extended for two further periods of six months to 30 September 2021, subject to the approval of the Scottish Parliament. On 29 September 2020 and 30 March 2021, regulations came into force extending the expiry date of Part 1 of each of the Acts to 31 March 2021 and 30 September 2021 respectively<sup>3</sup>. Provisions in the Acts have been suspended or expired where they were no longer necessary or appropriate.

4. The Coronavirus (Extension and Expiry) (Scotland) Act 2021<sup>4</sup> (“the Extension and Expiry Act”) amended the Acts to extend Part 1 of each Act until the end of 31 March 2022,

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1 [Coronavirus \(Scotland\) Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk/uk/scots/acts/2020/1)

2 [Coronavirus \(Scotland\) \(No.2\) Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk/uk/scots/acts/2020/2)

3 [The Coronavirus \(Scotland\) Acts \(Amendment of Expiry Dates\) Regulations 2020 \(legislation.gov.uk\)](https://legislation.gov.uk/uk/scots/regulations/2020/1) and [The Coronavirus \(Scotland\) Acts \(Amendment of Expiry Dates\) Regulations 2021 \(legislation.gov.uk\)](https://legislation.gov.uk/uk/scots/regulations/2021/1)

4 [Coronavirus \(Extension and Expiry\) \(Scotland\) Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk/uk/scots/acts/2021/1)

with the potential for further extension by secondary legislation to the end of 30 September 2022, subject to the approval of the Scottish Parliament. In addition to extending provisions, the Extension and Expiry Act also expired certain provisions within the Acts which were no longer necessary or appropriate.

5. The Extension and Expiry Act contained no provision to extend the Acts beyond the end of 30 September 2022.

### **Policy objectives**

6. Part 1 of each of the Acts can only be extended in their entirety and not on a provision by provision basis. This is done through regulations made following the agreement of the Parliament, and anything that should not be extended is therefore required to be expired through separate regulations.

7. During the passage of both Bills, Ministers committed to expiring provisions of each of the Acts as soon as it is appropriate to do so. In the decision on whether Part 1 of each of the Acts should be extended, Scottish Ministers have given careful consideration to the need to balance the needs of many stakeholders and partners who wish to see the provisions remain available, against the commitment given when the Acts were introduced that the provisions would not remain in place unless they were needed.

8. As part of the Scottish Government's regular reviews of the Acts' provisions and as part of the preparations for the potential extension of the Acts, consideration has been given to whether each individual provision continues to be needed beyond the end of 31 March 2022.

9. It has been judged that the provisions set out in regulations 2 and 3 of these Regulations will no longer be needed beyond the end of 31 March 2022 and can be expired. The provisions of the Acts which are expired early on 30 March 2022 will accordingly not benefit from the extension of Part 1 of each of the Acts, should this be agreed to by the Scottish Parliament.

### **Expiry of certain provisions on 30 March 2022**

*First Scottish Act: schedule 1, paragraphs 2, 4 and 6 to 10*

10. Paragraphs 2, 4, 6 and 7 of schedule 1 of the First Scottish Act modify the law on eviction notices to extend the period of grace that a landlord must allow a tenant, following the service of an eviction notice, before they can raise eviction proceedings. This applies to tenancies under the Rent (Scotland) Act 1984, the Housing (Scotland) Act 1988, the Housing (Scotland) Act 2001, and the Private Housing (Tenancies) (Scotland) Act 2016. Paragraph 8 gives the Scottish Ministers a power to modify the notice periods set in paragraphs 2, 4, 6 and 7. Paragraph 9 modifies statutory forms of eviction notices and paragraph 10 makes provision for errors in eviction notices.

11. A research report by the Collaborative Centre for Housing Excellence<sup>5</sup> published in November 2021 set out that, while these provisions succeeded in preventing mass evictions

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<sup>5</sup> [The pandemic arrears crisis : CaCHE \(housingevidence.ac.uk\)](https://housingevidence.ac.uk/)

during the worst of the pandemic, it has stored up a different set of problems as rent arrears for private and social landlords have risen substantially (upper estimate of £126 million). The report recommends that to successfully unwind the emergency measures, the Scottish Government should:

- retain pre-action requirements to encourage better approaches to arrears managed by private landlords who may otherwise rely too heavily on legal action;
- return notice periods to the pre-pandemic situation at the end of March 2022 but retain Tribunal discretion in arrears cases to allow individual circumstances to be taken into account; and
- continue the provision of additional financial support for tenants offered by the Scottish Government (increased Discretionary Housing Payment funding, Tenant Grant Fund) but monitor demand closely as the scale of current funding is small compared to the estimated level of rent arrears.

12. Given the significant relaxation of restrictions in the vast majority of other areas, and that the housing market has been open and operational for some time now, the Scottish Government believes the public health justification for extended notice periods no longer exists. It is, therefore, the view of the Scottish Government that these provisions should be expired.

13. Whilst this would see a return to pre-pandemic notice periods, it is worth highlighting that private tenants in Scotland already benefitted from significant protections brought in through the Private Housing (Tenancies) (Scotland) Act 2016, which will be further strengthened by the other two emergency provisions (private landlord pre-action protocol and Tribunal discretion) proposed to be made permanent through the Coronavirus (Recovery and Reform) (Scotland) Bill<sup>6</sup> (“the Recovery and Reform Bill”), which was introduced to the Scottish Parliament on 25 January 2022. In addition, the Scottish Government recently launched ‘A New Deal for Tenants’ consultation<sup>7</sup>, seeking views on a range of measures that will help further strengthen rights for tenants, including: greater rights to personalise a rented home, restrictions on winter evictions and the introduction of nationwide rent controls.

#### Saving provision

14. Regulation 4 of these Regulations makes saving provision for paragraphs 2, 4 and 6 to 10 of schedule 1 of the First Scottish Act. The extended notice periods provided for in schedule 1 of the First Scottish Act will be preserved for all eviction notices served prior to 30th March 2022. Landlords are only able to raise eviction proceedings where an eviction notice has been served and the applicable notice period has expired. A notice served prior to 30th March 2022 will be subject to the extended notice periods provided for in the First Scottish Act and landlords will only be able to raise proceedings on the basis of such a notice once that extended notice period has expired.

#### Transitional provision

15. Regulation 5 of these Regulations makes transitional provision for the scenario where a landlord has served an eviction notice prior to 30th March 2022 (“the new notice”), the

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<sup>6</sup> [Coronavirus \(Recovery and Reform\) \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)

<sup>7</sup> [A New Deal for Tenants - draft strategy: consultation - gov.scot \(www.gov.scot\)](#)

notice period for which has not yet expired, and following the expiry of these provisions, serves a fresh eviction notice. Regulation 5 provides that, where the new notice contains any of the grounds of eviction which were contained in the existing notice, the new notice cannot expire earlier than the existing notice.

16. This is designed to protect tenants from a landlord seeking to shorten the period after which eviction proceedings can be raised by serving a new notice under the newly reduced notice periods on the same ground or grounds of eviction. For example, an eviction notice under the 2016 Act seeking eviction on grounds of rent arrears served prior to the expiry of these provisions would have a notice period of 6 months but the same notice served after the expiry of these provisions would have a notice period of 28 days. The transitional provisions prevent a landlord who has already served an eviction notice for rent arrears prior to 30th March 2022 (which has a 6 month notice period) from cutting that notice period down to 28 days by serving a fresh eviction notice for rent arrears on or after 30th March. In those circumstances, the notice period previously communicated to the tenant would be respected.

*First Scottish Act: schedule 6, paragraphs 11, 12 and 14*

17. These paragraphs modify the requirements in the Local Government (Scotland) Act 1973 in relation to the provision of copies of documents in respect of meetings of local authorities. There is a requirement for local authorities to provide hard copies or extracts of a document requested by a member of the public in their offices. This provision in schedule 6 allows the local authority the flexibility to provide such hard copies or extracts only if it is “reasonably practicable” to do so.

18. Any hard copies or extracts of documents that conceivably could be requested by a member of the public, such as a report from a committee meeting, are more than likely to be available online on the council’s website. So, there is a clear route to accessing those documents. Although the Scottish Government has not specifically asked local authorities to report on the use of this provision, to avoid placing any additional reporting burdens on them when they are on the frontline in the fight against the pandemic, officials have not received any representations from local government that these paragraphs should continue in force. The Scottish Government is confident that this provision has very rarely been used, if at all. Given the significant relaxation of restrictions, the Scottish Government considers that the public health justification for continuing this provision no longer exists. It is, therefore, the view of the Scottish Government that this provision should be expired.

*First Scottish Act: schedule 7, paragraphs 6 and 7*

19. The measure extended the minimum period required for eviction of commercial property tenants from 14 days to 14 weeks. This was designed to allow sufficient time for tenants and their landlords to come together to revise lease terms and conditions where appropriate. As the economy opens up further rents will start flowing again, possibly with the revised lease structures put in place during the lockdown and restriction periods. Eviction has always been possible in Scotland during the Covid pandemic and it is considered that any notices to quit would have been exercised already if that was the route landlords were pursuing.

20. The moratoriums on eviction of tenants in the other UK administrations have always been much more restrictive than in Scotland so that there was less incentive for the parties to come together, hence their proposal to put binding arbitration into place.

21. The Code of Practice put in place to support landlord-tenant relationships during the pandemic has always operated in conjunction with the anti-irritancy provisions and this has now been revised<sup>8</sup>. Parts still apply in Scotland but it is now more focused on the binding arbitration proposals. However, it still provides generic voluntary guidance to encourage commercial tenants and landlords to work together to protect viable businesses and save jobs.

22. Of the stakeholders with which the Scottish Government has communicated (Royal Institution of Chartered Surveyors, Scottish Property Federation, Scottish Retail Consortium and the Federation of Small Businesses) only the Federation of Small Businesses would like to see the measures continued. However, it is thought that landlords will not bring forward evictions after two years of being able to do so, albeit with a longer period of notice to quit required. It is, therefore, the view of the Scottish Government that these provisions should be expired.

*Second Scottish Act: schedule 4, paragraph 14*

23. These provisions ensured that properties which, in normal times would not be liable for council tax because of the status of those who lived there (e.g. full-time students), and that were empty due to the pandemic, did not become liable for council tax. This was relevant in the earlier stages of the Covid pandemic as many of those who would live in such properties, particularly students, were not occupying them due to Covid related restrictions such as the restrictions on in-person teaching at universities and in other education institutions. Without this measure, landlords would have become liable for the council tax on such properties at a point they were unoccupied, and therefore providing no income, due to the impact of Covid restrictions and through no fault of the landlord.

24. Landlords are no longer reporting void properties as a concern. With the reopening of the housing market and the return of in-person teaching in universities and other education institutions the properties this measure covered are no longer empty. It is, therefore, the view of the Scottish Government that these provisions should be expired, a view supported by landlord organisations.

## **Consultation**

25. A formal public consultation exercise has not been undertaken in relation to this instrument. However, the Scottish Government has informally consulted with public bodies and other stakeholders on the development of the approach to expire certain measures contained in the Acts, and further detail of this is provided above.

## **Impact Assessments**

26. No impact assessments have been completed for this instrument. However, as part of the assessment of the continued necessity of certain provisions beyond the end of 31 March

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<sup>8</sup> [Code of practice for commercial property relationships following the COVID-19 pandemic - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/91111/code_of_practice_for_commercial_property_relationships_following_the_COVID-19_pandemic_-_GOV.UK)

2022, assessment of the rights and equality impacts of expiring these provisions has been undertaken.

27. A range of Impact Assessments were undertaken for the First Scottish Act, Second Scottish Act, Extension and Expiry Act and the recently introduced Recovery and Reform Bill<sup>9</sup>.

28. The Scottish Government has assessed the potential impacts of expiring these provisions and has determined that no detrimental effects on rights or equality are anticipated. The extended notice period provisions were put in place to protect public health by keeping people safe in their home, for as long as possible. Expiry of the extended notice period provisions will see a return to the original protections offered by the Private Residential Tenancy, which were already considered amongst the strongest in the UK.

### **Financial Effects**

29. The Deputy First Minister and Cabinet Secretary for Covid Recovery confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Directorate for Constitution and Cabinet  
February 2022

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<sup>9</sup> All of these Impact Assessments are linked to from this webpage - [Coronavirus \(COVID-19\) legislation - gov.scot \(www.gov.scot\)](https://www.gov.scot/legislation/coronavirus)