

EXPLANATORY MEMORANDUM TO

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

2020 No. 914

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 to the Coronavirus Act 2020, which introduced emergency measures requiring residential landlords to provide extended notice periods of three months when seeking possession of either a social or privately rented property in England and Wales. 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 these measures in three ways, so that these protections will continue to apply; (1) it will extend the relevant period during which Schedule 29 applies so the measures will be in force until 31 March 2021; (2) it will lengthen the required notice period to six months, save in relation to cases set out in (3); and (3) it will reduce the length of notice periods required for cases where a shorter period is considered justified, such as serious rent arrears, anti-social behaviour and domestic abuse. This reflects the change in circumstances since the Act was originally introduced in March 2020.

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 29th August. It is laid only one day before commencement which also falls after Parliament has risen.
- 3.2 While the Ministry acknowledges the general desirability of observing the “21-day rule”, allowing a prolonged delay before these measures come into force would mean that any tenant served notice between now and the end of September would be asked to leave their property in December, the height of winter. The Ministry also wants to mitigate the risk of landlords serving notice now to avoid serving a longer notice period before the Regulations come into force, as this would undermine the policy aim of providing protection for tenants over the winter months. The Ministry’s view is therefore that the coming into force of this instrument cannot be delayed for the period necessary to allow for 21 days or whilst Parliament is sitting.

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)

- 3.3 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 2020 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 brought into force for an initial period of six months and therefore expire on 30 September 2020. In the light of the ongoing circumstances of the pandemic, this instrument extends these measures so that they continue to provide protections for tenants for another reasonable and defined period of time, until 31 March 2021.

7. Policy background

- 7.1 The measures in Schedule 29 to the Coronavirus Act were introduced in March 2020, 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 Ministry 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. Schedule 29 therefore requires landlords in both the social and private rental sectors to provide more time when serving notices of their intent to possess property, ensuring that in almost all circumstances they must give renters with tenancies at least three months’ notice.
- 7.2 Based on the information available at that time on the nature of the virus and the public health requirements that were being put in place, three months was deemed to be an appropriate length of time for notice periods and the measures were introduced for what was considered a reasonable amount of time, meaning they expire on 30 September 2020.
- 7.3 Whilst the volume of COVID-19 cases steadily declined since the peak in April and had continued to do so until early July, more recently cases have started to increase again and a number of local areas have been placed into lockdown.

- 7.4 Forecasts suggest that COVID infection rates will likely increase during Winter, which is compounded by the risks presented by the annual flu season. In this context, the Ministry have reviewed the measures in Schedule 29. The Ministry's primary consideration is public health and the potential strain on public services. The Ministry is cognisant of the ongoing need to minimise the impact on public services of households either contracting the virus or being made homeless during the Winter months. Evictions over the winter period present a health risk to individuals as it will put them at greater risk of contracting coronavirus and puts additional pressure on what could be an already overstretched NHS and local authority services.
- 7.5 The Ministry therefore believes it is appropriate to extend the period in which these measures are in force until 31 March 2021 and to extend notice periods to six months in most circumstances. The Ministry deems this to be especially justified given that the stay on housing possession proceedings in court will only be in force until 20 September, meaning that after this, landlords will be able to progress cases through court. Extending the period will have the ancillary benefit of ensuring that tenants have more time to find new accommodation whilst navigating the implications of the pandemic.
- 7.6 However, to most appropriately balance the interests of landlords and tenants, the Ministry believes it is proportionate that notice periods are lowered for cases that cause particular stress and financial strain for landlords, other tenants and local communities.
- 7.7 This instrument therefore modifies the length of notice required for some cases in the following ways:
- 7.7.1 Notice periods for grounds that relate to anti-social behaviour (including the grounds for nuisance/illegal or immoral use of the property), domestic abuse riot, and fraud will return to their original notice periods, before the Coronavirus Act 2020 was introduced. This reflects that these cases place untenable strain on other tenants, local communities and landlords, and that it is no longer proportionate to allow them to continue without resolution.
- 7.7.2 Notice periods for grounds based on the death of the tenant and the fact that the tenant is unlawfully present in the UK in breach of immigration rules (known as the 'Right to Rent') will remain at three months, reflecting the need for landlords to be able to respond to these cases, but with less urgency than other serious matters.
- 7.7.3 Notice periods for rent arrears will be amended so that if at least six months of rent arrears are due, then landlords will be able to provide four weeks' notice. Where arrears owed are under six months, landlords will be required to provide six months' notice. The Ministry considers six months of unpaid rent to be the appropriate length for balancing the interests of landlords and tenants.
- 7.7.4 Notice periods for Introductory Tenancies (used by Local Authorities) for cases relating to anti-social behaviour (including rioting) and domestic abuse will be four weeks. This is broadly in line with the proposed notice periods for cases relating to anti-social behaviour and domestic abuse as set out in 7.7.1. Otherwise, notice periods for Introductory Tenancies will be 6 months in line with most other grounds. This reflects that social landlords have identified anti-social behaviour as a key issue. As Introductory Tenancies last for a period of 12 months (unless extended by 6 months), rent arrears accrued will be finite.

7.7.5 Notice periods for Demoted Tenancies (used by Local Authorities) for cases relating to anti-social behaviour (including rioting) and domestic abuse will be four weeks. This reflects the minimum notice period for possession proceedings for Demoted Tenancies under section 14E and is broadly in line with the proposed notice periods for cases relating to anti-social behaviour and domestic abuse as set out in 7.7.1. Otherwise, notice periods for Demoted Tenancies will be 6 months in line with most other grounds. Demoted Tenancies are used where secure tenants have caused a nuisance through anti-social behaviour. This reflects that social landlords have identified anti-social behaviour as a key issue

7.8 The instrument also makes provision for the prescribed forms of notice to be updated, so they contain accurate information as to the relevant notice required to be given.

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 Due to the fast-paced and changing circumstances of the coronavirus pandemic, there has not been time for a public consultation on this instrument. However, the Ministry has engaged with stakeholders during the course of the pandemic since the original measures came into force, including through the working group convened by the Master of the Rolls which has considered prioritisation of cases when the current stay on court possession proceedings lifts on 20 September 2020. The Ministry has drawn on the information provided to inform the policy in the drafting of the instrument.

11. Guidance

11.1 The Ministry published public guidance¹ on the original measures in the Coronavirus Act in March 2020. This is for tenants, landlords and local authorities, and sets out what changes were brought in by the Coronavirus Act and how this affects the rights and responsibilities of the key parties. The Ministry will continue to update these so they provide accurate and technical guidance for landlords, tenants and other key parties such as Local Authorities and letting agents.

12. Impact

12.1 There is no significant impact on voluntary bodies.

12.2 This instrument will apply to landlords that are charities (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 landlords who operate as small businesses. It will require them to provide an extended period of notice when seeking possession of a property, subject to certain exceptions as set out above. This could have a financial impact where a landlord has to wait longer before it can gain

¹ <https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities>

possession of (and subsequently re-let) a property. However, the instrument also reduces the period of notice that landlords must give in cases where over six months' of rent arrears are due or when seeking possession on grounds relating to anti-social behaviour. This will assist landlords in dealing with the most serious and urgent cases.

- 12.3 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.

14. Monitoring & review

- 14.1 As this is a temporary measure lasting only 6 months, 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.