

Local Government, Housing and Planning Committee

29th Meeting, 2022 (Session 6)

Tuesday, 22 November 2022

SSI cover note for: SSI 2022/307 Assured Tenancies and Private Residential Tenancies (Prescribed Notices and Forms) (Miscellaneous Temporary Modifications) (Scotland) Regulations 2022

SSI 2022/307

Title of Instrument: Assured Tenancies and Private Residential Tenancies (Prescribed Notices and Forms) (Miscellaneous Temporary Modifications) (Scotland) Regulations 2022

Type of Instrument: Negative

Laid Date: 28 October 2022

Circulated to Members: 3 November 2022

Meeting Date: 22 November 2022

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? Yes

Reporting deadline: 5 December 2022

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.
2. An electronic copy of the instrument is available at: [The Assured Tenancies and Private Residential Tenancies \(Prescribed Notices and Forms\) \(Miscellaneous Temporary Modifications\) \(Scotland\) Regulations 2022 \(legislation.gov.uk\)](#)
3. Copies of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

Purpose

4. The Policy Note states that—

The above instrument was made in exercise of the powers conferred by sections 19(3), 53(1),(2) and (3) and 55(1) of the Housing (Scotland) Act 1988, and sections 62(1)(d) and 77(1) and (2) of the Private Housing (Tenancies) (Scotland) Act 2016. The instrument is subject to negative procedure.

5. The Policy Note further states that the instrument updates the prescribed notices a landlord is required to serve a tenant when seeking to end a tenancy under the Housing (Scotland) Act 1988 and the Private Housing (Tenancies) (Scotland) Act 2016 to reflect the temporary changes introduced under the Cost of Living (Tenant Protection) (Scotland) Bill. It does so by making changes to certain forms and notices that a landlord is required to serve on a tenant when seeking to end a tenancy. The modifications are made in response to emergency measures introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Delegated Powers and Law Reform Committee consideration

6. At its meeting on 8 November 2022 the DPLR Committee considered the instrument and agreed to draw it to the attention of the Parliament under reporting ground (j) for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

7. The DPLR Committee's Report¹ notes that instruments subject to the negative procedure are to be laid at least 28 days before they come into force, not counting recess periods of more than 4 days. This instrument was laid on 28 October 2022 and came into force on the same day.

8. However, the DPLR Committee's Report further notes that the Scottish Government wrote to the Presiding Officer explaining that the 28-day rule could not be

¹ [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 8 November 2022 \(azureedge.net\)](#)

met due to “the speed the new legislation was being introduced and amending regulations being required to ensure the forms reflect all evictions grounds on the date the 2022 Act came into force.”

9. The Scottish Government further explained that the coming into force date of the Act and regulations could not be moved as these measures were urgently needed to help protect tenants during the cost-of-living crisis. The letter to the Presiding Officer is included as an annexe to the DPLR Committee’s report.

10. The DPLR Committee was content with the Scottish Government’s explanation of the reasons for its failure to comply with the laying requirements although Oliver Mundell MSP wished to place on record that he disagreed, stating—

“I am not content with the reason for the breach, as I believe that it could have been avoided if the primary legislation had followed the normal parliamentary procedure.”

Procedure for Negative Instruments

11. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

12. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Clerks,
Local Government, Housing and Planning Committee**

Annexe A

Scottish Government Explanatory Note

These Regulations temporarily modify the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 and the Rent Regulation and Assured Tenancies (Forms) (Scotland) Regulations 2017 in response to emergency measures introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022, which comes into force on 28 October 2022 and is due to expire on 31 March 2023, unless amended.

Regulation 2 and schedule 1 modify the notice to leave form which is required to be issued to tenants under the Private Housing (Tenancies) (Scotland) Act 2016. The modified form includes additional, temporary grounds for eviction which were introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022.

Regulation 3 and schedule 2 modify Form AT6 which is required to be issued by a landlord who intends to raise proceedings for possession to a tenant of an assured tenancy under the Housing (Scotland) Act 1988. The modified form includes additional, temporary grounds for eviction which were introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022.

These Regulations make changes to certain forms and notices considering emergency measures introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022, which was subject to a Business Regulatory Impact Assessment. No further impact on business is foreseen because of these Regulations. A copy of all impact assessments for the Act can be obtained online at www.legislation.gov.uk

As per purpose above and including Scottish Government Policy Note

POLICY NOTE

THE ASSURED TENANCIES AND PRIVATE RESIDENTIAL TENANCIES (PRESCRIBED NOTICES AND FORMS) (MISCELLANEOUS TEMPORARY MODIFICATIONS) (SCOTLAND) REGULATIONS 2022

SSI 2022/307

The above instrument was made in exercise of the powers conferred by sections 19(3), 53(1), (2) and (3) and 55(1) of the Housing (Scotland) Act 1988, and sections 62(1)(d) and 77(1) and (2) of the Private Housing (Tenancies) (Scotland) Act 2016. The instrument is subject to negative procedure.

The instrument updates the prescribed notices a landlord is required to serve a tenant when seeking to end a tenancy under the Housing (Scotland) Act 1988 and the Private Housing (Tenancies) (Scotland) Act 2016 to reflect the temporary changes introduced under the Cost of Living (Tenant Protection) (Scotland) Bill.

Policy Objectives

The instrument is necessary to ensure that notices served by landlords to end a tenancy under the Housing (Scotland) Act 1988 and the Private Housing (Tenancies) (Scotland) Act 2016 are amended to reflect the changes introduced under the Cost of Living (Tenant Protection) (Scotland) Bill. These changes will allow landlords to

serve a valid notice to end a tenancy using the new temporary grounds for repossession introduced as part of the exemptions to the moratorium on evictions.

Consultation

Due to the emergency nature of the Cost of Living (Tenant Protection) (Scotland) Bill, no formal public consultation has taken place. The measures in this instrument make amendments to prescribed forms required for implementation of the measures in the Bill.

Impact Assessments

Impact assessments have been completed as part of the development of the Cost of Living (Tenant Protection) (Scotland) Bill. All Impact Assessments for the Bill are available on the Scottish Government website, namely:

- Equality Impact Assessment
- Fairer Scotland Duty Impact Assessment
- Island Communities Impact Assessment
- Business Regulatory Impact Assessment
- Child Rights and Wellbeing Impact Assessment
- Data Protection Impact Assessment

There are no equality/children's/privacy, etc. impact issues in relation to this instrument.

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Financial Effects

The Minister for Zero Carbon Buildings, Active Travel and Tenants' Rights 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 Local Government and Housing

October 2022