

In confidence

Office of the Associate Minister for Housing (Public Housing)
Chair, Cabinet Business Committee

RESIDENTIAL TENANCIES (INFRINGEMENT NOTICES) REGULATIONS 2021

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Residential Tenancies (Infringement Notices) Regulations 2021 (the regulations).

Executive Summary

- 2 The Residential Tenancies Amendment Act 2020 (the Amendment Act) introduced an infringement offence regime under the Residential Tenancies Act 1986 (the RTA) to strengthen compliance with the RTA. Cabinet agreed to establish an infringement offence regime that would enable the Regulator (the Ministry of Business, Innovation and Employment) to issue infringement notices for strict liability offences [SWC-19-MIN-0142].
- 3 The Amendment Act provides that infringement notices served under the RTA must be in the form prescribed in regulations. Prescribing the form of infringement notices in regulations is the final legislative step for the Regulator to be able to issue infringement notices.
- 4 The regulations will prescribe the form of infringement notices (the form) under the RTA. The regulations are routine and do not require new policy decisions. The proposed form reflects standard practice for infringement notice forms.
- 5 The infringement regime provisions in the Amendment Act will come into effect on 11 February 2021. The regime will not be able to operate as intended until the regulations are made. I seek a waiver of the 28-day rule to enable the regulations to be made by 11 February 2021.

Policy

- 6 The Amendment Act introduced an infringement offence regime to strengthen compliance with the RTA. The Regulator will be able to issue a landlord with an infringement notice if the Regulator reasonably believes that the landlord has committed an infringement offence. Recipients of infringement notices must pay the infringement fee specified in the notice, unless they wish to challenge the notice.
- 7 Examples of infringement offences the Regulator will be able to issue infringement notices for include (among others):

- 7.1 requiring a letting fee;
 - 7.2 breaching duties on receipt of bond; and
 - 7.3 failing to provide healthy homes information.
- 8 The Amendment Act provides that infringement notices served under the RTA must be in the form prescribed in regulations. Prescribing the form of infringement notices and reminder notices in regulations is the final legislative step for the Regulator to be able to issue infringement notices.
- 9 The regulations will prescribe the form of infringement notices under the RTA. The regulations are routine and do not require new policy decisions. The proposed form reflects standard practice for infringement notice forms. Consultation on the content of the infringement notice was undertaken as part of the Select Committee process on the Amendment Act.
- 10 The empowering provision for these regulations is section 140(1)(a) of the RTA, which enables regulations to be made prescribing forms to be used for any purposes under the RTA.
- 11 The Amendment Act provides that infringement notices must contain the following particulars:
- 11.1 details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence:
 - 11.2 the amount of the infringement fee:
 - 11.3 the address of the department:
 - 11.4 how the infringement fee may be paid:
 - 11.5 the time within which the infringement fee must be paid:
 - 11.6 a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:
 - 11.7 a statement that the person served with the notice has a right to request a hearing:
 - 11.8 a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:
 - 11.9 any other matters prescribed in regulations.
- 12 The approach for the form, as outlined below, complies with the above requirements.

Details of the infringement notice

- 13 The form provides for identifying the infringement notice number and the date the infringement notice was issued, in accordance with standard practice.

Details of the enforcement authority

- 14 The form provides for identifying the name of authorised person who issued the notice and the address of the enforcement authority for correspondence and queries, in accordance with standard practice.

Details of recipient of infringement notice

- 15 The form provides for identifying the name of the recipient.
- 16 The infringement notice also provides for identifying the address, gender, date of birth, occupation and telephone number of the recipient, in accordance with standard practice. The form notes that these five particulars must be specified only if known, and the particulars for date of birth, occupation, and gender are not required if the notice is served on a company.

Alleged infringement offence(s) details

- 17 The form provides for identifying the provision breached. It also provides for identifying the, time, nature and place of the offence, in accordance with section 126E(a) of the Amendment Act and standard practice. The form also provides for identifying the name(s) of relevant tenant(s) (if known).
- 18 The form provides for specifying the infringement fee(s) payable. The form allows for multiple offences, and multiple infringement fees with a total infringement fee payable, to be included in one notice. This will be useful where a landlord commits multiple offences, for example, failing to lodge bond for multiple tenancies.
- 19 The Amendment Act prescribes a higher tier of infringement fees for landlords of boarding houses and landlords with six or more tenancies. The form also provides for including, if applicable, that the recipient received the infringement fee prescribed for landlords with six or more tenancies and landlords of boarding houses. This will enable landlords to contest the tier of infringement fee they were given if necessary. Details about landlord rights and how to correspond with the Regulator are set out later in the form.

Service details

- 20 The form provides for identifying the method of service and the date the notice was served.

Payment of infringement fee

- 21 The form includes standard information about how to pay the infringement fee.

Recommendation to consult a lawyer

- 22 The form includes the standard recommendation to consult a lawyer if the recipient does not understand anything in the notice.

Payments

- 23 The form includes information about:
- 23.1 the further enforcement action that can and cannot be taken under the RTA if the recipient pays the infringement fee and
 - 23.2 the impact of entering into a time-to-pay arrangement.

Defence

- 24 The form includes standard information about the defence against proceedings in relation to the offence that the recipient will have if they pay the infringement fee.

Further action

- 25 The form includes standard information about the further action open to the recipient.
- 26 The form includes that if the defendant requests a court hearing to challenge the offence, if the court finds the person guilty of the offence, the court is entitled to take into account any maximum infringement fine for the offence, and not just the infringement fee. This means that the court may impose an infringement fine that is greater than the infringement fee. In addition, if the court finds them guilty of the offence, costs will be imposed in addition to any penalty and they will be required to pay a hearing fee.

Non-payment of infringement fee

- 27 The form includes standard information about what happens if the recipient does not pay the infringement fee.

Queries and correspondence

- 28 The form includes standard information about how the recipient can correspond with the enforcement agency.
- 29 The form also includes standard information about further details of the recipient's rights and obligations being set out in section 21 of the Summary Proceedings Act 1957.

Timing and 28-day rule

- 30 The provisions in the Amendment Act relating to the infringement offence regime will come into effect on 11 February 2021. The regime will not be able

to operate as intended until the regulations are made. I seek a waiver of the 28-day rule to enable the regulations to be made by 11 February 2021.

- 31 I seek a waiver of the 28-day rule on the ground that the regulations have little or no effect on the public.
- 32 The regulations will have little or no effect on the public as they do not involve new policy decisions. They only prescribe the form that will be used to enforce previously agreed policy. The form is consistent with standard practice and with section 126E of the Amendment Act which prescribes the particulars that an infringement notice must contain.
- 33 Extensive consultation was undertaken on the Amendment Act, including the infringement offence regime. The public has been made aware of the policy for the infringement offence regime, including the offences, the infringement fees payable, and the prescribed particulars that must be included in an infringement notice. The regulations merely prescribe the form that will be used to enforce that policy.

Compliance

- 34 The regulations comply with:
- 34.1 the principles of the Treaty of Waitangi;
 - 34.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 34.3 the principles and guidelines set out in the Privacy Act 2020
 - 34.4 relevant international standards and obligations;
 - 34.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 35 There are no statutory prerequisites for the making of the regulations.

Regulations Review Committee

- 36 I am not aware of any reasons why the Regulations Review Committee might draw the regulations to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

- 37 The draft regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

- 38 The Regulatory Quality Team at the Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide

a Regulatory Impact Statement on the basis that they have no or minor impacts on businesses, individuals or not for profit entities.

- 39 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Publicity

- 40 I intend to make a press release at a date to be determined in consultation with the Prime Minister's Office. The infringement offence regime introduced by the Amendment Act has already been publicised on the Ministry of Housing and Urban Development website, the Tenancy Services website, and in Ministerial press releases. There was extensive consultation on the Amendment Act and the public is already aware of the policy for the infringement offence regime.

Proactive release

- 41 I intend to proactively release this paper within 30 days of its consideration by Cabinet.

Consultation

- 42 The Ministry of Business, Innovation and Employment, the Ministry of Justice, Kāinga Ora and PCO have been consulted in the course of developing the regulations.
- 43 Consultation with sector stakeholders was not required as the regulations are standard-form and do not involve any new policy. Extensive consultation was undertaken on the Amendment Act, including on the infringement offence regime.

Recommendations

I recommend that the Cabinet Business Committee:

- 1 note that on 25 September 2019 the Social Wellbeing and Community Committee agreed to establish an infringement regime that would enable the Regulator to issue infringements notices for strict liability offences [SWC-19-MIN-0142].
- 2 note that the Residential Tenancies (Infringement Notices) Regulations 2021 will give effect to the decision referred to in paragraph 1 above;
- 3 note that a waiver of the 28-day rule is sought:
 - 3.1 so that the regulations can come into force on 11 February 2021
 - 3.2 on the grounds that the regulations will have no or little impact on the public.
- 4 agree to waive the 28-day rule so that the regulations can come into force on 11 February 2021;
- 5 authorise the submission to the Executive Council of the Residential Tenancies (Infringement Notices) Regulations 2021.

Authorised for lodgement

Hon Poto Williams

Associate Minister for Housing (Public Housing)