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MINIMUM PERIOD FOR APPLICATIONS TO REMAIN IN FORCE – SUSPENSIONS UNDER SECTION 20B OF THE HOUSING (SCOTLAND) ACT 1987

STATUTORY GUIDANCE

HOUSING (SCOTLAND) ACT 2014

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1. INTRODUCTION

1.1 Section 6 of the Housing (Scotland) Act 2014 ("the 2014 Act") provides an additional power to social landlords to impose suspensions on applications for social housing. Section 6 amends the Housing (Scotland) Act 1987 ("the 1987 Act") to introduce a new section 20B. This gives a legislative basis for suspending applicants from receiving an offer of housing for a period of time from the date they apply for housing. It creates an exception to section 20(2)(b) of the 1987 Act, which otherwise prevents a requirement that an application must have remained in force for a minimum period before the applicant is eligible for a housing allocation.

1.2 This document provides statutory guidance on the category of suspensions created by section 20B and the legal requirements social landlords must comply with. These new provisions provide social landlords with an additional power to impose suspensions in a set of specific circumstances set out in section 20B. The new provisions do not replace social landlords' existing suspensions policies but social landlords will want to review their policies in the light of the new provisions. This guidance and the new provisions will take effect from 1st May 2019[1].

2. SUSPENSIONS POLICIES

2.1 Many social landlords in Scotland operate a suspensions policy alongside or as part of their allocations policy. A suspensions policy sets out the circumstances in which a social landlord may regard a tenant as being ineligible to receive an offer of housing. Social landlords' existing suspensions policies do not have a statutory basis but the law does not prevent landlords from having them.

3. RESTRICTIONS ON A LANDLORD'S ABILITY TO IMPOSE A SUSPENSION

3.1 There are some restrictions in housing law on how suspensions policies operate, for example there are restrictions on when landlords can or cannot take account of rent or other housing related arrears[2].

3.2 Section 20(2)(b) of the 1987 Act prevents landlords from imposing a requirement that an application must have remained in force for a minimum period before the applicant is eligible for a housing allocation. This in practice means that where section 20(2)(b) applies a social landlord cannot suspend an application for a period of time, from the point the applicant applied for housing, before an offer of housing will be made.

1 The Housing (Scotland) Act 2014 Commencement No. 8, Savings, Transitional and Supplemental Provisions) Order 2018

2 Section 20(2)(a) of the 1987 Act.

4. NEW POWERS IN THE 2014 ACT

4.1 Section 6 of the 2014 Act amends the 1987 Act to introduce a new section 20B. It creates an exception to section 20(2)(b) of the 1987 Act and gives social landlords the power to impose a suspension in certain circumstances where section 20(2)(b) would previously have prevented them from doing so. The legislation now allows landlords to suspend an application for a period of time from the date of the application in any of the specified circumstances.

4.2 The new power in section 20B is discretionary. A social landlord can choose whether or not to use it. A social landlord's approach to suspensions, including the option of imposing a suspension under section 20B, should be clearly set out in the landlord's suspensions policy.

5. TERMINOLOGY

5.1 Section 20(2)(b) of the 1987 Act and the amendment to it in the 2014 Act do not use the term 'suspension'. Section 20(2)(b) as amended states that a social landlord shall not impose a requirement "except to the extent permitted by section 20B *that an application must have remained in force for a minimum period*" before an applicant is eligible for the allocation of housing.

5.2 This guidance refers to this as a suspension for ease of reference and in line with common practice. This guidance only covers suspensions which may be imposed under section 20B.

6. WHAT IS A SUSPENSION?

6.1 In general a suspension is where an applicant for housing – whether that is a new applicant, a person already on a housing list, or an existing tenant applying to move home – has to wait for a period of time before being considered, or further considered, for an offer of housing. Landlords cannot suspend persons from the housing list but can suspend persons from receiving offers of housing.

6.2 To be suspended under section 20B an applicant must have been accepted onto a housing list and a decision taken at the point of application that they will not be eligible for an offer of housing until a specified period of time has elapsed. This means that suspensions under section 20B only apply to new applications for housing. Section 20B(1) provides that the circumstance being relied upon must have applied before the making of the application. In most cases a suspension issued under section 20B will be made at the point of application.

6.3 This is different from suspending a person who is already on a housing list for a period of time not linked to the date of their application, or for an indefinite period, for example suspending a transfer applicant until rent arrears are addressed. In these cases section 20B does not apply and the landlord will consider any suspensions under its existing suspensions/ allocations policy.

6.4 Suspensions do not include cases where:

- The applicant has been removed from the housing list (for example following a review of the list);
- There are delays in assessing an application while information is being collected; or
- An application has been deferred because the applicant's housing need is in the future rather than the present (many landlords allow applicants to apply for housing on the basis that they are not currently seeking housing but will be doing so in the future).

7. CIRCUMSTANCES IN WHICH AN APPLICANT MAY BE SUSPENDED FOR A PERIOD OF TIME UNDER SECTION 20B

7.1 The circumstances in which a landlord may suspend a new applicant from receiving an offer of housing are set out below. Landlords will need to consider all the circumstances of an individual application when deciding whether to impose a suspension. This legislation provides landlords with powers that they can choose to use – landlords do not need to impose a suspension where the wider circumstances of an application may mean it is inappropriate, for example where an applicant has been the victim of domestic abuse and needs to move.

7.2 The legislation does not differentiate between new applicants applying for housing and existing tenants applying to move. Section 20 of the 1987 Act requires landlords to allocate houses in line with their allocation policies. The law applies equally to transfer and external applicants for social housing in terms of the reasonable preference groups. This means that landlords ought generally to treat their existing tenants and external applicants in the same way when imposing suspensions.

8. ANTISOCIAL BEHAVIOUR

8.1 Section 20B(6)(a) states that landlords may impose a suspension where

"(a) the person has-

(i) acted in an antisocial manner in relation to another person residing in, visiting or otherwise engaged in lawful activity in the locality of a house occupied by the person,

(ii) pursued a course of conduct amounting to harassment of such other person, or a course of conduct which is otherwise antisocial conduct in relation to such other person, or

(iii) acted in an antisocial manner, or pursued a course of conduct which is antisocial conduct, in relation to an employee of the social landlord in the course of making the application".

8.2 Antisocial behaviour is defined as an action or course of conduct causing or likely to cause alarm, distress, nuisance or annoyance[3]. Conduct in this context includes things which a person has said as well as physical actions. A course of conduct must involve antisocial behaviour on at least two occasions.

3 Section 20B(7) of the 1987 Act.

9. EVIDENCE REQUIRED IN CASES OF ANTISOCIAL BEHAVIOUR

9.1 Antisocial behaviour is a common reason for suspending applicants from receiving offers of housing. Landlords may wish to apply the same criteria as those used to operate the Housing (Scotland) Act 2001 ("the 2001 Act") grounds for eviction, namely:

- the nature, frequency and length of the conduct;
- the extent to which the conduct arises because of acts or omissions of people other than the tenant;
- the effect the conduct is having on other people; and
- any other action taken, or capable of being taken, by the landlord to address the conduct.

9.2 Landlords will need to be aware that an applicant who has been suspended for a period of time under section 20B has a right to appeal to the sheriff[4]. They will therefore want to bear in mind that the evidence will need to be sufficiently robust to satisfy the court that it is reasonable to impose the suspension.

9.3 Landlords also need to consider the purpose of the suspension. For example a landlord may wish to consider whether preventing an applicant who has a history of antisocial behaviour from accessing housing would encourage the applicant to modify their behaviour. In such a case, it may be more suitable to provide housing with a support package in place, which the applicant has agreed to accept, and/or to give a short Scottish secure tenancy in order to encourage the applicant to modify their behaviour.

4 Section 20B(10) of the 1987 Act.

Short Scottish Secure Tenancies for Antisocial Behaviour

The 2014 Act amends the 2001 Act with regard to short Scottish secure tenancies (short SSTs) issued on the grounds of antisocial behaviour. Social landlords are now able to convert an existing Scottish secure tenancy (SST) to a short Scottish secure tenancy, or can give a short SST to new tenants, where the tenant, a household member or a visitor, has been involved in antisocial behaviour in or near the house within the last three years. Landlords no longer need to have obtained an eviction order for antisocial behaviour or an antisocial behaviour order (ASBO). In these cases a short SST must be given for a minimum period of 12 months to allow sufficient time for any support services offered to the tenant to help address the antisocial behaviour to take effect.

The legislation allows social landlords to extend a short SST which was created due to antisocial behaviour by an additional six months. This means that short SSTs created due to antisocial behaviour could last up to 18 months.

These tenancies still convert automatically to a full Scottish secure tenancy after 12 months, if there has been no repetition of antisocial conduct and no action is taken by the landlord to extend them to 18 months. Landlords can however still take eviction action against the tenant during this period if it becomes necessary. If the tenant refuses to vacate the house, the court must give an order for recovery of possession if the landlord has followed the correct procedures, whether the tenancy has reached its expiry or whether repossession is sought earlier than that because tenancy obligations have been broken.

The use of short SSTs can benefit tenants by giving them a further chance to change their behaviour and sustain their tenancy. It can also help landlords who are concerned about offering a permanent tenancy to tenants who behave antisocially where there is a risk that offending behaviour might recur.

Further information can be found in the statutory guidance Short Scottish Secure Tenancies for Antisocial Behaviour and Other Miscellaneous Changes to Short Scottish Secure Tenancies.

10. PREVIOUS CONVICTIONS

10.1 Section 20B(6)(b) states that landlords may impose a suspension where:

"The person has been, or has resided with a person who has been, convicted of–

(i) using a house or allowing it to be used for immoral or illegal purposes, or

(ii) an offence punishable by imprisonment which was committed in, or in the locality of, a house occupied by the person".

10.2 This means that landlords can suspend an applicant (including a tenant applying for a transfer) from receiving an offer of housing for a period where they, or someone they live or have lived with, have been convicted of a crime that has been committed in or near the property where they were a tenant. Landlords will want to consider carefully the nature of the crime and whether the behaviour that led to the conviction has had an impact on the people living in, or in the locality of, the house before suspending a tenant or applicant on this basis.

10.3 Punishable by imprisonment means that the offence carries imprisonment as a possible penalty. A prison sentence does not need to have been imposed. For example a community payback order may be given by the criminal court as an alternative to a prison sentence.

11. ORDER FOR RECOVERY OF POSSESSION

11.1 Section 20B(6)(c) states that landlords may impose a suspension where:

An order for recovery of possession has been made against the person in proceedings under–

(i) the Housing (Northern Ireland) Order 1983

(ii) the Housing Act 1985

(iii) the Housing (Scotland) Act 1987

(iv) the Housing (Scotland) Act 1988

(v) the Housing (Scotland) Act 2001.

11.2 This means that where a court in Scotland, England, Wales or Northern Ireland has previously granted an order to evict a tenant, a social landlord may suspend that person from receiving an offer of housing, taking the time limits set out in paragraph 17.1 of this guidance into account.

11.3 This power enables landlords to suspend an applicant who has had an order for recovery of possession made against them. It is not a requirement to do so in every case and landlords should consider each case on its merits so that individual circumstances can be taken into account, and this flexibility should be included in suspensions policies.

12. ABANDONING OR NEGLECTING A PROPERTY

12.1 The 1987 Act, as amended by the 2014 Act, provides grounds for imposing a suspension from the date of application where a tenant or a joint tenant have previously abandoned a tenancy:

- Section 20B(6)(d) enables landlords to impose a suspension where the person's tenancy has been terminated by the landlord under section 18(2) of the 2001 Act (repossession where abandoned tenancy)
- Section 20B(6)(e) enables landlords to impose a suspension where the person's interest in a tenancy has been terminated by the landlord under section 20(3) of the 2001 Act (abandonment by a joint tenant)
- Section 20B(6)(f) enables landlords to impose a suspension where, in relation to a house where the person was a tenant, a court has ordered recovery of possession on the ground set out in paragraph 3 or 4 of schedule 2 to the 2001 Act (deterioration of the property due to neglect, or deterioration of furniture due to ill-treatment).

12.2 The first two grounds above, (d) and (e), mean that a suspension may be imposed where the applicant has previously had a property repossessed by a social landlord, using the powers in the 2001 Act, because the property had been abandoned. This applies where the applicant was an individual or a joint tenant.

12.3 Section 20B(6)(f) means that a suspension may be imposed where a court has ordered recovery of possession due to the deterioration of the condition of the property or furniture provided for the tenant's use (as set out in schedule 2 of the 2001 Act).

12.4 All three of the circumstances above only apply to repossessions or orders for repossession made in Scotland under the provisions of the 2001 Act. Social landlords may still impose a suspension even if the repossession or court order listed above related to properties owned by a different Scottish social landlord.

13. RENT ARREARS AND OTHER TENANCY RELATED DEBT

13.1 Landlords can impose a suspension where:

"There is or was any outstanding liability (for payment of rent or otherwise) in relation to a house which –

(i) is attributable to the person's tenancy of the house, and

(ii) either –

(A) section 20(2A) would not be satisfied in respect of that debt, or

(B) in the case of a debt which is no longer outstanding, section 20(2A) would not have been satisfied at any time while that debt remained outstanding"[5].

13.2 This ground means that a social landlord may impose a suspension for rent arrears or other outstanding charges relating to a house. It may not, however, impose a suspension where the applicant is in rent arrears (or owes a landlord money for a reason relating to the property) in the following circumstances:

- that the rent arrears are not more than one twelfth of the annual rent (i.e. one month's rent) or that
- the applicant:
  - (i) has agreed with the landlord an arrangement for paying the outstanding liability; and
  - (ii) has made payments in accordance with that arrangement for at least 3 months; and
  - (iii) is continuing to make such payments.

13.3 This ground also applies if the debt is no longer outstanding, but there has been tenancy-related debt that while it was outstanding never met these criteria. So in some circumstances it may be reasonable for a landlord to impose a suspension on an applicant or tenant if they have previously had significant unpaid rent arrears or service charges which are no longer outstanding – this is likely to be where a landlord has written the debt off. Landlords are not prevented from imposing a suspension in such cases either under section 20B at the time of application, or while a person is on a housing list (most probably as a transfer applicant) however landlords cannot suspend an applicant:

- because of non-housing debts;
- where previous arrears of rent or service charges have been paid;

5 Section 20B(6)(g) of the 1987 Act as amended by section 6(2) of the 2014 Act.

- where the rent or service charge arrears amount to no more than a month's rent or charges; or
- where the applicant has come to an arrangement with the landlord for paying arrears, has kept to the arrangement for at least three months and is continuing to make the payments.

13.4 Tenancy related debts can include such things as service charges, the cost of rechargeable repairs, the costs of clearing an abandoned house and storing furniture, and property management charges.

13.5 For applicants with tenancy debt it is important that any repayment agreement is realistic. The emphasis should be on the applicant's willingness to address the debt and come to an agreement to do so. Landlords should base any agreement on its affordability to the applicant rather than the level of debt.

13.6 Landlords should be wary of adopting too rigid an approach to suspending applicants with arrears and should take the circumstances of why the arrear/debt has arisen in each individual case into account before imposing suspensions. In many cases landlords will already be working with tenants or applicants with rent arrears to help them manage the debt and make repayments.

14. MAKING A FALSE STATEMENT IN AN APPLICATION FOR HOUSING

14.1 Landlords can impose a suspension where the applicant knowingly or recklessly made a false statement in their application form[6]. Section 20B only applies to a false statement by the applicant and does not extend to a false statement by a person who it is proposed will reside with the applicant[7]. Landlords should take the extent to which the applicant has misled the landlord by providing false information into account before deciding whether to impose a suspension or deciding how long the suspension should last.

15. APPLICANTS WHO HAVE REFUSED AN OFFER OF HOUSING

15.1 Landlords can impose a suspension where the applicant has refused one or more reasonable offers of housing and the landlord considers the refusal of that number of offers to be unreasonable[8]. As section 20B only applies to suspensions imposed at the point of application, most applicants will not have received any offers of housing and therefore in practice this provision is likely to be little used.

15.2 Many landlords, within their existing allocation policies, impose a limit on the number of offers that an applicant can have before they suspend their application, as a way of limiting void times and rent loss. In addition in some areas there is pressure on supply of certain

6 Section 20B(6)(h) of the 1987 Act as amended by section 6(2) of the 2014 Act.

7 Section 20B(1)(b) of the 1987 Act as amended by section 6(2) of the 2014 Act.

8 Section 20B(6)(i) of the 1987 Act as amended by section 6(2) of the 2014 Act.

types of housing and appropriate alternative offers may not be available. Landlords' rules around such suspensions should be clearly set out in their allocations policy and applicants and tenants should be made aware of the rules on refusing reasonable offers of housing when offers are made to them.

15.3 Landlords should make sure that they have detailed, accurate and up to date information about applicants' requests and preferences in relation to the type of housing they are seeking, to ensure that, as far as possible, applicants receive offers that match their needs.

16. CIRCUMSTANCES WHERE A LANDLORD MAY NOT IMPOSE A SUSPENSION FOR A PERIOD OF TIME

16.1 A landlord cannot use the same evidence more than once to impose a suspension under section 20B, when it relates to the same application for housing. When evidence is used to impose a suspension under section 20B, the same evidence cannot be used again to impose another suspension (for example when the period of the first suspension has ended). This applies to evidence relating to an applicant or someone it is proposed will live with the applicant[9]. This does not stop a further suspension being imposed based on different evidence.

16.2 While the restriction at paragraph 16.1 applies to suspensions imposed under section 20B of the 1987 Act, it would not be good practice to impose any suspension, whether within the statutory scheme or the landlord's non-statutory suspensions policy, based on evidence that has been used on a previous occasion to impose a suspension in relation to the same application.

16.3 A local authority may not impose a suspension under section 20B where it has a duty to secure accommodation for an applicant who is homeless.[10]

16.4 This restriction only applies when the applicant makes the application for housing. If a homeless applicant is made a suitable offer of housing they can then be treated in the same way as others on the housing list. For example, in such circumstances if the landlord's allocation/suspensions policy allows suspension then the applicant could be suspended in terms of that policy if they refuse reasonable offers of housing.

16.5 Registered Social Landlords (RSLs) also have duties under section 5 of the 2001 Act to house statutory homeless people. RSLs have to meet section 5 requests from local authorities unless there are good reasons not to. The restriction discussed in paragraph 16.3 does not apply to RSLs however they will want to consider whether it is appropriate to suspend an applicant who has been assessed as homeless.

9 See subsection (2) of section 20B of the 1987 Act.

10 This is the duty set out in section 31(2) of the 1987 Act. Subsection (2) of section 20B of the 1987 Act sets out the restriction.

17. HOW FAR BACK CAN A LANDLORD GO IN CONSIDERING AN APPLICANT'S BEHAVIOUR OR CIRCUMSTANCES?

17.1 Section 20B does not specify how many years back a landlord can look at when considering an applicant's behaviour or circumstances. In considering an applicant's previous behaviour, landlords should generally consider the applicant's behaviour or circumstances for no more than three years prior to the application for housing.

17.2 Landlords should exercise their discretion when deciding whether it is appropriate to impose a suspension. For example if an applicant or tenant has behaved antisocially two or three years ago, but has changed their behaviour since and is no longer behaving antisocially it may not be appropriate to suspend them.

17.3 There may be occasional circumstances where a landlord may consider behaviour which took place more than three years prior to the application. This should only take place in exceptional circumstances and landlords should bear in mind that they may have to explain any decision to do so.

17.4 The Scottish Government has the power to set out in law a maximum period of time that landlords can consider in deciding whether to impose a suspension under section 20B and may do so if it becomes evident that landlords are not having appropriate regard to this guidance.

18. MAXIMUM PERIOD FOR A SUSPENSION TO REMAIN IN FORCE

18.1 Section 20B does not specify how long a suspension can remain in force. In some circumstances landlords will wish to reconsider the length of a suspension as a result of circumstances changing, for example where the applicant has existing rent arrears the suspension may cease to be appropriate once a certain amount of the debt has been repaid.

18.2 Any ineligibility for the allocation of social housing should be limited in its duration and the applicant should be advised of the timescale and any conditions that have to be met for the suspension to be lifted ahead of that timescale. Social landlords should determine the timescale for suspensions and this should be clearly set out in their allocations/suspensions policies. As a rule, however, suspensions under section 20B should not exceed three years in length from the date of the application.

18.3 The Scottish Government has the power to set out in law a maximum length of time such a suspension can last and may do so if it becomes evident that landlords are not having appropriate regard to this guidance[11].

11 See subsection (5) of section 20B of the 1987 Act.

19. REDUCING OR LIFTING A SUSPENSION

19.1 Landlords can shorten or withdraw a suspension at any time where they feel that it is appropriate to do so. However, they cannot vary a suspension in a way that lengthens it[12].

20. APPEALS

20.1 Landlords should have a clear internal review procedure in place and information should be made available to applicants about how to make an application for review to the landlord against any decision to impose a suspension, whether under section 20B or under their allocations policy. This should be clearly set out in their allocations/suspensions policy.

20.2 The legislation[13] gives applicants who have been suspended by a social landlord under section 20B the right to appeal against their suspension from receiving an offer of housing. This appeal is made to the sheriff, by summary application. There is no equivalent right of appeal for suspensions under an allocations/suspensions policy (these not being statutory decisions).

20.3 There is further information on the summary application rules on the Scottish Court Services website. Applicants currently have 21 calendar days to lodge an appeal from the date that the applicant was informed of the decision being appealed. This timescale is not extended by any period during which an applicant has sought review through the landlord's internal processes, though sheriffs have discretion to extend the period in which an appeal can be lodged if good cause is shown to allow late appeal. http://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/sheriff-court/summary-applications-statutory-applications-and-appeals/scr---summary-applications---chapter-2/chapter-2-summary-application-rules-(4).doc?sfvrsn=14

20.4 An applicant who wishes to appeal to the sheriff should be advised to seek legal advice, or assistance from an organisation such as Shelter Scotland or Citizens Advice Scotland, as soon as possible. An applicant for internal review should be advised of the timescale for the review, which should be carried out quickly, and if it is a decision under section 20B the applicant should be told that they have a right of appeal and the timescale is 21 days from the date they became aware of the original decision.

12 See subsection (9) of section 20B of the 1987 Act.

13 Subsection (10) of section 20B of the 1987 Act.

21. MINIMISING SUSPENSIONS

21.1 Landlords will already be working in ways that minimise or prevent homelessness and be providing services that are inclusive and accessible. It is therefore good practice to minimise the use of suspensions.

21.2 When imposing suspensions landlords should consider:

- Are there other options to suspension, such as taking a proactive approach to managing the problem rather than excluding the applicant?
- Whether there is robust evidence for making the decision to impose a suspension?
- Is it a proportionate decision?
- Is the length of the suspension reasonable?
- What are the consequences for the applicant or members of their household?
- Any other implications, for example when suspending an applicant could potentially lead to them making a homeless application.

22. MANAGING SUSPENSIONS – INFORMATION FOR APPLICANTS

22.1 Landlords need to make sure that applicants are aware of their approach to suspensions and what this means. Information about the suspensions policy should be included in a landlord's allocation policy and in any other information that the landlord provides to people applying for housing.

22.2 Once a landlord has decided to suspend an applicant from receiving an offer of housing it must tell the applicant, in clear terms:

- why it is suspending the application, including the circumstances it has taken into account;
- what this means, for example that they will not be considered for an allocation of housing/ transfer;
- how long the suspension will last;
- what they have to do to have the suspension shortened or lifted (if this is applicable and can be predicted);
- where to find independent housing and/or legal advice; and
- about their rights to review and where appropriate appeal, both through internal procedures and to the sheriff, and the relevant timescales that are involved.

22.3 Landlords need to tell applicants about the decision to suspend them from receiving offers as soon as they make it. Landlords should continue to remind applicants, when reviewing their waiting list, that they remain suspended from receiving offers of housing.

23. MONITORING SUSPENSIONS

23.1 It is important that landlords have an effective monitoring system in place to manage suspensions, to make sure that suspensions are regularly reviewed and are lifted when the time period has elapsed. Landlords also need to monitor their suspensions and manage them in an accountable and transparent way and make sure that suspensions are operating satisfactorily and in line with legislation. Landlords should therefore want to monitor, for section 20B suspensions and those under their non-statutory suspensions policies:

- the number of applications suspended, and for what reason;
- the number of reviews of suspensions requested immediately by applicants and their outcomes;
- the number of appeals against section 20B suspensions and their outcomes; and
- the number of subsequent requests for reviews of suspensions, or reviews initiated by the landlord, and their outcomes.

23.2 There is no legal requirement to monitor the gender, age, ethnicity and disability of suspended applicants but it might be helpful to do this, in order to gather information on how the suspensions policy impacts on different groups of people and to ensure it is operating fairly.

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