

Explanatory Memorandum to the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Education and Public Services Department of the Welsh Government and is laid before the Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020.

Julie James
Minister for Housing and Local Government
28 September 2020

1. Description

- 1.1 Section 81 and Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”) provide protection from eviction by increasing the notice period a landlord is required to give a tenant when seeking possession. These Regulations extend until 31 March 2021 (from the previous end date of 30 September 2020) the period during which increased notice must be given to tenants granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996. In addition, these Regulations increase from three months to six months the period of notice required for most notices served in respect of protected and statutory tenancies, secure tenancies, introductory and demoted tenancies, thus bringing those tenancies into line with the period of six months’ notice already required in relation to assured tenancies and assured shorthold tenancies. However, in the case of all tenancies, the Regulations suspend the longer notice periods required under Schedule 29 to the 2020 Act in relation to cases where the ground or reason for giving notice relates to antisocial behaviour (ASB) or domestic violence (DV)

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 There is an urgent need to ensure that the relevant period is extended beyond the 30 September. The number of people under immediate threat of eviction from their homes must be kept low, in order to continue to contribute to the range of measures in place that respond to the virus. Consequently, the Regulations come into force on 29 September 2020 and do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force.
- 2.2 In accordance with section 11A(4) of the Statutory Instruments Act 1946 (inserted by Schedule 10 paragraph 3 of the Government of Wales Act 2006), the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.
- 2.3 Even though the Regulations apply prospectively (i.e. on or after the date the amendments come into force) there is an element of retrospectivity to the Regulations in that notice periods in existing tenancies are temporarily altered. However, the extended notice period will apply to notices given on or after the date the Regulations come into force.

3. Legislative background

- 3.1 These Regulations are made under Section 88, and paragraphs 1(2) and 13(1) of Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”).
- 3.2 Section 81 and Schedule 29 to the 2020 Act delay when landlords may evict tenants by either amending the notice period a landlord is required to serve on a tenant or, in some cases, creating a notice requirement when such a requirement does not currently exist. Notices served in respect of

protected tenancies, statutory tenancies secure tenancies, assured tenancies, assured shorthold tenancies, introductory tenancies and demoted tenancies during the “relevant period” are subject to an extended notice period. The relevant period, which is set to end on 30 September 2020, may be extended by the “relevant national authority” (which means the Welsh Ministers in relation to Wales) under a power set out in paragraph 1(2) of Schedule 29.

- 3.3 Schedule 29 applies to all landlords who have granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996. Three months’ notice is required for notices served in respect of protected and statutory tenancies, secure tenancies, introductory tenancies and demoted tenancies. Following amendments made to Schedule 29 of the 2020 Act by the Coronavirus (Assured Tenancies and Assured Shorthold Tenancies; Extended Notice Periods) (Amendment) (Wales) Regulations 2020, six months’ notice must be served in respect of assured tenancies and assured shorthold tenancies, except where the notice is issued under Grounds 7A and 14 of Schedule 2 to the Housing Act 1988 (respectively, the mandatory ground for serious offences/ASB and the nuisance and annoyance discretionary ground) where the notice period remains at three months.
- 3.5 Paragraph 13(1)(a) of Schedule 29 provides the Welsh Ministers with power to alter a reference to three months in Schedule 29 to a reference to six months, or a reference to any other specified period which is less than six months. Paragraph 13(1)(b) provides the power to alter a reference which has been altered by virtue of either paragraph (a) or (b) but not so as to result in the reference being to a specified period of more than six months.
- 3.6 Paragraph 14(1)(b) of Schedule 29 states that regulations under Schedule 29... “may be exercised so as to make different provision for different purposes or different areas,..”. Paragraph 14(3) states that a statutory instrument containing regulations of the Welsh Ministers under paragraph 13 is subject to annulment in pursuance of a resolution of the Senedd (i.e. the negative resolution procedure).
- 3.7 Section 88 of the 2020 Act provides a power to ‘national authorities’ to suspend and revive provisions within the Coronavirus Act. This power may be exercised more than once in relation to a given provision and may be exercised so as to make different provision for different purposes or areas.
- 3.8 Section 88(9) provides that the Welsh Ministers are a relevant national authority in relation to a provision if it extends to England and Wales and applies in relation to Wales and the provision would otherwise fall within the legislative competence of the Senedd.

4. Purpose & intended effect of the legislation

- 4.1 The Regulations amend Schedule 29 of the 2020 Act so as to ensure that after 29 September 2020 until 31 March 2021 tenancies are subject to a six-month notice period for termination of the tenancy, except where the reason for seeking to end the tenancy relates to ASB or domestic violence.
- 4.2 In the period since the Coronavirus 2020 Act was commenced, it has become apparent that the public health emergency and its effects are likely to last for many more months with continuing restrictions required on various aspects of normal life, including local lockdowns. Although there is currently little independent evidence available to confirm the scale of the problem of rent arrears at the present time, or projections as to how the problem may increase in future as the full economic effects of the coronavirus become clear, financial hardship resulting from the effects of the pandemic are likely to have had a damaging impact on the ability of some tenants to pay rent. This may give rise to a substantial increase in evictions if action is not taken.
- 4.3 With this in mind, the Regulations have been drafted in order to support three of the overarching aims of the Coronavirus Act, that is:
- containing and slowing the virus
 - easing the burden on frontline staff; and,
 - supporting people.
- 4.4 Extending the relevant period to 31 March 2021 and increasing notice periods for those tenancies not already increased by the 2020 Regulations – but at the same time reducing the notice period for grounds relating to ASB and DV - will support these three aims through:

Reduced homelessness- continued longer notice periods, and increased notice periods for those tenancies not already increased by the 2020 Regulations, should mean fewer people evicted into homelessness, or be at risk of being evicted into homelessness. If a person becomes homeless, their potential vulnerability to the virus and the likelihood of them spreading it is increased further (*“containing and slowing the virus”*). This may become particularly significant in the event of a potential second wave or local spikes occurring during the autumn and winter months. Even where that does not occur, aspects of homelessness constitute a public health risk in themselves, and any steps that combat that risk have merit in their own right.

Reducing the notice period for ASB and DV grounds would result potentially in the individuals subject to such notices being evicted more quickly – but the negative effect of this would be mitigated, for example, by the reduced need to rehouse neighbouring tenants who are affected by the ASB, and fewer homes left vacant due to the ASB which might otherwise be used to house those at risk of homelessness. In those cases subject to notices issued under the discretionary ASB ground (Ground

14), the court would be able to take into account any particular consideration arising as a result of Covid-19, and whether the severity of the case warranted an eviction in the circumstances of the pandemic, before deciding whether to issue a possession order.

Reduced pressure on services - Fewer people would be evicted into homelessness, or be at risk of being evicted into homelessness, at a time when local authorities are less able to respond to these situations as a result of pressures on services created by coronavirus. These pressures include finding suitable homes for those currently residing in temporary accommodation, diverting resources away from other vital aspects of local authorities' response to the public health emergency posed by Covid-19, will potentially weaken the effectiveness of that response (*"easing the burden on frontline staff"*), particularly as health and other services will already likely face additional pressures (for example, caused by increased influenza cases) during the winter months.

Although reducing notice periods relating to ASB and DV could lead to increased pressure on homelessness services specifically, overall it is likely to reduce pressure on public services. This is because an earlier eviction on ASB grounds will reduce the need for ongoing intervention to address the impact that ASB and DV has on others, for example (in the case of ASB) neighbours (including having to rehouse those worst affected, but also the intensive support and security measures, including police intervention, more generally required in these cases). In the case of both ASB and DV, a quicker process of eviction also helps to deter such behaviours from occurring in the first place, thus eliminating the need for services to intervene.

Increased security and reduced anxiety - Those renting their homes will continue to benefit from the knowledge that they will not face the threat of eviction at short notice and in some instances will receive even longer notice on a statutory basis. As well as increased security, this will reduce levels of anxiety amongst tenants who in many cases are already being affected in other ways by the ongoing uncertainties caused by the coronavirus outbreak (*"supporting people"*). Reducing anxiety in the general population also has a clear public health benefit and reduces pressures on public services including mental health services (*"easing the burden on frontline staff"*).

At the same time, reducing the notice periods for ASB will also contribute to a greater feeling of security and reduced anxiety amongst those who would otherwise be negatively affected by the on-going ASB of a neighbour.

Increased scope to support individuals at risk of eviction - An extension to the relevant period and increased notice periods for those tenancies not already increased by the 2020 Regulations, would also

continue to provide additional time for landlords, tenants and support agencies to work together to identify and agree arrangements to support tenants to better manage their finances and repay any rent arrears which may accrue as a result of the coronavirus outbreak (“supporting people”). In the case of ASB, especially in social housing, there are likely to have been significant interventions by support agencies prior to a possession notice being issued, so the additional time extended notice periods provide would have little value in this respect.

- 4.5 With the stay on possession proceedings in the courts ending on 20 September, the extended notice periods have become more important. Extending the relevant period for which the longer notices apply will reduce the number of possession proceedings in the weeks and months following the stay being lifted and help to flatten any wave of evictions that may arise.
- 4.6 The Welsh Government also thinks that notice periods for protected and statutory tenancies, secure tenancies, and introductory tenancies and demoted tenancies should be increased from three months to six months except those that relate to ASB or DV. This will mean that they better align with those relating to assured tenancies and assured shorthold tenancies and provide tenants with a similar level of security irrespective of the type of tenancy they have.
- 4.7 Taking all the above into account, the Regulations make the following specific changes:

Relevant period

The relevant period to which Schedule 29 of the Coronavirus Act 2020 applies is extended to 31 March 2021

Rent Act 1977

- (i) Subject to (ii) below, notice periods in relation to protected tenancies and statutory tenancies are extended from three months to six months;
- (ii) In relation to notices that relate to Case 2 of Schedule 15 (conduct which is a nuisance or annoyance to adjoining occupiers, or dwelling-house used for immoral or illegal purposes), the existing three month notice period is suspended so that for the time being, the arrangements for giving notice return to those which applied in the pre-Coronavirus period.
- (iii) The Notice to Quit etc. (Prescribed Information) Regulations 1988 are amended so the notice to quit will have to specify that the landlord believes that the circumstance in Case 2 applies.

Housing Act 1985 ("the 1985 Act")

Secure tenancies

- (i) Subject to (ii) and (iii) below, notice periods in relation to secure tenancies are extended from three months to six months;
- (ii) The existing three month notice periods for notices issued in relation to grounds 2 (discretionary ground for nuisance and annoyance) and 2A (domestic violence) under Schedule 2 to the 1985 Act, are suspended so that for the time being the arrangements for giving notice return to those set out in the pre-Coronavirus Act version of section 83 of that 1985 Act ;
- (iii) The existing three month notice period for notices issued under the absolute ground for ASB (section 84A) are suspended so that for the time being, the arrangements for giving notice return to those set out in the pre-Coronavirus Act version of section 83ZA of the 1985 Act.
- (iv) The Secure Tenancies (Notices) Regulations 1987 are amended so the form used to provide notice reflects the detail above.

Housing Act 1988 ("the 1988 Act")

Assured tenancies

- (i) the existing three month notice period in relation to grounds 7A (mandatory ground for serious offences/ASB) and 14 (discretionary ground for nuisance and annoyance), and the existing six month notice period for ground 14A (domestic violence), is suspended so that the arrangements for giving notice return to those set out in the pre-Coronavirus Act version of section 8 of the 1988 Act;
- (ii) All other grounds set out in Schedule 2 to the 1988 remain subject to the existing six month notice period.
- (iii) Paragraph 5 of Form 3 of the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 is amended to reflect the above.

Assured shorthold tenancies

- (iv) Notices issued under section 21 of the 1988 act remain subject to the existing six month notice period.

Housing Act 1996

- (i) Subject to (ii), notice periods in relation to introductory and demoted tenancies are extended from three months to six months;
- (ii) Where the landlord has specified in the notice of proceedings an ASB or domestic violence reason for applying for a possession order - that is a reason which corresponds to any of those set out in section 84A(3) to (7) of the Housing Act 1985 or Grounds 2 and 2A of Schedule 2 to that Act – the existing three month notice period is reduced to four weeks beginning with the date on which the notice of proceedings is served.

5. Consultation

- 5.1 Given the emergency, it has not been possible to conduct any consultation on these Regulations and there is no statutory requirement to do so.

6. Regulatory Impact Assessment

- 6.1 The COVID-19 emergency and the urgency to make these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment. However, the following section provides a qualitative description of the likely impacts.

Options

- 6.2 Three options have been considered:

Option A – Do nothing

Option B – Extend the relevant period until 31 March, keeping all notice periods at their existing lengths

Option C – Extend the relevant period until 31 March and maintain/increase notice periods for all tenancies to six months except those relating to ASB or DV which would be reduced back to those periods applying pre-Covid

Costs and Benefits

Option A – Do nothing

- 6.3 If no action is taken, from 1 October, the arrangements for notice periods will revert to those which was required before the temporary amendments introduced by Schedule 29 of the 2020 Act. This will mean different things in relation to different tenancies, but in all instances will mean that the period given to a tenant will either be less than it currently is.

Although there are no immediate additional costs associated with this option, nor any costs at all to landlords, it will not achieve any of the benefits set out in 4.4 above. As a result of the latter, there will be a potentially significant cost medium to longer term cost, both in terms of potential harm to public health and the financial impact on services of having to deal with those facing eviction and homelessness.

Option B – Extend the relevant period until 31 March, keeping all notice periods at their existing lengths

- 6.4 Under this option, regulations would be made that extend the relevant period until 31 March 2021. Consequently, the benefits of extending the period over which additional protections are applied, as outlined under 4.4, would be realised for an additional six months (and across the winter months when pressures on the health service in particular are at their worst). There would also be a saving to local authorities and organisations providing support to individuals faced with eviction with the temporary reduction in their caseload potentially allowing them to redirect resources elsewhere.

That said, the benefits outlined in 4.3 would not be as fully realised as would be the case if notice periods in respect of protected and statutory tenancies, secure tenancies, and introductory and demoted tenancies were also increased to six months for that period.

More significantly, under this option, the benefits to public health and public services set out in relation to a reduction in the notice periods for ASB and DV would not be realised. Instead, there would be continuing costs associated with public health and financial impact on services associated with ASB and DV.

The administrative and transitional costs to landlords of extending the relevant period are expected to be negligible. Where a landlord is seeking possession of property on the rent arrears grounds, there is, however, a potential additional cost arising from the extra delay there would be to the landlord making a claim to the court and the arrears that may build up during that time. Balanced against this is the fact that this additional delay will allow more time for landlords, tenants and support agencies to work together to identify and agree arrangements to support tenants to better manage their finances and repay any rent arrears. Furthermore, the Welsh Government's recently announced Tenancy Saver Loan scheme is designed to support both landlords and tenants. The funds from these loans will be paid directly to landlords, and should help considerably with easing any financial burden on them resulting from rent arrears.

Option C – Extend the relevant period until 31 March and maintain/increase notice periods for all tenancies to six months except those relating to ASB or DV which are reduced back to those periods applying pre-Covid.

- 6.5 As with option B, under this option, regulations would be made that extend the relevant period until 31 March 2021. This would realise fully the all the benefits outlined in 4.4.

Also as with option B, the administrative and transitional costs to landlords of this option are expected to be negligible but there are potential additional costs arising from the extra three months delay there would be to making a claim to the court in relation to cases of rent arrears. Again however, this is mitigated by the additional time there will be for arrangements to support tenants to better manage their finances and repay any rent arrears, and by the recently introduced Tenancy Saver Loan. There should also be savings to those who provide support to individuals faced with eviction.

The main difference compared with option B, is that under option C, the negative impact on community well-being and the financial costs associated with continued anti-social behaviour do not arise. Reducing all notice periods for all tenancies where ASB or DV is involved, will help landlords resolve issues which can frequently be the cause of significant stress and anxiety for those living in the vicinity of a tenant engaging in ASB. As a consequence, it is considered that the benefits of pursuing this option do, clearly, outweigh the costs.

It is the view of the Welsh Government that this option will continue to reduce as far as is reasonable, evictions and movement in the light of the ongoing pandemic. However, the option also recognises that the increased three-month notice periods have had a negative impact on those neighbourhoods affected by ASB, and potentially those affected by DV, and that these impacts should not have to continue for a further extended period due to an inability to evict for reasons of ASB or DV in a more timely manner.

Competition Assessment

- 6.6 It has not been possible to undertake a full competition assessment in relation to these Regulations. However, the changes are being applied to all landlords that rent out a property as a home. This broad application means that no changes to the overall structure or size of the private rented sector are expected. In addition no change is expected in terms of competitiveness of businesses, the voluntary sector and charities. There is therefore no risk of a detrimental effect on competition.

Specific Impact Tests

- 6.7 *Equal opportunities*
These provisions do not discriminate against persons sharing any of the

protected characteristics as set out in the Equality Act 2010. On the contrary, the extending the relevant period may be particularly beneficial to vulnerable individuals who might otherwise find themselves facing eviction when they have not breached the terms of their tenancy and forced to find alternative accommodation at short notice during the current public health emergency. Those with certain protected characteristics under the Equality Act 2010 are likely to be disproportionately represented amongst those living in the rented sector and therefore vulnerable to eviction, e.g. some Black, Asian and Minority Ethnic groups.

6.8 *Children's rights*

No conflict with UNCRC has been identified and no negative impacts on children and young people are expected to arise as a result of these Regulations. Given that a significant proportion of households in the rented sector are families with dependent children, extending the relevant period may help reduce the disruption caused to children by a home move – including potentially having to change school – by providing more time for parents to find suitable alternative accommodation nearby, or sufficient time to make arrangements for a move further afield where that is necessary or desirable.

6.9 *Welsh language*

These Regulations should not give rise to any negative impacts in relation to cultural wellbeing or the Welsh language.

6.10 *Local Government*

These Regulations may have a limited, positive, impact on local authorities, if demand on crisis homelessness services reduces as a result of fewer possession notices being served, and also because longer notice periods allow those faced with a possession notice more time to find alternative accommodation themselves without recourse to homelessness services.

6.11 *Economic effects*

As set out above, whilst landlords would still be able to recover possession if a tenant fails to pay rent, or otherwise breach the terms of their tenancy, and lenders may still be able to recover possession in the event of the landlord defaulting on the mortgage, there is a potential additional cost to them arising from increased notice periods. However, the financial impact of this may be balanced out by the additional time landlords, tenants and support agencies have to work together to identify and agree arrangements to support tenants to better manage their finances and repay any rent arrears. Any negative economic impact caused should therefore be slight. In more general economic terms, the greater security of tenure provided by increased notice periods may have beneficial impacts. For example it may provide tenants with a more stable set of circumstances, improving their ability to secure or sustain employment.

6.12 *Impact on Privacy*

The Regulations do not produce any new requirements relating to privacy or the sharing of information.

6.13 *Rural proofing*

These Regulations will apply to homes rented by people living in rural, as well as urban areas. As such, the impacts – and benefits – will be no different between rural and urban areas.

6.14 *Health and wellbeing*

In addition to the wider public health benefits that would result from a reduction in the number of households having to relocate during the current pandemic. It is also well-recognised that good quality and secure housing is a significant determinant of individuals' general health and wellbeing. These Regulations should therefore support health and wellbeing for individual tenants by providing reassurance that they will not face eviction at short notice during the pandemic.

6.15 *Impact on the Justice System*

The net effect of changes resulting from this legislation is expected to be neutral or even positive on the basis that allowing tenants more time to resolve financial issues may result in fewer rent arrears cases proceeding to court.