

SL(6)052 – The Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 3) (Wales) Regulations 2021

Background and Purpose

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 the period during which increased notice must be given to tenants until 31 December 2021 (from the previous end date of 30 September 2021), and this will apply to tenancies granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996.

Specifically, these Regulations amend Schedule 29 to the 2020 Act (“Schedule 29”). Schedule 29 modifies various statutory provisions, relating to notices that need to be given in order to seek possession of dwellings, during “the relevant period”. The provision made by Schedule 29 was originally to end on 30 September 2020 (at the end of the relevant period). However, due to the continuing pandemic the “relevant period” has been extended several times by subsequent regulations. Regulations extended the period in relation to Wales until 31 March 2021, to the 30th June 2021 and then to September 30 2021. Regulation 2 of these Regulations further amends paragraph 1(1)(b)(ii) so that Schedule 29 has effect, in relation to Wales, until 31 December 2021.

Procedure

Made Negative.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd



We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Julie James MS, Minister for Climate Change, in a letter to the Llywydd dated 22 September 2021. In particular, we note the following in the letter:

“In the light of the ongoing pandemic, and the recent rise in case numbers and hospitalisations, the Welsh Ministers have concluded that there remains an urgent need to ensure that the number of tenants under threat of eviction from their homes is kept as low as possible. Doing so will assist with the containment of Coronavirus, ease the burden on frontline staff, and ensure tenants are provided with appropriate support. The Regulations make an important contribution to meeting that urgent need. In order to ensure that the provisions of Schedule 29 continue to apply after 30 September, the Regulations come into force on 30 September. Due to their immediacy, the Regulations have not been subject to consultation and there has been insufficient time to carry out a Regulatory impact Assessment in relation to them.”

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

These Regulations engage a landlord’s rights under Article 1 Protocol 1 of the European Convention on Human Rights (“A1P1”). The Committee note that the Regulations will only extend the relevant period for a specified period (up to 31 December 2021).

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

Paragraph 4.4 states: “Since the time when the relevant period was last extended, there have been improvements in the public health situation as a consequence of the success of the vaccine programme. However, there has been a recent increase in case numbers which has led to an increase in hospitalisations, albeit at a much lower rate than was the case before the roll out of the vaccination programme. The most recent short to medium term projections show that cases will continue to rise for some time. Therefore, since the virus is once again circulating widely in the community, delaying evictions will continue to help control its transmission.

Generally, the virus remains a serious threat to public health, which would be significantly exacerbated if the current wave of cases were accompanied by a sudden wave of evictions and a resultant increase in homelessness. This will remain true as we move into the winter months, where the impact of Covid-19, in conjunction with a possible resurgence in influenza infections and other normal winter pressures, may place the health service under significant strain. In these circumstances, taking continued action to limit the risk of a sudden spike in evictions so that public health continues to be protected, is considered appropriate.”



Taking the above comments into account, the Committee note that Landlords have already had restrictions imposed on them for a significant period of time. The restrictions originally contained in the Coronavirus Act in April 2020 were imposed on landlords until September 30 2020. Whilst the pandemic meant that it was considered proportionate by the Welsh Government to extend the “relevant period” on three previous occasions, the circumstances have since changed significantly and this has been reflected by legislation that has reduced the alert level for the whole of Wales to alert level zero. This has meant that restrictions in several sectors have been relaxed. The Committee would like further evidence from the Welsh Government that demonstrates that the action now being taken remains proportionate on grounds of human rights.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Committee note that the Welsh Government have considered other options before deciding to extend the current restrictions for a further 3 months. Option B in the Explanatory Memorandum explores the possibility of taking a more graduated and proportionate action in relation to landlords given the improvement in the general picture of public health.

It states that *“recognising the positive impact that the vaccination programme has had on the public health situation, there is an argument that it might be appropriate to start reducing notice periods back towards their pre-Covid length.”*

The Committee note that a more graduated approach has been taken in England (not dissimilar to the option considered above) to take into account the improvements made in the risks to public health and to apply a proportionate response to how landlords may evict their tenants. The Regulations in England are drafted in a way that reduces and tapers down the notice periods from 6 months to 2 or 4 months depending on the circumstances and whether they are fault or no fault evictions. The Explanatory Memorandum for the Regulations in England state that *“this is to ensure that the measures remain proportionate to the public health risks.”*

The Committee note the options and reasons given in the Explanatory Memorandum and would like the Welsh Government to expand on and justify the legislative approach taken in these Regulations. Specifically, can the Welsh Government explain why it did not take a tapered approach similar to that in England given the positive impact of the vaccination programme.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:



“Given the emergency, it has not been possible to conduct any consultation on these Regulations and there is no statutory requirement to do so. However, the Welsh Government has strong relationships with stakeholders from across the housing sector; bodies representing landlords have been informally engaged on the purpose and effect these Regulations.”

5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Committee note that no regulatory impact assessment has been prepared for these Regulations and the Explanatory Memorandum states:

“The COVID-19 emergency and the urgency to make these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment.”

6. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues or public policy likely to be of interest to the Senedd.

These Regulations extend the period of time (by approximately 12 weeks) during which a landlord will be subject to the extended notice periods that must be given in order to seek possession of their property, and those extended periods will apply where a landlord wishes to seek possession because of unpaid rent. These Regulations, combined with the provisions made by the Public Health (Protection from Eviction) (Wales) Regulations 2021 and the Health (Protection from Eviction) (No. 2) (Wales) Regulations 2021 (which prevent, except in specified circumstances, attendance at a dwelling for the purpose of executing a warrant of possession or of delivering a notice of eviction) mean that landlords will have been subject to a number of restrictions on obtaining possession over a significant period of time. As this Committee pointed out previously, this may lead to financial difficulties for some landlords in the private rented sector, particularly small-scale landlords who may rely on their rental income to cover mortgage payments or as their only source of income. The Committee note the Welsh Government’s response to the Committee’s concerns raised in this regard for the Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 2) (Wales) Regulations 2021. In that response, the Welsh Government acknowledged the potential adverse economic impact on Landlord’s but stated that the following support had been given to Landlord’s and the broader sector:

- *“£4.1 million to top up Department for Work and Pensions funding for Discretionary Housing Payments to help those in receipt of housing related benefits who are in rent arrears,*
- *funding of the Private Rented Sector (PRS) Debt Helpline to advise and support private sector tenants struggling with rent, income and housing benefits; delivered by Citizen’s Advice Cymru,*
- *funding of £166 million to local authorities in 2021-22 through the Housing Support Grant to deliver housing related support services. The services help to prevent people*



from becoming homeless, stabilizes their housing situation, or helps potentially homeless people to find and keep accommodation,

- *Providing additional funding through the Discretionary Assistance Fund (DAF),*
- *Our Tenancy Saver Loan scheme; which made low cost loans available to private sector tenants who suffered a temporary change of income and fell into rent arrears;*
- *Funding for Shelter Cymru to advise and support tenants.*
- *Our new Tenancy Hardship Grant, will support private rented sector tenants in Wales who are in significant rent arrears as a direct consequence of the pandemic."*

Given the lack of consultation, the absence of a regulatory impact assessment and the fact that these regulations are being brought into force at short notice breaching the 21 day rule, what, if any, action has the Welsh Government taken further to the measures listed in your previous response, to mitigate the economic effects of these Regulations on landlords.

Welsh Government response

A Welsh Government response is required for merits points 2, 3 and 6.

Legal Advisers

Legislation, Justice and Constitution Committee

29 September 2021



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee