

SL(5)787 – The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2021

Background and Purpose

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2021 (“the Regulations”) were made in exercise of the powers conferred on the Welsh Ministers by section 82(12) of the Coronavirus Act 2020.

Section 82 of the Coronavirus Act 2020 ensures that re-entry or forfeiture for non-payment of rent may not be enforced in relation to relevant business tenancies during the “relevant period”. Section 82(12) of the Act defines the “relevant period” as beginning on 26 March 2020, and ending on 30 June 2020, or such later date as may be specified in regulations made by the relevant national authority. The power to specify a later date may be exercised on more than one occasion so as to further extend the “relevant period”. The Welsh Ministers are the relevant national authority in relation to Wales.

Regulation 2 of these Regulations extends the “relevant period” until 30 June 2021, and regulation 3 revokes the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

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 point is 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

Section 6 of the Explanatory Memorandum, headed “Consultation”, states:



“An engagement exercise with key stakeholders to better understand the impact that Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No.3) Regulations 2020 has had on both commercial tenants and landlords in Wales was undertaken, concluding in February 2021.”

A short summary of the key points is set out in the Explanatory Memorandum, but no link is provided to the full consultation and the responses thereto. If available, access to this information would be helpful to gain a full appreciation of the impact of the relevant legislation to date, as well as providing further clarity on the proportionality of extending the “relevant period” by the Regulations (for example, in respect of any impact on ECHR Article 1 Protocol 1 rights on landlords).

Welsh Government response

Merit Scrutiny point:

Owing to the nature of these Regulations, rapid engagement activity has been sought with relevant stakeholders to develop an understanding of the reactions to the moratorium on forfeiture in relation to business tenancies. For the purpose of considerations around The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2021, stakeholders were contacted on Monday 8th February and asked to respond with any comments on the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2020 by Monday 22nd February. It was made clear to stakeholders that the Welsh Government was considering whether a further extension of the moratorium was necessary, and would welcome views from both commercial tenants and landlords on the impact the Regulations are having in practice.

In order to develop a better understanding of the impact, this engagement took place with business representative organisations, trade unions, property organisations and our social partners. The timing of this engagement was designed to be sufficient to allow stakeholders to reflect on the impact of the Regulations and form a response to the Welsh Government, while protecting compliance with the Senedd’s timelines for laying Regulations of this nature. This process of informal engagement with relevant stakeholders has been in place for several of the previous extensions to the ‘relevant period’.

Legal Advisers

Legislation, Justice and Constitution Committee

15 March 2021

