

SL(5)795 – The Public Health (Protection from Eviction) (No.2) (Wales) (Coronavirus) Regulations 2021

Background and Purpose

These Regulations are made by the Welsh Ministers under sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984.

These Regulations re-enact the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021 which expire on 31 March 2021.

These Regulations come into force on 1 April 2021 and expire at the end of the day on 30 June 2021. Regulation 3 provides that the Regulations must be reviewed regularly to ensure the restrictions and requirements imposed remain proportionate.

These Regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction.

The specified circumstances are where the court is satisfied that: the claim is against trespassers who are persons unknown; or where it was made wholly or partly on the grounds of domestic violence, serious offences, anti-social behaviour, or nuisance; or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance and the possession order was made wholly or partly on the grounds of the death of the occupant.

In a statement dated 17th March 2021, the Minister for Housing and Local Government said:

“These regulations replicate in substance the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021, and will extend the current restrictions on evictions, which are due to expire on 31 March, to the end of June 2021 – although the restrictions will, as with other coronavirus restrictions, be subject to regular review during that time.

As with the current protection from eviction arrangements, the No.2 Regulations will be made using powers under section 45C of the Public Health (Control of Diseases) Act, and will prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution, or delivering a notice of eviction.

It is also my intention for Regulations to be made separately to extend until the end of June 2021 the application of the requirements set out in Schedule 29 to the Coronavirus Act 2020. This means that landlords will remain under a statutory obligation to provide



a six-month notice period to tenants before making a possession claim (except in relation to anti-social behaviour and domestic violence).

Taken together, these two sets of Regulations will support the Welsh Government's continuing public health response to coronavirus by helping to reduce the number of people evicted, or at risk of being evicted, into homelessness, and particularly street homelessness, where their potential vulnerability to the virus, and the likelihood of them spreading it, is increased. This will be particularly important in the context of new variants of the virus increasing its transmissibility or the severity of its impact, or a potential third wave or local spikes occurring during the period where restrictions are being relaxed.

The Welsh Government recognises that extending these temporary protections for a further period of time may cause difficulties for some landlords in the private rented sector. However, our overriding priority must be the protection of public health at this time.

Throughout the period they are in force, the No.2 Regulations will be subject to the ongoing review cycle to ensure that the arrangements remain proportionate and necessary. These reviews will be aligned with the review timings in the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020."

Procedure

Made Affirmative.

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

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 3 February 2021 in order for it to remain in effect.

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 or 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 exceptions are included in the Regulations that allow for evictions in certain circumstances, that the regulations are



made only for a specified period, that they are to be reviewed on a regular 3-week cycle and are made in the context of the current health emergency.

The committee further note the government's consideration of the proportionality of these regulations in the Explanatory Memorandum.

"The purpose of the Regulations is to ensure a continuation of appropriate public health responses to the Covid-19 virus by extending the prevention of the enforcement of evictions in Wales, except in the most serious circumstances. The Regulations will come into force on 1 April 2021, following the expiry of the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021, and expire on 30 June 2021. The continuing need for, and proportionality of, the regulations must be reviewed every three weeks. These three-weekly reviews are aligned with the review periods for the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020, as the relevant Alert Level will be a key consideration in determining whether these measures remain proportionate."

2. 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.

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

"Given the public health 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 these Regulations."

3. 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.

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 of making these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment."

The Committee notes that paragraph 6 of the Explanatory Memorandum attempts to set out a summary of the potential impact of these Regulations which does provide some qualitative assessment of their impact.

4. 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 by which a landlord will be prevented from seeking possession of their property for unpaid rent. In combination with previous Regulations passed in January 2021 and December 2020, landlords will have been prevented from recovering possession due to unpaid rent for a significant period of



time. The arrears of rent for some landlords may have a significant adverse economic impact on them.

The Committee note the following assessment of this risk by the government in the Explanatory Memorandum:

“ Extending these protections for a further period of time may potentially mean that some tenants accrue greater levels of rent arrears than might otherwise be the case were the regulations not to be made, and this in turn 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 Welsh Government’s Early Alert Scheme for rent arrears and other household debt in the private rented sector has been put in place to help tenants agree affordable repayment plans with their landlord or letting agent to address rent arrears and reduce the risk of them losing their home, while the Tenancy Saver Loans Scheme enables tenants in the private sector to apply for a loan, which will be paid directly to the landlord or agent, and made available to tenants at 1% APR interest, repayable over up to five years. Work is being undertaken to increase awareness amongst landlords and tenants of the schemes. However, any financial difficulties which landlords may incur necessarily have to be balanced against the cost to public health, and the knock-on effects for the health service, local authorities and other organisations, of permitting evictions to occur where there is significant risk that this contributes to the incidence and spread of the virus.”

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

18 March 2021

