

Explanatory Memorandum to the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021

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 Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Julie James
Minister for Housing and Local Government
8 January 2021

1. Description

- 1.1 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 anti-social behaviour, serious offences, nuisance, domestic violence or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant. The regulations will expire on 31 March 2021 but the continuing need for, and proportionality of, the regulations must be reviewed every three weeks. They replicate in substance the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020 (“the 2020 Regulations”) which expire on 11 January.

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

- 2.1 There is an urgent need to ensure that evictions are kept as low as possible given the widespread and increasing community transmission of the Covid-19 virus, and the pressures this places on public services generally. With access to services and alternative accommodation likely to remain limited, there is a heightened risk that evictions will lead to homelessness, which in turn increases the risk of Covid-19 being contracted by the individual and transmitted by them. In the light of this and the current high rate of infections in Wales, these Regulations are made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (“the 1984 Act”) and have been made without a draft having been first laid and approved by a resolution of the Senedd, as would usually be required under section 45Q of the Act. It is the opinion of the Welsh Ministers that, by reason of urgency, it is necessary to make these Regulations without a draft being so laid and approved so that public health measures can be taken in response to the serious and imminent threat to public health posed by the incidence and spread of Covid-19. The Regulations will come into force on 11 January 2021. Since they are made under the emergency procedure they will cease to have effect at the end of 28 days from the day on which they are made unless, during that period, they are approved by a resolution of Senedd Cymru.

3. Legislative background

- 3.1 These Regulations are made under section 45C of the Public Health (Control of Disease) Act 1984 to enable public health measures to be taken for the purpose of reducing the public health risks posed by the incidence and spread of Covid-19. Section 45C of that Act enables the

Welsh Ministers (as “The appropriate Minister”), by regulations, to make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Wales. The Regulations will prevent the eviction of residential tenants during this critical stage of the pandemic. In accordance with section 45R of the 1984 Act, the Welsh Ministers are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft having been laid before, and approved by the Senedd.

- 3.2 Legislative measures have previously been put in place for the purpose of protecting tenants from eviction during the coronavirus pandemic. Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”) provides protection from eviction in respect of most residential tenancies and notices¹ served during the ‘relevant period’ (which was initially defined as ending on 30 September 2020 but has subsequently been extended to 31 March 2021). It does this by increasing, in most cases, the period of the notice that must be served before possession proceedings can be commenced in the courts.
- 3.3 In addition, there was a temporary stay on court proceedings in Wales and England initiated in March that came to an end on 20 September. It subsequently became possible to commence possession proceedings through the courts where the required notice period had elapsed, and, if an order was made, for the landlord to seek to enforce that order by applying to the court for a writ or warrant of possession, which could lead to eviction by County Court bailiffs or High Court enforcement officers.
- 3.4 The UK Government has sought to prevent evictions taking place (on an England and Wales basis) where these have been deemed incompatible with public health measures, through guidance to county court bailiffs and the Lord Chancellor writing to High Court Enforcement Officers. This applied during the firebreak in Wales.
- 3.5 On 16 November, the UK Government laid regulations before Parliament - The Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020. Amongst other things, those regulations prevented in England, most evictions taking place during the period up to 11 January 2021.
- 3.6 To ensure the enforcement of evictions in Wales over the Christmas and New Year period received the same statutory underpinning as in England, the 2020 Regulations were brought into force on 11 December. They 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

¹ The relevant notices are those served under the Protection from Eviction Act 1977, the Rent Act 1977, the Housing Act 1985, the Housing Act 1988 and the Housing Act 1996

is against trespassers who are persons unknown or where it was made wholly or partly on the grounds of anti-social behaviour, serious offences, nuisance, domestic violence or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant. The 2020 Regulations expire on 11 January 2021.

4. Purpose & intended effect of the legislation

- 4.1 The purpose of the Regulations is to provide a public health response to the increasing incidence and transmission of the Covid-19 virus by preventing the enforcement of evictions in Wales except in the most serious circumstances. The Regulations come into force on 11 January 2021 and expire on 31 March. The continuing need for, and proportionality of, the regulations must be reviewed every 3 weeks. These 3 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.
- 4.2 Up until 20 September, and thus throughout the first wave of the pandemic, evictions were prevented from going ahead through amendments to the Civil Procedure Rules which stayed possession proceedings. Given the stay, there was no need to consider taking action to prevent the enforcement of evictions during that period using the powers set out in the 1984 Act at that time. However, the lifting of the stay, combined with the onset of a second wave of the pandemic and the increased wintertime pressures on health and other services has changed that situation.
- 4.3 During the Christmas and mid-winter period, at a time when risk of transmission of the virus has been very high once again, and access to services and alternative accommodation has been limited, the 2020 Regulations have been in place to ensure people are not evicted.
- 4.4 Although the disruption to services and the supply of alternative accommodation caused by the Christmas holiday period is not a factor after 11 January, the impact on public health, specifically on the incidence and spread of Covid-19, of evictions and homelessness remains of great concern. Wales has moved into Alert Level 4 (the highest level available) which may make it more difficult for those facing eviction to access services, including advice and support services as businesses may be closed or running at a reduced capacity. Securing alternative accommodation which is already more limited during the winter period

may also present increased practical difficulties. In a situation where there is widespread and increasing community transmission of the virus, and with the pressures placed on public services generally, the likelihood that evictions will result in homelessness remains raised.

- 4.5 Homelessness also places people in situations where they are at much greater risk of both contracting the virus and transmitting it to others. A person made homeless is less likely to have access to basic hygiene facilities – especially handwashing facilities - that are a crucial means of protection against the disease. They are much less likely to be able to maintain social distancing, even where alternative, temporary accommodation is secured. And they are likely to come into contact with many more people, whether they be those providing support services to the homeless, or other homeless people. As a result if evictions were allowed to take place, additional burdens are likely to be placed on the NHS and local authorities hindered in their public health response, during a period when winter pressures on relevant public services are likely to be at their most acute. .
- 4.6 In the light of the above, continued legislative action to prevent evictions after 11 January remains imperative. Furthermore, given the Alert Level 4 restriction currently in place, and the general rule that people must stay at home, except for very limited purposes, allowing the recommencement of action by bailiffs and High Court Enforcement Officers to evict people from their homes would seem contrary to the purpose of those restrictions.
- 4.7 To ensure that the measures remain proportionate to the increased public health risk the Welsh Ministers consider that some exceptions are needed to the ban on enforcement of possession orders. These are the same as those included in the 2020 Regulations. These are first and foremost instances where it is considered that the interests of preventing harm to third parties and taking action against egregious behaviour are sufficient to outweigh the public health risks posed by evictions but also where there is no obvious risk to public health. Specifically, these are:
- cases where the court is satisfied that the order for possession was made wholly or partly on the grounds of anti-social behaviour; nuisance; and/or domestic violence in social tenancies; or
 - cases where the court is satisfied that the claim is against trespassers who are persons unknown; or
 - cases where the person attending the property is satisfied that the dwelling house is unoccupied at the time of attendance, where the court is satisfied that order for possession was made wholly or partly on the grounds of death of the occupant.

- 4.8 In applying these particular specified circumstances where enforcement is possible, the Welsh Ministers note that anti-social behaviour will often result in a significant negative impact on the mental-health and well-being of neighbours. If eviction is not possible on grounds of anti-social behaviour/nuisance and annoyance landlords may find themselves having to rehouse those neighbours whose well-being is worst affected or neighbouring residents may take steps of their own to find and move to new accommodation. In extreme circumstances, vulnerable individuals may even choose to become homeless rather than remain the victims of anti-social behaviour. Rehousing neighbours because of anti-social behaviour and the steps taken by neighbours themselves to find and move to a new home, will potentially expose those individuals to situations where they are at greater risk of transmitting the virus. In the case of those who choose to become homeless, those risks are likely to be even greater. In many instances, cases involving trespassers may also be associated with anti-social behaviour.
- 4.9 In these cases, permitting enforcement of possession orders may result in less risk of the virus being caught and spread than allowing the perpetrators of ASB to remain in their homes. Although this means that some people will be evicted during the winter period, preventing the enforcement of evictions except in the most egregious of cases will substantially decrease enforcement proceedings during the winter period when transmission of the virus is increasing.
- 4.10 The other specified circumstance where enforcement is possible is where the tenant has died and there is no right of succession. In this case the person attending at the dwelling-house must take reasonable steps to satisfy themselves that the dwelling-house is unoccupied before executing a writ or warrant of possession or restitution or delivering a notice of eviction. This reflects the fact that taking possession of an unoccupied property poses no risk to public health.

5. Consultation

- 5.1 Given the public health emergency, it has not been possible to conduct a 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.

6. Regulatory Impact Assessment

- 6.1 The COVID-19 emergency and the urgency of making 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 Two options have been considered:

Option A – Do nothing

Option B – legislate to prevent most evictions taking place between 11 January 2021 and 31 March 2021, subject to periodic review.

Costs and Benefits

Option A – Do nothing

6.4 Although there are no immediate additional costs associated with this option, it will not achieve the benefit to public health and the control of the virus that would arise from preventing evictions during this period. As a result of the latter, there will be a potentially significant medium to longer term cost, both in terms of potential harm to public health and the impact on services of having to deal with those facing eviction and homelessness.

Option B – legislate to prevent most evictions taking place between 11 January 2021 and 31 March 2021, subject to periodic review

6.4 Under this option, regulations would prevent enforcement of possession orders unless the ground for possession fell within one of the specified circumstances where an order may be enforced during the winter period. Consequently, the public health benefits of preventing an upsurge in homelessness and any associated upsurge in the incidence and transmission of the virus will be realised. 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.

6.5 There are no obvious administrative and transitional costs of preventing evictions for this temporary period. Where a landlord is seeking possession of property for which rent is not being paid, there is a potential additional cost for landlords arising from the extra delay in the landlord gaining possession of the property and the arrears that may build up during that time. However this would necessarily have to be balanced against the cost to public health, and the knock-on effects for the health service and other organisations of permitting evictions to occur where there is significant risk that this contributes to the incidence and spread of the virus.

Competition Assessment

- 6.6 It has not been possible to undertake a full competition assessment in relation to these Regulations. However, given their time limited application, it is unlikely that they will have any detrimental impact on competition.

Specific Impact Tests

Equal opportunities

- 6.7 These Regulations do not discriminate against persons sharing any of the protected characteristics as set out in the Equality Act 2010. On the contrary, the provisions included in the regulations may be particularly beneficial to vulnerable individuals who might otherwise find themselves facing eviction and forced to find alternative accommodation during a period when finding such accommodation may be especially challenging. 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 more vulnerable to eviction.

Children's rights

- 6.8 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. For families with dependent children, a pause on evictions during the winter period may help reduce the disruption caused to children by a home move 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.

Welsh language

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

Local Government

- 6.10 These Regulations may have a limited, positive, impact on local authorities, due to reduced demand on crisis homelessness services as a result of fewer evictions during the winter period.

Economic effects

- 6.11 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 the delay caused by the pause in evictions. However, the temporary nature of the regulations means that

any negative economic impact caused should be limited to the time that the pause remains in force.

Impact on Privacy

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

Rural proofing

6.13 These Regulations will apply equally to people living in rural and urban areas. As such, the impacts – and benefits – should be no different between the two.

Health and wellbeing

6.14 In addition to the specific public health benefits that would result from a reduction in the number of people evicted into homelessness during the winter period, the Regulations should also support the health and wellbeing of individuals liable to be evicted by providing reassurance that they will not face eviction during each review period.

Impact on the Justice System

6.15 The Regulations will impact on the justice system in that they will prevent the carrying out of court orders during the winter period. Any long-lasting effect will be dependent on how long the pause remains in place and whether a backlog of possession orders builds up..