

SL(6)117 - The Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 4) (Wales) Regulations 2021

Background and Purpose

Section 81 and Schedule 29 to the Coronavirus Act 2020 provide protection from eviction by increasing the notice period a landlord is required to give a tenant when seeking possession.

These Regulations extend until 24 March 2022 (from the previous end date of 31 December 2021) the period ('the relevant 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.

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 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 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 17 December 2021.

In particular, we note what the letter says regarding why these regulations breach the 21 day rule:

"In the light of the ongoing pandemic, and during a time when there remains a serious threat to public health, both as a result of Covid-19 case rates remaining high overall and



concern regarding the emergence of the new Omicron variant, 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 31 December 2021, the Regulations come into force on 31 December. Due to their urgency, 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 24 March 2022).

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:

“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 lower rate than was the case before the roll out of the vaccination programme. The recent emergence of a new variant (Omicron) is of significant concern. As of 10 December 2021, Wales is remaining at Covid stable (Alert Level 0). However further guidance has been provided regarding additional testing and the use of face masks in hospitality settings. The most recent short to medium term projections show that the new variant is projected to cause a spike in infection and could very quickly overtake “Delta” as the dominant strain across the UK. Therefore, in light of increasing case rates overall and the threat from Omicron, delaying evictions will continue to help control the transmission of Covid-19.

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 the case as we move through 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.”



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.

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 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 of these Regulations.”

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.

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 section 6 of the Explanatory Memorandum attempts to set out a summary of the potential impact of these Regulations which does provide some qualitative assessment.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

21 December 2021

