

SL(6)182 – The Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) Regulations 2022

Background and Purpose

The Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) Regulations 2022 (“these Regulations”) amend the Coronavirus Act 2020 (“the Act”).

The purpose of these [Regulations](#) is to extend the expiry date of certain provisions of the Act to the end of the day on 24 September 2022. They would otherwise expire at the end of the day on 24 March 2022.

Section 89(1) of the Act provides that the Act expires at the end of 2 years beginning with the day on which it is passed, subject to subsection (2) of that section and section 90 of the Act. Section 90(2) of the Act provides that a relevant national authority may by regulations amend the expiry date of provisions in the Act. The Welsh Ministers are a relevant national authority for Wales in relation to provisions of the Act that apply in relation to Wales and which would fall with the legislative competence of Senedd Cymru.

The relevant provisions which expire at the end of the day on 24 September 2022, in so far as they apply in relation to Wales are:

- Section 38(1) and Schedule 17 – Temporary continuity: education, training and childcare (Wales)

This provision gives the Welsh Ministers a power to issue temporary continuity directions to educational institutions, registered childcare providers and local authorities requiring them to take reasonable steps – or specific steps that the Welsh Minister consider reasonable – in connection with the provision of education, training, childcare (or services relating to these), or ancillary services and facilities, for a specified period.

It also gives the Welsh Ministers a power to issue notices to disapply or modify, for a period of one month, certain specified statutory requirements in education and childcare, where the Welsh Ministers consider the issuing of the notice to be an appropriate and proportionate action in all the circumstances relating to the incidence or transmission of coronavirus.

Whilst there is no requirement to extend the childcare or for Higher or Further Education provisions, there may be need to consider powers for schools to dis-apply or modify certain requirements, if there is further significant disruption during this academic year as a consequence of Covid.

- Section 82 - Business tenancies in England and Wales: protection from forfeiture etc.

Section 82 provides that a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent may not be enforced, by action or otherwise, during the “relevant



period". The moratorium was introduced in order to limit the significant impact on businesses from the series of interventions and restrictions that have been imposed on the Welsh economy throughout the pandemic. These provisions were included as an intervention to address the issues – particularly cash-flow.

The end of the relevant period for this provision was initially 30 June 2020. Subsequently, Welsh Ministers agreed to extend the moratorium on a number of occasions. Most recently, the "relevant period" was extended in relation to Wales until 25 March 2022 by The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No. 3) Regulations 2021. This has provided protection for relevant business tenants whilst also providing time for the development of the Commercial Rent (Coronavirus) Bill ("the Bill").

The proposal to extend Section 82 is to provide the Welsh Ministers continued opportunity to extend the relevant period if considered to be required in the context of the Bill.

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd must approve 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 made for them to continue to have effect.

The procedure for regulations made by the Welsh Ministers under the Act is provided by sections 94(2) and (6) of the Coronavirus Act 2020.

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

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:

Whilst the Act engages individual rights under the Human Rights Act 1998 and the European Convention on Human Rights, the Government considers that they are justified for the purpose of preventing the spread of infectious diseases and/or the interference is permitted on the basis that it is in pursuit of a legitimate aim, namely of protecting public health, and are proportionate.



Article 1 of the First Protocol (protection of property) and Article 2 of the First Protocol (right to education) are key articles of the ECHR engaged by the provisions of the Act which are being extended.

Each of these is a qualified right, which permits the Welsh Ministers to interfere with the exercise of the rights if necessary in a democratic society in the interests of public safety or for the protection of health. All such restrictions and requirements must be justified on the basis that they are in pursuit of a legitimate aim, namely of protecting public health, and are proportionate to that aim. Any interference with these rights also needs to be balanced with the state's positive obligations under Article 2 (right to life). The adjustment of the provisions of Act by these Regulations is a proportionate response to the spread of coronavirus. It balances the need to maintain an appropriate response to the threat posed by coronavirus against the rights of individuals and businesses, in a manner which remains proportionate to the need to control the rate of transmission of the coronavirus, taking into account the scientific evidence.

Welsh Government response

A Welsh Government response is not required.

Legal Advisers

Legislation, Justice and Constitution Committee

24 March 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee