

## **Explanatory Memorandum to the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020**

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 2020. I am satisfied that the benefits justify the likely costs.

Julie James  
Minister for Housing and Local Government  
10 December 2020

## **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 11 January 2021

## **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 during the Christmas and mid-winter period. With access to services and alternative accommodation often limited during this time, 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, 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 the day following the day on which they are laid. 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 the Senedd.

## **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 evictions from occurring during the mid-winter period for residential tenants. 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 notices<sup>1</sup> 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 Although landlord notice periods have been increased, the temporary stay on court proceedings in Wales and England initiated in March came to an end on 20 September. It has subsequently become possible to commence possession proceedings through the courts where the required notice period has elapsed, and, if an order is 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 has applied during the recent firebreak in Wales and the recent national lockdown in England. The UK Government has also previously said that possession orders in England and Wales would not be enforced by bailiffs between 11 December 2020 and 11 January 2021.
- 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 prevent in England, 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 during the period up to 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 incidence and spread of Covid-19 during the Christmas and mid-winter period by preventing the enforcement of evictions in Wales except

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<sup>1</sup> 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

in the most serious circumstances. The Regulations come into force on the day following the day on which they are laid.

- 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 is high once again, there is a clear need for legislative action to be taken to ensure people are not evicted, on the basis the non-legislative approach taken by the UK Government may not be sufficient to achieve this.
- 4.4 During this period, it will become more difficult for those facing eviction and at risk of becoming homeless, to access services, including advice services. Furthermore, businesses may be closed or running at a reduced capacity and securing alternative accommodation may present increased practical difficulties. In these circumstances, evictions will be more likely to lead to homelessness.
- 4.5 Homelessness places people in situations where they are at much greater risk of both contracting the virus and transmitting it to others. This will likely place additional burdens on the NHS and hinder local authorities in their public health response, during a period when winter pressures on relevant public services are likely to be at their most acute. The UK Government has decided that it is necessary to legislate to prevent evictions in England and the Welsh Ministers consider that the same statutory reinforcement of the non-eviction policy during the mid-winter period is required in Wales.
- 4.6 To ensure the measure remains proportionate to the increased public health risk transmission of the virus presents over the winter period, the Welsh Ministers consider that some exceptions are needed to the ban on enforcement of possession orders. These are 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. 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.

4.7 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.

4.8 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 mid-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.

4.9 Another 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 any consultation on these Regulations and there is no statutory requirement to do so.

## **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 December 2020 and 11 January 2021*

## **Costs and Benefits**

*Option A – Do nothing*

- 6.3 If no action is taken, it would be necessary to rely on UK Government guidance issued to county court bailiffs and the Lord Chancellor writing to High Court Enforcement Officers to prevent evictions during the Christmas and mid-winter period. However, it is not certain whether this guidance would be issued or whether it can be relied upon, noting that the policy of preventing evictions over this period has been placed on a statutory footing in England.
- 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 the Christmas and mid-winter period if an alternative non-legislative approach is not implemented by the UK Government or is not effective. 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 December 2020 and 11 January 2021*

- 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 mid-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 the temporary, one month nature of the Regulations means that delay – and any associated costs – would be limited.

### **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 mid-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 Christmas and mid-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 one month nature of the regulations means that any negative economic impact caused should therefore be limited.

#### *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 mid-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 the Christmas and mid-winter 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 Christmas and mid-winter period. However the temporary nature of the Regulations means that there should be no long-lasting effect.