

Explanatory Memorandum to the Public Health (Protection from Eviction) (No.2) (Wales) (Coronavirus) Regulations 2021

This Explanatory Memorandum has been prepared by the Education and Public Services Group of the Welsh Government and is laid before 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) (No.2) (Wales) (Coronavirus) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Housing and Local Government

17 March 2021

1. Description

- 1.1 These Regulations will extend from 1 April 2021 until 30 June 2021, the restrictions introduced in January 2021 by the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021 ('the 2021 regulations'), namely to 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. These Regulations will expire on 30 June 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 2021 which expire on 31 March.

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

- 2.1 The 2021 Regulations were introduced at a time when the virus rate was very high in Wales. Despite levels of infection and transmission continuing to reduce, and the vaccine programme now being well underway, keeping these protections in place for the coming months – although subject to the regular review cycle – 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 (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.
- 2.2 In light of this, these Regulations are being 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 1 April 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, and was subsequently 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, a temporary stay on court proceedings in Wales and England was initiated in March 2020 that came to an end on 20 September 2020. 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.
- 3.5 On 16 November 2020, 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 that the enforcement of evictions in Wales over the Christmas and New Year period received the same statutory underpinning as in England, the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020 were brought into force on 11 December, with an expiry date of 11

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

January 2021. However, in view of continuing concerns, not least in respect of new variants and excessive pressures on public services, further regulations were made covering the period from 11 January to 31 March 2021. The current 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 current Regulations expire on 31 March 2021.

- 3.7 The UK Government has recently announced that the stay on evictions in England will be extended until the end of May, whilst the Scottish Government has announced that in Scotland the arrangements will be extended until the end of September.

4. Purpose & intended effect of the legislation

- 4.1 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.
- 4.2 Up until 20 September 2020, 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, and the continuing increased 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 was very high, and access to services and alternative accommodation limited, Regulations were put in place to ensure people were not evicted. In view of continuing concerns regarding the virus and pressures on health and wider public service, further Regulations were put in place to prevent evictions in January 2021. Those Regulations expire on 31 March 2021.
- 4.4 The impact on public health, specifically on the incidence and spread of Covid-19, of evictions and homelessness remains of concern, as do the capacity

issues services are continuing to face as a result of the pandemic, which mean that there continues to be an increased likelihood that evictions will result in homelessness, particularly street homelessness.

- 4.5 Homelessness places people in situations where they are at greater risk of both contracting the virus and transmitting it to others. They are less likely to be able to practice 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 homelessness support services or other homeless people. If evictions were to resume at the current time, there is a risk that this would lead to increased levels of transmission, thereby undermining national efforts to continue to reduce the prevalence of the virus.
- 4.6 The current Alert Level 4 restrictions may make it more difficult for those facing eviction to access services, including advice and support services as organisations may be closed or running at a reduced capacity. Securing alternative accommodation may also present increased practical difficulties if families and friends are reluctant to offer temporary accommodation; the pandemic has shone a light on the extent of 'sofa surfing' and the number of those presenting as homeless because of the breakdown of family and friend relationships given the pandemic and restriction-related pressures on households. In a situation where there is ongoing concern about widespread community transmission of the virus, and with the pressures placed on public services generally, including through restrictions designed to reduce transmission, the likelihood that evictions will result in homelessness is raised. This is particularly the case given the significant pressure on the availability of temporary and move-on accommodation to local authorities as numbers presenting as homeless or threatened with homelessness remain high.
- 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 previous 2021 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 catching and 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 anti-social behaviour to remain in their homes. Although this means that some people will be evicted, preventing the enforcement of evictions except in the most egregious of cases will substantially decrease enforcement proceedings overall.
- 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 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 emergency nature of these regulations mean that 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 1 April 2021, subject to periodic review.

Costs and Benefits

Option A – Do nothing – take no further action following expiry of the current Regulations on 1 April 2021.

- 6.3 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 – renew the regulations so that most evictions continue to be prevented from taking place between 1 April 2021 and 30 June 2021, subject to periodic review.

- 6.4 Under this option, regulations would continue to prevent enforcement of possession orders, unless the ground for possession fell within one of the specified circumstances where an order may be enforced. 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. However, 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.

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. Whilst robust data on the protected characteristics of landlords in Wales is limited², we are unaware of any negative implications of the Regulations which would disproportionately affect people with protected characteristics.

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, continuing the pause on evictions 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.

Economic effects

² Rent Smart Wales collect data on the protected characteristics of registered landlords but the significant number of those who "prefer not to say" in a number of categories, means that the data is not wholly reliable. For that reason, we have been unable to carry out an Equality Impact assessment in respect of landlords.

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, and the support mechanisms Welsh Government has established, 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, 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.

Wellbeing of Future Generations

6.15 The temporary protection from eviction through the extension of these Regulations helps to contribute to the achievement of well-being goals, in particular a more equal Wales and a healthier Wales. The five ways of working are embedded in terms of this action being preventative; taking into account the long-term impact on those likely otherwise to be evicted; acting in collaboration with third sector partners, such as Shelter Cymru; taking an integrated approach to health and housing and other areas; and involving stakeholders through stakeholder meetings.

Impact on the Justice System

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