

SL(5)696 – The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020

Background and Purpose

These Regulations are made by the Welsh Ministers under sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984. The 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 domestic violence, serious offences, anti-social behaviour, nuisance 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 come into force on 11 December 2020 and will expire on 11 January 2021.

The Minister for Housing and Local Government made a statement on 10 December 2020 adding that “the purpose of the Regulations is to ensure that during the Christmas and mid-winter period, evictions are kept as low as possible. 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 transmission of the virus.”

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 26 January 2021 in order for it to remain in effect”

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 3(2) is a saving provision and it states



“(2) The expiry of these Regulations does not affect the validity of anything done or not done pursuant to these Regulations before they expire.”

It is unclear why this provision is necessary owing to the operation of section 34 of the Legislation (Wales) Act 2019. The provision appears to serve no purpose and is superfluous. There will be contexts in which it is both meaningful and desirable, or even necessary, to make provision replicating a provision of the Legislation (Wales) Act but in this instance it is unclear why it has been included and could cause confusion. The Government are asked to explain why this provision is deemed necessary.

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 or 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”). Although the Explanatory Memorandum states that these Regulations are made in response to a public health emergency, it fails to refer specifically to the fact that these regulations engage human rights and how they deem the provisions to be justifiable and proportionate in the context of those rights. The Government are asked to provide this justification.

2. 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 public health emergency, it has not been possible to conduct any consultation on these Regulations and there is no statutory requirement to do so.”

Although it is accepted that there is no statutory requirement to consult when making these regulations under the above powers, can the Government confirm whether or not they were able to engage in any capacity with relevant stakeholders before making these regulations.

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.

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

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 14 December 2020 and reports to the Senedd in line with the reporting points above.

