

Explanatory Memorandum to the Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by 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 Coronavirus Act 2020 (Alteration of Expiry Date) (Wales) Regulations 2022.

Mark Drakeford MS
First Minister
22 March 2022

1. Description

The Regulations amend the [Coronavirus Act 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk).

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

The Welsh Ministers are of the opinion that the requirements set out in the Coronavirus Act 2020 (“the Act”), as amended by these Regulations, are necessary and proportionate as a public health response to the current threat posed by coronavirus.

European Convention on Human Rights

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.

3. Legislative background

The power to make the Regulations is at section 90(2) of the Act, which allows “the relevant national authority” to extend provisions of the Act by regulations. Under section 90(7) of the Act, the Welsh Ministers are a relevant national authority in relation to the power to extend the expiry date of a provision of the Act that extends to England and Wales and applies in relation to Wales, and which would be within the legislative competence of Senedd Cymru if it were contained in an Act of Senedd Cymru (including any provision that could only be made with the consent of a Minister of the Crown within the meaning of the Ministers of the Crown Act 1975). Section 94(2) and (6) provide that the Regulations must be approved by the Senedd within 40 days of being made, or they will cease to have effect.

The Act is part of a concerted effort across the whole of the UK to tackle the COVID-19 outbreak. The intention is that it will enable the right people from public bodies across the UK to take appropriate actions at the right times to manage the effects of the outbreak. Further details about the Act can be found in the [Explanatory notes](#).

4. Purpose and intended effect of the legislation

These Regulations are made in response to the threat to public health which is posed by the incidence of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which causes the disease known as COVID-19.

The Regulations amend the Act, with effect from 23 March 2022 to expire at the end of the day on 24 September 2022.

1) Section 38 (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.

Before giving the direction, the Welsh Ministers must have regard to any advice from the Chief Medical Officer for Wales (or his deputies) relating to the incidence or transmission of coronavirus, and must determine that giving the direction is a necessary and proportionate action for or in connection with the continued provision, as relevant, of education, training or childcare etc. 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.

2) 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.

5. Consultation

Given the ongoing threat arising from coronavirus and the need for a proportionate and prompt public health response, there has been no public consultation in relation to these Regulations.

6. Regulatory and other impact assessments

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. In accordance with the Code, a regulatory impact assessment as to the likely cost and benefit of complying with these Regulations has not been carried out, due to the need to put them in place urgently.

Given that these amended Regulations are extending current provisions the impact assessment undertaken on introduction of the Act remain valid. <https://www.gov.uk/government/publications/coronavirus-act-2020-equality-impact-assessment>