

Explanatory Memorandum to the Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No.3) (Wales) Regulations 2021

This Explanatory Memorandum has been prepared by the Education and Public Services Department 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 Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No.3) (Wales) Regulations 2021.

Julie James
Minister for Climate Change
22 September 2021

1. Description

- 1.1 Section 81 and Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”) provide protection from eviction by increasing the notice period a landlord is required to give a tenant when seeking possession. These Regulations extend until 31 December 2021 (from the previous end date of 30 September 2021) the period (‘the relevant period’) during which increased notice must be given to tenants granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996.

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

- 2.1 There is an urgent need to ensure that the relevant period is extended beyond the 30 September. The number of people under immediate threat of eviction from their homes must be kept low, in order to continue to contribute to the range of measures in place that respond to the continuing effects of the pandemic. Consequently, these Regulations come into force on 30 September 2021 in order to ensure that there is no gap in the protection given to tenants, which means that they do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force. The decision to extend the relevant period has been taken at relatively short notice in response to a situation that is still rapidly evolving, and in the light of an expected rise in Covid 19 cases and hospitalisations as we move into the autumn and winter period. Taking the decision at short notice has been essential to ensuring appropriate alignment of the measures taken to combat the effects of the pandemic. Complying with the 21 day convention has thus not been possible.
- 2.2 In accordance with section 11A(4) of the Statutory Instruments Act 1946 (inserted by Schedule 10 paragraph 3 of the Government of Wales Act 2006), the Llywydd has been informed that the Regulations will come into force less than 21 days from the date of laying.
- 2.3 Even though these Regulations apply prospectively (i.e. on or after the date the amendments come into force) there is an element of retrospectivity to these Regulations in that notice periods in existing tenancies are temporarily altered. However, the extended notice period will apply to notices given on or after the date these Regulations come into force.

3. Legislative background

- 3.1 These Regulations are made under paragraphs 1(2) and 14(1) of Schedule 29 to the Coronavirus Act 2020 (“the 2020 Act”).

- 3.2 Section 81 and Schedule 29 to the 2020 Act delay when landlords may evict tenants by either amending the notice period a landlord is required to serve on a tenant or, in some cases, creating a notice requirement when such a requirement does not currently exist. Notices served in respect of protected tenancies, statutory tenancies, secure tenancies, assured tenancies, assured shorthold tenancies, introductory tenancies and demoted tenancies during the relevant period are subject to an increased notice period. The relevant period, which is set to end on 30 September 2021, may be extended by the “relevant national authority” (which means the Welsh Ministers in relation to Wales) under a power set out in paragraph 1(2) of Schedule 29.
- 3.3 Schedule 29 applies to all landlords who have granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996. Following amendments made to Schedule 29 of the 2020 Act by the Coronavirus (Assured Tenancies and Assured Shorthold Tenancies; Extended Notice Periods) (Amendment) (Wales) Regulations 2020 and the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020, six months’ notice is currently required for most notices served in respect of protected tenancies; statutory tenancies; secure tenancies; assured tenancies; assured shorthold tenancies; introductory tenancies; and demoted tenancies. For all tenancies where the ground or reason for giving notice relates to antisocial behaviour (ASB) or domestic violence, notice periods have returned to their pre-Coronavirus levels.
- 3.4 Paragraph 14(1)(a) of Schedule 29 states that regulations made under Schedule 29... “may be exercised more than once,”. Paragraph 14(3) states that a statutory instrument containing regulations of the Welsh Ministers under paragraph 1 is subject to annulment in pursuance of a resolution of the Senedd (i.e. the negative resolution procedure).

4. Purpose & intended effect of the legislation

- 4.1 The Regulations amend Schedule 29 of the 2020 Act to ensure that until 31 December 2021 tenancies are subject to a six month notice period for termination of the tenancy, except where the reason for seeking to end the tenancy relates to ASB or domestic violence.
- 4.2 From the evidence available, there remains the potential for a significant number of evictions in the private rented sector. Without a longer period to offer support, address rent arrears, and for landlords and tenants to prepare for potential eviction local authorities could struggle to meet the demand for temporary accommodation which could lead to a large number of people potentially sleeping rough.

4.3 In the light of the above, the extension to the relevant period is intended to support three of the overarching aims of the 2020 Act, that is:

- containing and slowing the virus
- easing the burden on frontline staff; and,
- supporting people.

4.4 It does this through:

- **Reduced homelessness** - continued longer notice periods should mean fewer people evicted into homelessness, or being at risk of eviction into homelessness. If a person becomes homeless, their potential vulnerability to the virus and the likelihood of them spreading it is increased further (*“containing and slowing the virus”*).

Since the time when the relevant period was last extended, there have been improvements in the public health situation as a consequence of the success of the vaccine programme. However, there has been a recent increase in case numbers which has led to an increase in hospitalisations, albeit at a much lower rate than was the case before the roll out of the vaccination programme. The most recent short to medium term projections show that cases will continue to rise for some time. Therefore, since the virus is once again circulating widely in the community, delaying evictions will continue to help control its transmission.

Generally, the virus remains a serious threat to public health, which would be significantly exacerbated if the current wave of cases were accompanied by a sudden wave of evictions and a resultant increase in homelessness. This will remain true as we move into the winter months, where the impact of Covid-19, in conjunction with a possible resurgence in influenza infections and other normal winter pressures, may place the health service under significant strain. In these circumstances, taking continued action to limit the risk of a sudden spike in evictions so that public health continues to be protected, is considered appropriate.

Reduced pressure on services - Fewer people would be evicted into homelessness, or be at risk of being evicted into homelessness, at a time when local authorities are less able to respond to these situations as a result of continued pressures on services created by the continuing effects of the pandemic. These pressures include finding suitable homes for those currently residing in temporary accommodation. Diverting resources away from other vital aspects of local authorities' response to the impact that Covid-19 has had will potentially weaken the effectiveness of that response and undermine recovery (*“easing the burden on frontline staff”*). Local authorities are under considerable pressure in relation to homelessness presentations – currently over 6000 people are already being housed in temporary accommodation. They will struggle to accommodate any significant rise in numbers presenting as

homeless which may lead to a significant increase in the numbers of those who become homeless and who may end up sleeping rough.

- **Increased security and reduced anxiety** - Those renting their homes will continue to benefit from the knowledge that they will not face the threat of eviction at short notice.

As well as increased security, this will reduce levels of anxiety amongst tenants who are already disproportionately affected in other ways by the ongoing financial and economic uncertainties caused by the pandemic (*“supporting people”*) (not least because young people and those in low income groups, who have been most at risk of their employment as a result of the pandemic, are over-represented in the rented sector). Reducing anxiety in the general population (the ONS has found that nearly 50% of people have experienced elevated levels of anxiety at times during the pandemic) also has a clear public health benefit and reduces pressures on public services including mental health services (*“easing the burden on frontline staff”*) and will better enable those services to deal with the consequences of any new outbreaks of the virus. Being made homeless, threatened with sleeping rough, placed potentially a long distance from their home and support networks and, if they have children, from children’s friends and support networks will increase stress and anxiety.

- **Increased scope to support individuals at risk of eviction –** Maintaining an extension to the relevant period, with continued increased notice periods, would also continue to provide additional time for landlords, tenants and support agencies to work together to identify and agree arrangements to support tenants to better manage their finances and repay any rent arrears which may accrue as a result of the coronavirus outbreak (*“supporting people”*).

5. Consultation

- 5.1 Given the emergency, it has not been possible to conduct any 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 the purpose and effect these Regulations.

6. Regulatory Impact Assessment

- 6.1 The COVID-19 emergency and the urgency to make 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 Three options have been considered:

Option A – Do nothing

Option B – Extend the relevant period until 31 December 2021, but reducing notice periods currently set at six months to four months

Option C - Extend the relevant period until 31 December 2021 and retain all current notice periods

Costs and Benefits

Option A – Do nothing

- 6.3 If no action is taken, from 1 October 2021, the arrangements for notice periods will revert to those that applied before the temporary amendments introduced by Schedule 29 of the 2020 Act. This will mean different things in relation to different tenancies, but in most instances (that is, excluding the current exemptions relating to ASB and DV) will mean that the notice period given to a tenant will be less than it is currently. For example, in relation to assured tenancies, the period of notice required under section 8 of the Housing Act 1988, where the notice is given under the mandatory rent arrears ground, would reduce from six months to two weeks. In relation to assured shorthold tenancies, the period of notice required under section 21 of the Housing Act 1988 would reduce from six months to two months.
- 6.4 Although there are no immediate additional costs associated with this option, nor any costs at all to landlords, it will not achieve any of the benefits set out in 4.4 above. Furthermore, on the basis of surveys undertaken by organisations representing both landlord and tenant interests, it is reasonably clear that the financial hardship resulting from the effects of the pandemic has had a damaging impact on the ability of some tenants to pay rent. 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 financial impact on services, if there is a sudden upturn in evictions or the threat of evictions caused by an immediate and premature return to pre-Covid notice periods.
- 6.5 In addition, this option would not address the perverse situation that a notice issued at the end of September may come to an end months later than an equivalent notice issued at the beginning of October.

Option B – Extend the relevant period until 31 December, but reduce notice periods from six months to four months (except those relating to ASB or DV to which pre-Covid notice arrangements apply).

- 6.6 Under this option, regulations would be made that extend the relevant period until 31 December 2021 so as to cover a period when it is expected that the impact of the pandemic will continue to be significant. Consequently, the benefits of extending the period over which additional protections are applied, as outlined under 4.4, would be realised for an additional three months. 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.
- 6.7 However, recognising the positive impact that the vaccination programme has had on the public health situation, there is an argument that it might be appropriate to start reducing notice periods back towards their pre-Covid length. Under this option, therefore, the regulations extending the relevant period would also reduce notice periods from their current six months to four months. For notices issued under section 21 of the Housing Act 1988, this would be the midpoint between the current six months' notice period and the pre-coronavirus period of two months. Although, this would still mean that a notice issued in September would expire after that issued in October, it would significantly reduce the extent of that differential and mean that the reversion to pre-Covid notice periods from October onwards would be more graduated.
- 6.8 The administrative and transitional costs to landlords of extending the relevant period are expected to be negligible. However, where a landlord is seeking possession of property on the rent arrears grounds, there is a potential additional cost arising from the extra delay there would be to the landlord making a claim to the court and the arrears that may build up during that time. 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. 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 a sudden increase in evictions occurring. In addition, the Tenancy Hardship Grant (THG) scheme introduced in Wales in July, which supports tenants with serious rent arrears owed to private rented sector landlords and accrued due to Covid-19, should mitigate against some of the effects, particularly as the grant is paid directly to landlords on behalf of the tenant who applies.

Option C – Extend the relevant period until 31 December and retain notice periods for all types of tenancies at six months (except those relating to ASB or DV to which pre-Covid notice arrangements apply).

- 6.10 As with Option B, regulations would be made that extend the relevant period until 31 December 2021 so as to cover a period when the impact of the pandemic will continue to be felt, with the benefits as identified in paragraph 4.4.
- 6.11 And again, as with Option B, the extension would help to ensure tenants in both the private and social rented sector remain in their homes and have enough time to find alternative accommodation during the period of planned transition back to normality and the economy is fully opened up. Ensuring that tenants remain protected until the end of December will continue to help reduce pressure on essential public services.
- 6.12 However, under this option six-month notice periods would be retained for all notices for which the notice period is currently set at that length. This would not provide for the more graduated reversion to pre-coronavirus notice periods set out in Option B. Given the recent, and predicted, increases in both case numbers and hospitalisations, retaining six month notice periods is likely to best support the objectives of containing and slowing the virus, easing the burden on frontline staff and supporting people. In particular, concerns about the impact of a further wave combined with the expected impact of normal winter pressures on the health service, supports a more cautious approach. For these reasons, the Welsh Ministers consider Option C is the more appropriate option to pursue at this time.

Competition Assessment

- 6.13 It has not been possible to undertake a full competition assessment in relation to these Regulations. However, the changes are being applied to all landlords that rent out a property as a home. This broad application means that no changes to the overall structure or size of the private rented sector are expected. In addition no change is expected in terms of competitiveness of businesses, the voluntary sector and charities. There is therefore no risk of a detrimental effect on competition.

Specific Impact Tests

6.14 *Equalities*

The extension of the relevant period for a further three months whilst still retaining longer notice periods of six months (as opposed to allowing notice periods to return to their pre-Covid position), will positively impact on those same people with protected characteristics; it may be particularly beneficial to vulnerable individuals who might otherwise find themselves facing eviction who, if the regulations were not extended, might be forced to find alternative accommodation at short notice during the current public health emergency. Those with certain protected characteristics under the Equality Act 2010 are likely to be disproportionately represented amongst those living in the private rented sector and therefore more vulnerable to

eviction, e.g. some Black, Asian and Minority Ethnic groups. Whilst robust data on the protected characteristics of landlords in Wales is limited¹, officials are unaware of any negative implications of the Regulations which would disproportionately affect people with protected characteristics.

6.15 *Children's rights*

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. Given that a significant proportion of households in the rented sector are families with dependent children, extending the relevant period may help reduce the disruption caused to children by a home move – including potentially having to change school – 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.

6.16 *Welsh language*

These Regulations should not give rise to any negative impacts in relation to cultural wellbeing or the Welsh language.

6.17 *Local Government*

These Regulations may have a limited, positive, impact on local authorities, by lessening the demand on crisis homelessness services.

6.18 *Economic effects*

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, extending the relevant period, so that notice periods remain at an increased length, could result in tenants accruing greater levels of rent arrears, resulting in financial hardship for 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. However, the financial impact of this may be balanced out by the additional time landlords, tenants and support agencies have to work together to identify and agree arrangements to support tenants to better manage their finances and repay any rent arrears. In addition, the THG scheme, which supports tenants with serious rent arrears owed to private sector landlords and accrued due to Covid-19, should mitigate against some of the effects. In more general economic terms, the greater security of tenure provided by increased notice periods may have beneficial

¹ 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.

impacts. For example it may provide tenants with a more stable set of circumstances, improving their ability to secure or sustain employment.

6.19 *Impact on Privacy*

The Regulations do not produce any new requirements relating to privacy or the sharing of information.

6.20 *Rural proofing*

These Regulations will apply to homes rented by people living in rural, as well as urban areas. As such, the impacts – and benefits – will be no different between rural and urban areas.

6.21 *Health and wellbeing*

In addition to the wider public health benefits that would result from a reduction in the number in the number of people evicted into homelessness during the current pandemic. It is also well-recognised that good quality and secure housing is a significant determinant of individuals' general health and wellbeing. These Regulations should therefore support health and wellbeing for individual tenants by providing reassurance that they will not face eviction at short notice during the pandemic.

6.22 *Wellbeing of Future Generations*

The temporary protections provided through the extension of the relevant period 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.

6.23 *Impact on the Justice System*

The net effect of changes resulting from this legislation is expected to be neutral or even positive on the basis that allowing tenants more time to resolve financial issues may result in fewer rent arrears cases proceeding to court.