

SL(6)013 – The Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 2) (Wales) Regulations 2021

Background and Purpose

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 the period during which increased notice must be given to tenants until 30 September 2021 (from the previous end date of 30 June 2021), and this will apply to tenancies granted tenancies under the Rent Act 1977 and the Housing Acts 1985, 1988 and 1996.

Specifically, these Regulations amend Schedule 29 to the 2020 Act (“Schedule 29”). Schedule 29 modifies various statutory provisions, relating to notices that need to be given in order to seek possession of dwellings, during “the relevant period” (as defined by paragraph 1(1) of that Schedule). The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020 (S.I. 2020/778 (W. 172)) and, in part, the Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020 (S.I. 2020/1044 (W. 233)) amended the modifications made by Schedule 29. The provision made by Schedule 29 was originally to end on 30 September 2020 (at the end of the relevant period). Regulation 3 of S.I. 2020/1044 (W. 233) amended paragraph 1(1)(b)(ii) of the definition of the relevant period so that Schedule 29 had effect in relation to Wales until 31 March 2021. Regulation 2 of the Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (Wales) Regulations 2021 (S.I. 2021/377 (W. 118)) further amended paragraph 1(1)(b)(ii) of the definition of the relevant period so that Schedule 29 has effect in relation to Wales until 30 June 2021. Regulation 2 of these Regulations further amends paragraph 1(1)(b)(ii) so that Schedule 29 has effect, in relation to Wales, until 30 September 2021.

Procedure

Negative Resolution.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



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 of public policy likely to be of interest to the Senedd

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Julie James MS, Minister for Climate Change, in a letter to the Llywydd dated 17 June 2021. In particular, we note the following in the letter:

“In the light of the ongoing pandemic, and continuing uncertainties surrounding the impact of the new variants that have recently emerged, the Welsh Ministers have concluded that there remains an urgent need to ensure that the number of tenants under threat of eviction from their homes is kept as low as possible. Doing so will assist with the containment of Coronavirus, ease the burden on frontline staff, and ensure tenants are provided with appropriate support. The Regulations make an important contribution to meeting that urgent need. In order to ensure that the provisions of Schedule 29 continue to apply after 30 June, the Regulations come into force on 30 June.”

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of 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”). The Committee note that the Regulations will only extend the relevant period for a specified period (up to 30 September 2021).

We note the Welsh Government’s justification for any potential interference with human rights. In particular, we note the following paragraph in the Explanatory Memorandum:

Paragraph 4.4 states *“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 significant and continuing improvements made in relation to the virus and the public health situation no longer remains critical in the same way. The rate at which the virus is now circulating in the community means that delaying evictions is currently unlikely to be playing a significant role in controlling the transmission of the virus. However, at the same time, there remains a considerable degree of uncertainty regarding the trajectory of the pandemic and in particular on the emergence of new variants. With increasing case rates in both Scotland and England, a third wave in Wales appears possible as



current evidence suggests that the most recent Delta variant is more transmissible than the previously dominant Alpha variant.

This uncertainty relates to transmissibility of new variants but more importantly, the likely effectiveness of the current vaccines in preventing serious illness and hospitalisations in relation to these variants. Although there is, at present, a high degree of optimism in relation to continued effectiveness of the vaccines, it will be some time yet before any degree of certainty is achieved. The protection provided by two doses against this Delta variant appears to be much greater than for one dose, and therefore protection from infection remains limited for many in the population at this point. In the meantime, the virus remains a threat to public health, which would be significantly exacerbated if a new wave of cases, or outbreaks in specific locations, were accompanied by a sudden wave of evictions and a resultant increase in homelessness. 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 proportionate."

Taking the above comments into account, the Committee note that Landlords have already had restrictions imposed on them for a significant period of time. The restrictions originally contained in the Coronavirus Act in April 2020 were imposed on landlords until September 30 2020. Whilst the pandemic meant that it was considered proportionate to extend the "relevant period" on two previous occasions, the circumstances have since changed significantly and this has been reflected by legislation that has reduced the alert level for the whole of Wales to alert level 2. This has meant that restrictions in several sectors have been relaxed. For example, in the leisure industry, cinemas are now allowed to be open. Soft-play centres and gymnasiums have opened. Can the Welsh Government provide justification for the extended restrictions on Landlords, whilst restrictions in other areas have been lifted? The Welsh Government state in their Explanatory Memorandum that *"The rate at which the virus is now circulating in the community means that delaying evictions is currently unlikely to be playing a significant role in controlling the transmission of the virus."* In light of these comments in the Explanatory Memorandum, can the Welsh Government provide any evidence to the Committee which demonstrates that tenant evictions pose a greater health risk than allowing citizens to participate and attend other settings where restrictions have been lifted. The Committee consider that such evidence is necessary to demonstrate that the approach taken remains proportionate on grounds of human rights.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The Committee note that the Welsh Government have considered other options before deciding to extend the current restrictions for a further 3 months. Option B in the Explanatory Memorandum explores the possibility of taking a more graduated and proportionate action in relation to landlords given the improvement in the general picture of public health.

Paragraph 6.7 states:



“... recognising that the public health situation has improved, 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 June would expire after that issued in July, it would significantly reduce the extent of that differential and mean that the reversion to pre-Covid notice periods from September onwards would be more graduated.”

The Committee note that a more graduated approach has been taken in England (not dissimilar to the option considered above) to take into account the improvements made in the risks to public health and to apply a proportionate response to how landlords may evict their tenants. The legislation (The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) (No. 2) Regulations 2021) introduces a graduated approach. The Regulations in England are drafted in a way that reduces and tapers down the notice periods from 6 months to 2 or 4 months depending on the circumstances and whether they are fault or no fault evictions. The Explanatory Memorandum for the Regulations in England state that *“this is to ensure that the measures remain proportionate to the public health risks, and to mitigate the risk of a cliff-edge in protections that could encourage a spike in possession claims and create pressures for public services.”*

The Committee note the options and reasons given in the Explanatory Memorandum and would like the Welsh Government to expand on and justify the legislative approach taken in these Regulations. Specifically, can the Welsh Government explain why it did not take a tapered approach similar to that in England.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note there has been no formal consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

“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.”

5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of 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 to make these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment."

6. 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 extend the period of time (by approximately 12 weeks) during which a landlord will be subject to the extended notice periods that must be given in order to seek possession of their property, and those extended periods will apply where a landlord wishes to seek possession because of unpaid rent. These Regulations, combined with the provisions made by the Public Health (Protection from Eviction) (Wales) Regulations 2021 and the Health (Protection from Eviction) (No. 2) (Wales) Regulations 2021 (which prevent, except in specified circumstances, attendance at a dwelling for the purpose of executing a warrant of possession or of delivering a notice of eviction) mean that landlords will have been subject to a number of restrictions on obtaining possession over a significant period of time. This 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. Given that there has been no formal consultation or a thorough regulatory impact assessment undertaken, what, if any action has the Welsh Government taken to mitigate the economic effects of these Regulations on Landlords.

Welsh Government response

A Welsh Government response is required for merits points 2, 3 and 6.

Committee Consideration

The Committee considered the instrument at its meeting on 28 June 2021 and reports to the Senedd in line with the reporting points above.

