

SL(5)585 – The Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020

Background and Purpose

These Regulations temporarily extend from three months to six months the notice periods that landlords must give tenants under section 8(4A) or (4B) of the Housing Act 1998 (“the 1998 Act”) (notice of proceedings for possession: assured tenancies), and under section 21(1) or (4) of the 1998 Act (recovery of possession on expiry of assured shorthold tenancy). These notice periods had already been extended to three months by Schedule 29 to the Coronavirus Act 2020.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following three 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 Rebecca Evans MS, Minister for Finance and Trefnydd, in a letter to the Llywydd dated 23 July 2020 that:

There is an urgent need to ensure that the number of tenants under threat of eviction from their homes is kept as low as possible, so as to continue 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 and therefore come into force on the day after the day on which they are made.

Whilst we recognise that a number of measures have had to be put in place urgently during the Coronavirus pandemic, we are not clear why these Regulations in particular had to come into force so urgently as to breach the 21-day rule when the Welsh Ministers have had the power to make such regulations since 25 March 2020 (when the Coronavirus Act 2020 was passed).

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”). A1P1 states:



Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The Regulations increase, in certain cases, the notice period that a landlord must give a tenant from three months to six months. The effect of the amendments therefore is to restrict a landlord's use and enjoyment of their property for an additional three months. A1P1 is a qualified right and so controlling the landlord's use of their property is permitted if it is deemed necessary in the general interest.

In considering whether an interference is justified, the State must show that the regulations have a legitimate aim sufficient to justify the limitation of landlords' rights, that the regulations are rationally connected to that aim, that a less intrusive measure couldn't be used, and that there is a reasonable relationship of proportionality between the means employed to achieve that aim, and the aim pursued.

It is concerning that there is no analysis in the Explanatory Memorandum ("EM") of landlords' A1P1 rights and how interference with these rights is justified. In the absence of such justification these Regulations run the real risk of breaching A1P1 rights. The timing of the introduction of these Regulations, coupled with the fact that restrictions are being eased in other parts of the housing sector is a real concern. Whilst the aims behind these Regulations can be ascertained from the EM (containing and slowing the virus, easing the burden on frontline staff and supporting people), the Welsh Government is asked to justify how these Regulations are proportionate to achieving those aims.

In particular, how does the Welsh Government justify interfering with landlords' A1P1 rights when:

1. they have had the power to put these measures in place since 25 March 2020, but did not do so when the incidence and spread of coronavirus was much higher;
2. other restrictions that were put in place to deal with the Coronavirus pandemic are being eased; and
3. restrictions are being lifted in the housing market allowing estate agents to open and for house viewings and house sales to take place, which seems at odds with the policy pursued in these Regulations?

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

Whilst the Welsh Government have not been able to carry out a quantified regulatory impact assessment, the EM provides an assessment of the likely qualitative impacts of the Regulations. However, these Regulations were laid late on 23 July 2020 and came into force on 24 July 2020 giving landlords only a matter of hours notice of this substantive change to the law and their rights. The Committee are concerned that the lack of consultation and the absence of a quantified regulatory impact assessment further undermines any justification that these Regulations represent a proportionate response by the Welsh Government.



Implications arising from exiting the European Union

No implications are identified for reporting.

Government Response

A Welsh Government response is required to the three merits points raised.

Committee Consideration

The Committee considered the instrument at its meeting on 3 August 2020 and reports to the Senedd in line with the reporting points above.

