

Explanatory Memorandum to the Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (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) (Wales) Regulations 2021.

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Minister for Housing and Local Government
24 March 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 30 June 2021 (from the previous end date of 31 March 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 31 March. 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 virus. Consequently, these Regulations come into force on 31 March 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 the outcome of the most recent review of the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2021. 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)(a) 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 31 March 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 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, the notice period remains at three months.
- 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 30 June 2021 tenancies remain 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.
- 4.3 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 at risk of being evicted 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*”). This may become particularly significant in the event of new variants of the virus contributing to its

transmissibility or the severity of its impact, or a potential further wave or local spikes occurring during the period when restrictions are being relaxed. Even where that does not occur, aspects of homelessness constitute a public health risk in themselves, and any steps that combat that risk have merit in their own right.

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 pressures on services created by coronavirus. 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 public health emergency posed by Covid-19, will potentially weaken the effectiveness of that response ("*easing the burden on frontline staff*"). This is of particular relevance as we move to a period where hospitality can reopen, as many Local Authorities have been utilising closed hotels for temporary accommodation. These hotels will be keen to revert back to their core business and the supply to local authorities will be reduced, thus further exacerbating current pressures. In addition, securing informal alternative accommodation may also present increased practical difficulties if families and friends are reluctant to offer this; the pandemic has shone a light on the extent of 'sofa surfing' and the number of those presenting as homeless because of the breakdown of family and friend relationships given the pandemic and restriction-related pressures on households.

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 and in some instances will receive even longer notice on a statutory basis. As well as increased security, this will reduce levels of anxiety amongst tenants who in many cases are already being affected in other ways by the ongoing uncertainties caused by the coronavirus outbreak ("*supporting people*"). Reducing anxiety in the general population also has a clear public health benefit and reduces pressures on public services including mental health services ("*easing the burden on frontline staff*").

Increased scope to support individuals at risk of eviction - An extension to the relevant period 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 Two options have been considered:

Option A – Do nothing

Option B – Extend the relevant period until 30 June 2021, keeping all notice periods at their existing length

Costs and Benefits

Option A – Do nothing

- 6.3 If no action is taken, from 1 April, the arrangements for notice periods will revert to those which were required before the temporary amendments introduced by Schedule 29 of the 2020 Act. This will mean different things in relation to different tenancies, but in all instances will mean that the period given to a tenant will either be less than it currently is.

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. As a result of the latter, there will be a potentially significant cost medium to longer term cost, both in terms of potential harm to public health and the financial impact on services of having to deal with those facing eviction and homelessness.

Option B – Extend the relevant period until 30 June, keeping all notice periods at their existing extended lengths

- 6.4 Under this option, regulations would be made that extend the relevant period until 30 June 2021. 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 (and for the remaining period during which the vaccination of adults in Wales is expected to be completed). 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.

The administrative and transitional costs to landlords of extending the relevant period are expected to be negligible. Where a landlord is seeking possession of property on the rent arrears grounds, there is, however, 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. The Welsh Government’s Early Alert Scheme for rent arrears and other household debt in the private rented sector has been put in place to help tenants agree affordable repayment plans with their landlord or letting agent to address rent arrears and reduce the risk of them losing their home, while the Tenancy Saver Loans Scheme enables tenants in the private sector to apply for a loan, which will be paid directly to the landlord or agent, and made available to tenants at 1% APR interest, repayable over up to five years. Work is being undertaken to increase awareness amongst landlords and tenants of the schemes. 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 where there is significant risk that this contributes to the incidence and spread of the virus.

It is the view of the Welsh Government that this option will continue to reduce evictions as far as is reasonable, in the light of the ongoing pandemic.

Competition Assessment

- 6.6 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

6.7 *Equal opportunities*

These provisions do not discriminate against persons sharing any of the protected characteristics as set out in the Equality Act 2010. On the contrary, the extending the relevant period may be particularly beneficial to vulnerable individuals who might otherwise find themselves facing eviction when they have not breached the terms of their tenancy and forced to find alternative accommodation at short notice during a period when finding such accommodation may be especially challenging. Those with certain protected characteristics under the Equality Act 2010 are likely to be disproportionately represented amongst those living in the rented sector and therefore vulnerable to eviction. Whilst robust data on the protected characteristics of landlords in Wales is limited¹, we are unaware of any negative implications of the Regulations which would disproportionately affect people with protected characteristics.

6.8 *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.

6.9 *Welsh language*

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

6.10 *Local Government*

These Regulations may have a limited, positive, impact on local authorities, if demand on crisis homelessness services reduces as a result of longer possession notices being served, and also because longer notice periods allow those faced with a possession notice more time to find alternative accommodation themselves without recourse to homelessness services.

6.11 *Economic effects*

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.

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, and lenders may still be able to recover possession in the event of the landlord defaulting on the mortgage, there is a potential additional cost to them arising from increased notice periods. 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 more general economic terms, the greater security of tenure provided by increased notice periods may have beneficial impacts. For example it may provide tenants with a more stable set of circumstances, improving their ability to secure or sustain employment.

6.12 *Impact on Privacy*

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

6.13 *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.

6.14 *Health and wellbeing*

In addition to the wider public health benefits that would result from a reduction 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.

6.15 *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.

6.16 *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.