

SL(5)718 – The Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021

Background and Purpose

These Regulations are made by the Welsh Ministers under sections 45C(1), (2), (3)(c) and 45P(2) of the Public Health (Control of Disease) Act 1984.

These Regulations re-enact the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020 which expire on 11 January 2021.

These Regulations come into force on 11 January 2021 and expire at the end of the day on 31 March 2021. Regulation 3 provides that the Regulations must be reviewed regularly to ensure the restrictions and requirements imposed remain proportionate.

These Regulations prevent, except in specified circumstances, attendance at a dwelling-house for the purpose of executing a writ or warrant of possession, executing a writ or warrant of restitution or delivering a notice of eviction.

The specified circumstances are where the court is satisfied that: the claim is against trespassers who are persons unknown; or where it was made wholly or partly on the grounds of domestic violence, serious offences, anti-social behaviour, or nuisance; or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance and the possession order was made wholly or partly on the grounds of the death of the occupant.

In a statement on 8th January 2021, the Minister for Housing and Local Government said:

“The purpose of the Regulations is to contribute to the public health response to coronavirus by preventing the enforcement of evictions except in the most serious circumstances. The impact of evictions and homelessness on the incidence and spread of Covid 19 remains of great concern. Homelessness places people in situations where they are at much greater risk of both contracting the virus and transmitting it to others. The current Alert Level 4 restrictions may make it more difficult for those facing eviction to access services, including advice and support services as organisations may be closed or running at a reduced capacity. Securing alternative accommodation which is already more limited during the winter period, may also present increased practical difficulties. In a situation where there is widespread and increasing community transmission of the virus, and with the pressures placed on public services generally, the likelihood that evictions will result in homelessness remains raised.”

The Regulations will be subject to a review cycle during the period that they are in force to ensure the restrictions and requirements remain proportionate. The first review must take place in the period between the Regulations coming into force and the 28 January



2021 in order to align with the review timings in the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020. They must then be reviewed at least once in each subsequent three weekly period."

Procedure

Made Affirmative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

In accordance with the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984, this instrument must be approved by the Senedd by 3 February 2021 in order for it to remain in effect.

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 or 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 exceptions are included in the Regulations that allow for evictions in certain circumstances, that the regulations are made only for a specified period, that they are to be reviewed on a regular 3-week cycle and are made in the context of the current health emergency.

The Committee further note the reasons given for this legislation in the Explanatory Memorandum.

"The purpose of the Regulations is to provide a public health response to the increasing incidence and transmission of the Covid-19 virus by preventing the enforcement of evictions in Wales except in the most serious circumstances. The Regulations come into force on 11 January 2021 and expire on 31 March. The continuing need for, and proportionality of, the regulations must be reviewed every 3 weeks. These 3 weekly reviews are aligned with the review periods for the Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020, as the relevant Alert Level will be a key consideration in determining whether these measures remain proportionate. "

2. 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.



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

“Given the public health emergency, it has not been possible to conduct a 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 these Regulations.”

3. 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.

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 of making these Regulations means it has not been possible to prepare a quantified Regulatory Impact Assessment.”

The Committee notes that paragraph 6 of the Explanatory Memorandum attempts to set out a summary of the potential impact of these Regulations which does provide some qualitative assessment of their impact.

4. 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 10 weeks by which a landlord will be prevented from seeking possession of their property for unpaid rent. In combination with previous Regulations, landlords will have been prevented from recovering possession due to unpaid rent for a significant period of time. The arrears of rent for some landlords may have a significant economic impact. Have the Government given any consideration as to what financial support it may give landlords that find themselves in financial difficulty because of the extension of restrictions imposed by these regulations.

Welsh Government response

The Welsh Government has recognised in the Explanatory Memorandum (paragraph 6.5) to these Regulations that “Where a landlord is seeking possession of property for which rent is not being paid, there is a potential additional cost for landlords arising from the extra delay in the landlord gaining possession of the property and the arrears that may build up during that time”. However the Explanatory Memorandum (paragraph 6.11) also notes that “the temporary nature of the regulations means that any negative economic impact caused should be limited to the time that the pause remains in force” and furthermore (paragraph 6.5) that this impact “would necessarily have to be balanced against the cost to public health, and the knock-on effects for the health service and other organisations of permitting evictions to occur where there is significant risk that this contributes to the incidence and spread of the virus”. The purpose of review of the Regulations, held at least every three



weeks, will be to consider the continuing need for, and proportionality of, the Regulations, taking such matters into account.

The Welsh Government has sought to mitigate the financial impact of the coronavirus pandemic on tenants and landlords and the legislative measures taken to control it. We have introduced an Early Alert Scheme, which is designed to support private rented sector tenants at the first sign they are struggling to pay their rent or household bills. It provides additional access to the advice and support tenants need to manage their financial commitments. In addition, it helps tenants establish affordable repayment plans with their landlord or letting agent to address rent arrears and reduce the risk of them losing their home. We have also launched the Tenancy Saver Loan Scheme to help private rented sector tenants who are in rent arrears, or struggling to pay their rent as a result of reduced income during Covid-19. The loans are paid directly to the landlord, and made available to tenants at 1% APR interest, repayable over up to five years, making repayments more affordable.

The Welsh Government is committed to continuing to work with all partners to address issues that have arisen during the pandemic and have maintained regular engagement with representative bodies of landlords as well as tenants.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 18 January 2021 and reports to the Senedd in line with the reporting points above.

