

SL(5)623 – The Coronavirus Act 2020 (Residential Tenancies Protection from Eviction) (Wales) Regulations 2020

Background and Purpose

The Coronavirus Act 2020 (the “2020 Act”) section 81 and Schedule 29 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 March 2021 the 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. Previously, the end date was 30 September 2020.

Additionally, these Regulations increase from 3 months to 6 months the period of notice required for most notices served in respect of protected and statutory tenancies, secure tenancies, introductory and demoted tenancies. This brings those tenancies into line with the period of six months notice already required for assured and assured shorthold tenancies.

However, in respect of all tenancies, where the ground or reason for giving notice relates to antisocial behaviour, or domestic violence, the Regulations suspend the longer notice periods required under Schedule 29 of the 2020 Act.

Section 88(1) of the 2020 Act provides a power for a relevant national authority (in this case the Welsh Ministers) to suspend the operation of any provision of that Act by regulations. Regulations may also be made to revive a suspended provision (section 88(3)), and the provisions in 88(1) and (3) may be used more than once (see section 88(4)).

Procedure

Negative.

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 in respect of these Regulations (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). This Minister for Finance and Trefnydd, Rebecca Evans provides an explanation for the breach in a letter to the Llywydd dated 28 September 2020:

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, 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. In order to ensure that the provisions of Schedule 29 continue to apply after 30 September, the Regulations come into force on 29 September 2020.

Likewise, paragraph 2.1 of the Welsh Government’s Explanatory Memorandum (“EM”) states as follows:

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 virus. Consequently, the Regulations come into force on 29 September 2020 and do not follow the convention that not less than 21 days should elapse between the laying of the Regulations and their coming into force.

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 it was necessary for these Regulations to come into force so urgently as to breach the 21-day rule. Since earlier, similar, provision was made, in July by the Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020 (the “previous Regulations”), there has been a period of two months for the Welsh Ministers to consider and put into place provision beyond 30 September. Despite this, these Regulations were made on 25 September, laid on 28 September and came into force on 29 September. We noted in our report on the previous Regulations, that the Welsh Ministers have had the power to make such regulations since 25 March 2020 (when the 2020 Act 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 extend, in certain cases, the notice period that a landlord must give a tenant from three months to six months, after 29 September 2020. The Regulations have the effect of restricting a landlord's use and enjoyment of their property for this additional period of time. 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.

In our report on the previous Regulations, we noted that there was no analysis in the Welsh Government's EM of landlords' A1P1 rights and how interference with these rights is justified. The Government response to the Committee's report on those previous Regulations did not provide any detail about the rationale for the Government's decision.

The EM accompanying these Regulations also does not contain an analysis of the impact on human rights. As such, it is not possible for a reader of the Regulations to understand how the Government has weighed up the competing rights of landlords, tenants and the wider public.

The Welsh Government is asked to set out how it considers that these regulations are compliant with A1P1 of the ECHR.

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

Paragraph 2.3 of the Welsh Government's Explanatory Memorandum discusses the issue of retrospectivity:

Even though the Regulations apply prospectively (i.e. on or after the date the amendments come into force) there is an element of retrospectivity to the 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 the Regulations come into force.

Whilst we appreciate that the Regulations will apply prospectively, in that only notices given after the date the Regulations come into force will be affected by the provisions, the Regulations will apply to existing tenancies, made between landlords and tenants.



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

Paragraph 6.1 of the EM explains that the Welsh Government has not been able to carry out a quantified regulatory impact assessment, but that the EM provides a qualitative assessment of the likely impacts of the Regulations. However, these Regulations were laid on 28 September 2020 and came into force on 29 September 2020 giving landlords and other stakeholders only a matter of hours notice of this (extension to a) substantive change to the law and their rights.

In regard to the potential economic effects of the Regulations on landlords, paragraph 6.11 of the EM states as follows:

...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. Any negative economic impact caused should therefore be slight...

The Committee are concerned that the lack of consultation and the absence of a quantified regulatory impact assessment makes it harder to ascertain if the Regulations represent a proportionate response by the Welsh Government. There has also been a period of two months since the previous Regulations were made, which could have provided an opportunity for further assessment to be made by the Welsh Government into the impacts of the provisions.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

7 October 2020

