

Explanatory Memorandum to the Coronavirus Act 2020 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020

This Explanatory Memorandum has been prepared by the Education and Public Services Department of the Welsh Government and is laid before the 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 (Assured Tenancies and Assured Shorthold Tenancies, Extension of Notice Periods) (Amendment) (Wales) Regulations 2020.

Julie James
Minister for Housing and Local Government
23 July 2020

1. Description

- 1.1 These Regulations temporarily extend from three months to six months the notice period that landlords must give tenants under section 8(4A) or (4B) of the Housing Act 1988 and under section 21(1) or (4) of that Act.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 There is an urgent need to ensure that the number of people under immediate threat of eviction from their homes is kept low, in order to contribute to the measures already in place to respond to the virus. Consequently, the Regulations come into force on the day after the day on which they are made 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. This will minimise the number of possession notices with notice periods of only three months that can be issued and thereby help to reduce the risk of increased evictions during the period of the pandemic.
- 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 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 assured and assured shorthold tenancies are temporarily altered. However, the extended notice period will apply to notices given on or after the date the Regulations come into force.

3. Legislative background

- 3.1 These Regulations are made under paragraph 13(1) 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 to at least 3 months or, in some cases, creating a three months’ 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 extended notice period. The relevant period ends on 30 September 2020, but may be extended by the “relevant national authority” (which means the Welsh Ministers in relation to Wales).

- 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. Three months' notice is required for notices served in respect of protected and statutory tenancies, secure tenancies, assured tenancies, assured shorthold tenancies, introductory and demoted tenancies.
- 3.4 The vast majority of current tenancies granted by registered social landlords and private landlords are under the Housing Act 1988 ("the 1988 Act"). In relation to the 1988 Act, possession notices caught by the provisions of Schedule 29 to the 2020 Act include those issued under section 8 and section 21.
- 3.5 Paragraph 13 of Schedule 29 provides the Welsh Ministers with power to alter a reference to three months in Schedule 29 to a reference to six months, or a reference to any other specified period which is less than six months or to alter a reference which has been altered by virtue of paragraph (a) or (b) but not so as to result in the reference being to a specified period of more than six months (paragraph 13(1)(b)). The amendments in Schedule 29 are not intended to be permanent changes and the process will return to the current position once the specified period has ended. The period specified ends with 30 September, however, a later date may be specified.
- 3.6 Paragraph 14(1)(b) of Schedule 29 states that regulations under Schedule 29... "may be exercised so as to make different provision for different purposes or different areas...". Paragraph 14(3) states that a statutory instrument containing regulations of the Welsh Ministers under paragraph 13 is subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative resolution procedure).
- 3.7 The six month notice period will apply to the possession notices served on or after the date the Regulations come into force.

4. Purpose & intended effect of the legislation

- 4.1 The Regulations amend the notice periods set out in paragraph 6(c) and (d) and paragraph 7(a) and (b) of Schedule 29 to the 2020 Act so that the period of notice required to be given under section 8(4A) or (4B) and section 21(1) or (4) of the Housing Act is extended from three to six months.
- 4.2 In the period since the Coronavirus 2020 Act was commenced, it has become apparent that the public health emergency and its effects are likely to last for many months with continuing restrictions required on various aspects of normal life. Temporarily extending to six months the notice period that must be given in relation to notices issued under section

21(1) or (4) of the Housing Act 1988 and notices issued under section 8 (specifying any of the grounds under subsections (4A) or (4B)) of that Act, this is intended to support three of the overarching aims of the Coronavirus Act, that is:

- containing and slowing the virus
- easing the burden on frontline staff; and,
- supporting people.

4.3 The temporary extension will support these three aims through:

- **Reduced house moves** - Fewer people would be required to move home, and fewer evictions would take place during the ongoing public health emergency. Seeking, and moving to, a new home are likely to involve multiple interactions with persons from outside one's immediate household, with the associated increased risk of virus transfer. It may also transfer the virus between localities as people may need to travel outside of their immediate locality in order to find and move to a new home. If a person becomes homeless, their potential exposure to the virus and the likelihood of them spreading it is increased further ("*containing and slowing the virus*"). 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, including 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 risk posed by Covid-19, will potentially weaken the effectiveness of that response ("*easing the burden on frontline staff*");
- **Increased security and reduced anxiety** - Those renting their homes under certain types of less secure tenancies will benefit from the knowledge that they will not face the threat of eviction at short notice. 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*"); and,

- **Increased scope to support individuals at risk of eviction** - An extension of notice periods to six months would also 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”).

Constraints

- 4.4 Maximising the benefits of extending notice periods would involve extending **all** notice periods covered by Schedule 29 of the Coronavirus Act 2020 to six months. However, the benefits of doing so are outweighed in those cases where harm is being caused by tenants who are engaged in anti-social behaviour to the health and well-being of those around them, that is, on the public health of the local community. That harmful impact is in turn likely to place pressure on public services, for example, through local authority landlords needing to act to rehouse the neighbours of those engaged in anti-social behaviour.
- 4.5 Given that such behaviour and the harm it causes would directly undermine the three overarching aims of the Coronavirus Act set out above, further extending notice periods where such behaviour is the basis for possession of a property would be inappropriate.
- 4.6 In the case of secure, protected and statutory tenancies, it is not possible to separate the anti-social behaviour grounds to subject them from a different notice period. In the case of demoted and introductory tenancies, notices that need not specify grounds but may nevertheless be issued because of a tenant’s anti-social behaviour. Given the potential harm caused by extending notice periods that relate to anti-social behaviour, notice periods for these tenancies remain unchanged.
- 4.7 In relation to assured tenancies, the regulations do not amend paragraphs 6(a) and (b) of Schedule 29 to the 2020 Act which relate to Grounds 7A and 14 of Schedule 2 to the Housing Act 1988 (the mandatory ground for serious offences/anti-social behaviour and the nuisance and annoyance grounds) and the notice period remains at three months where these grounds are specified.
- 4.8 In relation to assured shorthold tenancies, notices do not require the landlord to demonstrate any fault on the part of the tenant after six months – so there would be no specific anti-social behaviour ground (unless possession is sought on that ground within the fixed term) to consider - and extending the notice period would contribute directly to the benefits of extending notices set out in 3 above.

4.9 Taking all the above into account, the Regulations will extend the notice period from three months to six months for assured tenancies where a notice is served under section 8 under the grounds in sub-sections (4A) or (4B), that is where the following grounds are specified:

Ground 1 - Landlord is previous owner-occupier or needs premises as home

Ground 2 - Tenancy subject to Ground 1 and lender taking possession

Ground 2A - Lender a fully mutual housing association

Ground 3 - Property is an out of season holiday let

Ground 4 - Property is student accommodation let to non-students

Ground 5 - Accommodation for Minister of Religion

Ground 6 - Landlord wishes to demolish or reconstruct property

Ground 7 - Tenant dies and no right of succession

Ground 8 - Mandatory rent arrears ground

Ground 9 - Suitable alternative accommodation is available

Ground 10 - Rent arrears

Ground 11 - Persistent delay in paying rent

Ground 12 - Other breach of tenancy

Ground 13 - Tenant has caused damage to premises

Ground 14A - Domestic violence has caused partner to leave property

Ground 15 - Tenant has caused Deterioration of furniture

Ground 16 - Employment related accommodation

Ground 17 - Tenancy granted because of false statement

The Regulations also extend the notice period for assured shorthold tenancies where a notice is served under section 21(1) or (4) of the Housing Act 1988.

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.

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

Three options have been considered:

Option 1: Do Nothing – in which case all notice periods set by Schedule 29 to the Coronavirus Act at three months would remain at three months for notices served during the “relevant period” which is the period ending with 30 September 2020.

Option 2: Increase notice periods for all tenancies to six months – in which case regulations would extend to six months’ notice periods for all those tenancies in Schedule 29, which extends the notice periods to three months.

Option 3: 2020: Increase notice periods for tenancies except those that would or might relate to anti-social behaviour.

Costs and Benefits

Option 1: Do Nothing

There are no additional costs or benefits associated with this option.

Option 2: Increase notice periods for all tenancies to six months

The administrative and transitional costs to landlords of extending the minimum notice period for notices from three months to six month 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 three months delay there would be to the landlord making a claim to the court and the arrears that may build up during that time. Balanced against this is the fact that this additional delay will allow more 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. Furthermore, there

may be savings 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.

A more significant cost to increasing all notice periods to six months would arise from the additional harm that might be caused by tenants who are engaged in anti-social behaviour. As described earlier, the impact this might have on those around them would place pressure on public services, for example, through local authority landlords needing to act to rehouse the neighbours of those engaged in anti-social behaviour. Therefore the extra cost of continued anti-social behaviour would be on financial resources as well as the well-being of the local community. As a result, the benefits of increasing all notice periods to six months does not clearly outweigh the costs.

Option 3: Increase notice periods for all tenancies except those that would or might relate to anti-social behaviour

As with option 2, the administrative and transitional costs to landlords are expected to be negligible but there are potential additional costs arising from the extra three months delay there would be to making a claim to the court in relation to cases of rent arrears. Again however, this is mitigated by the additional time there will be for arrangements to support tenants to better manage their finances and repay any rent arrears and there may be savings to those providing support to individuals faced with eviction.

The main difference compared with option 2, is that under option 3, the negative impact on community well-being and the financial costs associated with continued anti-social behaviour do not arise. As a consequence, it is considered that the benefits of pursuing this option do, clearly, outweigh the costs.

Competition Assessment

- 6.2 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

- 6.3 *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 extension of the section notice periods to six months 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 the current public health emergency. Those with certain protected characteristics under the Equality Act 2010 are likely to be disproportionately represented amongst those living in the private rented sector and therefore vulnerable to eviction, e.g. some Black, Asian and Minority Ethnic groups.

6.4 *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, a six month rather than three month notice 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.

6.5 *Welsh language*

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

6.6 *Local Government*

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

6.7 *Economic effects*

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 the extra three months delay. 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. In more general economic terms, the greater security of tenure provided by the 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.

6.8 *Impact on Privacy*

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

6.9 *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 for rural areas than for urban areas.

6.10 *Health and wellbeing*

In addition to the wider public health benefits that would result from a reduction in the number of households having to relocate 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.

6.11 *Impact on the Justice System*

The net effect of changes resulting from this legislation, alongside the Welsh Government's policy on reducing social landlord possession claims, 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.