

THE PUBLIC HEALTH (PROTECTION FROM EVICTION) (WALES) (CORONAVIRUS) REGULATIONS 2020 & 2021: INTERGRATED IMPACT ASSESSMENT SUMMARY

WHAT ACTION IS THE WELSH GOVERNMENT CONSIDERING AND WHY?

Action previously taken

Legislative measures have previously been put in place for the purpose of protecting tenants from eviction during the coronavirus pandemic. Schedule 29 to the Coronavirus Act 2020 ('the 2020 Act') provides protection from eviction in respect of most residential tenancies and notices¹ served during the 'relevant period' (which was initially defined as ending on 30 September 2020 but has subsequently been extended to 31 March 2021). It does this by increasing, in most cases, the period of the notice that must be served before possession proceedings can be commenced in the courts.

Although landlord notice periods have been increased, the temporary stay on court proceedings in Wales and England initiated in March came to an end on 20 September. It has subsequently become possible to commence possession proceedings through the courts where the required notice period has elapsed, and, if an order is made, for the landlord to seek to enforce that order by applying to the court for a writ or warrant of possession, which could lead to eviction by County Court bailiffs or High Court enforcement officers.

The UK Government has sought to prevent evictions taking place (on an England and Wales basis) where these have been deemed incompatible with public health measures, through guidance to county court bailiffs and the Lord Chancellor writing to High Court Enforcement Officers. This has applied during the recent firebreak in Wales and the recent national lockdown in England. The UK Government has also previously said that possession orders in England and Wales would not be enforced by bailiffs between 11 December 2020 and 11 January 2021, a so-called "Christmas truce".

¹ The relevant notices are those served under the Protection from Eviction Act 1977, the Rent Act 1977, the Housing Act 1985, the Housing Act 1988 and the Housing Act 1996

Action now being taken

On 16 November, the UK Government laid regulations before Parliament - The Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020. Amongst other things, those regulations prevent in England, 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 during the period up to 11 January 2021.

In the light of these developments, the Welsh Government determined that Regulations are required to provide a public health response to the incidence and spread of Covid 19 during the Christmas and mid-winter period by preventing the enforcement of most evictions in Wales from 11 December to 11 January. Due to the continued threat of Covid 19, further regulations were required to extend the period from 11 January 2021 to 31 March 2021.

Therefore the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2020 ('the 2020 Regulations') and the Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021 ('the 2021 Regulations') were brought in to force on 11 December 2020 and 11 January 2021 respectively. 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 anti-social behaviour, serious offences, nuisance, domestic violence or, in cases where the person attending is satisfied that the dwelling-house is unoccupied at the time of attendance, the death of the occupant. The regulations will expire on 31 March 2021. These regulations preventing evictions are also subject to a formal review every three weeks.

Rationale

The Welsh Government considers that the protections afforded by the Regulations are a necessary and proportionate response to the public health emergency, especially during any period where Wales or a part of it is in a lockdown situation (Alert Level 4).

The Regulations prevent evictions being carried out over the winter period because, at a time when there is widespread community transmission of the virus, it is more difficult for those facing eviction and at risk of becoming homeless, to access services, including advice services. Furthermore, businesses may be closed or running at a reduced capacity and securing alternative accommodation may present increased practical difficulties. In these circumstances, evictions will be more likely to lead to homelessness.

Homelessness places people in situations where they are at much greater risk of both contracting the virus and transmitting it to others. This will likely place additional

burdens on the NHS and hinder local authorities in their public health response, during a period when winter pressures on relevant public services are likely to be at their most acute.

Where the Welsh Government makes a decision to go to Alert Level 4 and where restrictions are put in place that amount to a 'stay at home' requirement, allowing the recommencement of action by bailiffs and High Court Enforcement Officers to evict people from their homes would seem contrary to the purpose of those restrictions. Such evictions will inevitably exacerbate the spread of the virus, posing additional risks for any individual made homeless and the public health of the wider community.

Throughout the first wave of the pandemic, evictions were prevented from going ahead through amendments to the Civil Procedure Rules which stayed possession proceedings. Given the stay, there was no need to consider taking action at that time to prevent the enforcement of evictions during that period using the powers set out in the 1984 Act. However, there is now no stay on possession proceedings.

To ensure the measure remains proportionate to the public health risk identified, the Welsh Ministers consider that some exemptions from a ban on enforcing evictions will be necessary. These are instances where it is considered that the interests of preventing harm to third parties and taking action against egregious behaviour are sufficient to outweigh the public health risks posed by evictions.

In applying these exemptions, the Welsh Ministers note that anti-social behaviour will often result in a significant negative impact on the mental-health and well-being of neighbours and the community more generally. Where it is not possible to evict the perpetrators, social landlords may find it necessary to rehouse those neighbours whose well-being is worst affected or neighbouring residents may take steps of their own to find and move to new accommodation. In extreme circumstances, vulnerable individuals may even choose to become homeless rather than remain the victims of anti-social behaviour. Rehousing neighbouring residents and the steps taken by neighbours themselves to find and move to a new home, will potentially expose those individuals to situations where they are at greater risk of contracting the virus, or indeed of transmitting the virus where they already have it. In the case of those who choose to become homeless, those risks are likely to be even greater. In many instances, cases involving trespassers will also be associated with anti-social behaviour.

In these cases, permitting evictions may result in less risk of the virus being caught and spread than allowing the perpetrators of ASB to remain in their homes. Although this means that some people will be evicted during the mid-winter period, restricting enforcement of evictions aside from under the most egregious grounds will substantially decrease the volume of people being evicted.

An exemption is also made where the person attending the property is satisfied that the dwelling house is unoccupied at the time of attendance, and the court is satisfied that order for possession was made wholly or partly on the grounds of death of the occupant. This reflects the fact that taking possession of an occupied property poses no risk to public health.

CONCLUSION

How have people most likely to be affected by the proposal been involved in developing it?

The emergency nature of the proposal means that there has been no time to involve stakeholders directly in its development. However, the Welsh Government has regular engagement and strong relationships with stakeholders from across the housing sector; landlord bodies with whom officials have engaged include ARLA Propertymark, and the National Residential Landlords Association. These bodies did not challenge the rationale for the need to continue with the pause on evictions during Alert Level 4, albeit that they have flagged that some landlords are facing issues of high levels of arrears accruing.

What are the most significant impacts, positive and negative?

Positive impacts

The most significant and positive impacts of extending the protections afforded by the Regulations are to:

- contain and slow the spread of the virus
- ease the burden on frontline staff caused by threatened evictions and homelessness caused by the pandemic; and,
- support tenants who may be experiencing difficulties as a result of the pandemic and who might otherwise face eviction within a relatively short period.

It does this through:

- **Reducing evictions significantly** - far fewer evictions, and especially evictions into homelessness, would take place during a time when community transmission of the virus is rapid and widespread.
- **Reducing 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.

- **Increased security and reduced anxiety** - Those who rent their homes will benefit from the knowledge that they will not generally face the threat of immediate 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. The impact of not having settled accommodation and concerns over the security of that accommodation can have a deep and lasting impact on some of the already disadvantaged parts of society. Reducing anxiety in the general population also has a clear public health benefit and reduces pressures on public services including mental health services.
- **Increased scope to support individuals at risk of eviction** – Longer notice periods provide additional time for tenants and support agencies to work together to avoid homelessness - tenants will also have a more realistic prospect of sourcing suitable alternative accommodation. By allowing more time for tenants to find suitable accommodation, it will support people living in rural areas and Welsh speaking communities to stay within their local areas.

Negative impacts

It prevents landlords from evicting tenants who are not paying rent and may lead to landlords becoming more selective about the types of tenants they let to, or leaving the market altogether. This has been balanced against the positive impacts of the regulations and the imperative to limit evictions and potentially significantly increase homeless presentations during a critical period during the pandemic.

It has not been possible to carry out an Equality Impact or Children's rights assessment in respect of landlords as we have been unable to find data on the make-up of landlords in terms of protected characteristics or their children.

In light of the impacts identified, how will the proposal:

- **maximise contribution to our well-being objectives and the seven well-being goals; and/or,**
- **avoid, reduce or mitigate any negative impacts?**

Prosperity for All, the Welsh Government's national strategy, emphasises the role that secure and affordable homes play in forming the basis for individuals and families to flourish in all aspects of their lives. Although only temporary, removing the threat of eviction at short notice obviously means that homelessness presentations due to the loss of a tenancy would be reduced. But it also allows more

time for renters to find alternative, suitable accommodation when they are required to leave a property, promotes conditions in which people feel more settled and secure in their home and more connected to their local community.

As outlined above, extending the protections afforded by the Regulations produces adverse effects for some landlords, especially in relation to rent arrears. The temporary nature of the provisions would necessarily makes those effects less relevant in the longer-term. In addition, the Welsh Government has taken a number of steps to alleviate the economic impact of the pandemic on landlords. It has developed and published comprehensive guidance to signpost tenants and landlords to the financial support available to them, and undertaken a communications campaign to raise awareness of the support available, including drawing attention to emergency funds available through the Discretionary Assistance Fund (DAF).

Funding has also been secured to deliver an Early Alert Scheme for rent arrears and other debt in the PRS. The Scheme supports the PRS by providing tenants with additional access to the advice and support they need to manage their financial commitments, and establish affordable repayment plans with their landlord or letting agent to address rent arrears. In addition to the early alert system the Welsh Government has introduced a Tenancy Saver Loan scheme to help tenants and landlords. The loan scheme provides an affordable way to cover rent arrears or future months' rent. The loan is purely for rent arrears, or for future periods which a tenant may struggle to pay their rent. Paying the loan directly to the landlord or agent will provide assurance that rent arrears will be covered, and will remove the threat of eviction for rent arrears.

How will the impact of the proposal be monitored and evaluated as it progresses and when

The Welsh Government maintains a regular and ongoing liaison with a broad range of stakeholders, including landlords and tenants and their representative bodies.