

EXPLANATORY MEMORANDUM TO
THE PUBLIC HEALTH (CORONAVIRUS) (PROTECTION FROM EVICTION)
(ENGLAND) REGULATIONS 2021

2021 No. 15

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to protect public health and reduce the public health risks posed by the spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) in England which causes the disease Covid-19.
- 2.2 This instrument prevents the enforcement of evictions, including the service of notices of eviction, against residential tenants, other than in the most serious circumstances, until the end of 21 February 2021. By restricting the enforcement of evictions at a time when pressure on public services is acute and the risk of virus transmission is very high, this measure will help control the spread of infection, prevent any additional burden falling on the NHS and avoid overburdening local authorities in their work providing housing support and protecting public health.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is made under the emergency procedure set out in section 45R of the Public Health (Control of Disease) Act 1984 (c. 22). This instrument is made without a draft having been laid and approved by a resolution of each House of Parliament. It is the opinion of the Secretary of State that, by reason of urgency, it is necessary to make this instrument without a draft being so laid and approved so that public health measures can be taken in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
- 3.2 This instrument was made on 7 January 2021 and will come into force on 11 January 2021, at the same time as the previous regulations expire. Having been made under the emergency procedure, it will automatically cease to have effect at the end of the period of 28 days beginning with the day on which it is made unless, during that period, it is approved by a resolution of each House of Parliament.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 This entire instrument applies to England only.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales only.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

5.1 The Parliamentary Under-Secretary of State for Justice has made the following statement regarding Human Rights:

“In my view the provisions of the Public Health (Coronavirus) (Protection from Evictions) (England) Regulations 2021 are compatible with the Convention rights.”

6. Legislative Context

6.1 The Public Health (Control of Disease) Act 1984 (the “1984 Act”) and regulations made under it provide a legislative framework for health protection in England and Wales.

6.2 Part 2A of the 1984 Act, as inserted by the Health and Social Care Act 2008, provides a legal basis to protect the public from threats arising from infectious disease or contamination from chemicals or radiation, and includes powers to impose restrictions or requirements on people, and in relation to things and premises. Overall, the amended 1984 Act sets out a framework for health protection which requires much of the detailed provisions to be delivered through regulations.

6.3 Section 45C of the 1984 Act provides a power for the appropriate Minister to make regulations to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination in England and Wales. The threat can come from outside England and Wales.

6.4 This instrument is made under section 45C to enable public health measures to be taken for the purpose of reducing the public health risks posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARSCoV-2).

6.5 In accordance with section 45R of the Act, the Secretary of State is of the opinion that, by reason of urgency, it is necessary to make this instrument without a draft having been laid before, and approved by a resolution of, each House of Parliament.

6.6 The Health Protection (Coronavirus, Restrictions) (No.3) and (All Tiers) (England) (Amendment) Regulations 2021 came into force on 6 January. The regulations strengthen the Tier 4 restrictions and apply those restrictions to every area in England. They will expire on 31 March 2021.

7. Policy background

What is being done and why?

7.1 The purpose of this measure is to protect public health by restricting the enforcement of evictions at a time when pressure on public services is acute and the risk of virus transmission is very high. The measure will help control the spread of infection, prevent any additional burden falling on the NHS and avoid overburdening local authorities in their work providing housing support and protecting public health.

7.2 During the first national lockdown evictions were prevented from going ahead, other than in cases of trespass against persons unknown, through amendments to the Civil

Procedure Rules which stayed possession proceedings and enforcement proceedings by way of writ or warrant of possession. The stays ended on 20 September and evictions were able to resume following this point.

- 7.3 A package of measures was introduced following the lifting of the stays to provide support for tenants. Regulations in force until at least 31 March 2021 require landlords to give tenants six months' notice of their intention to seek possession, except in the most serious circumstances such as anti-social behaviour, fraud and arrears greater than 6 months' rent. These regulations apply to new cases where the landlord served notice on or after 29 August 2020. Landlords who served notice between 26 March and 28 August were required to give 3 months' notice. Temporary court rules are also in place regarding the arrangements and procedures for the resumption of possession proceedings in the courts.
- 7.4 On 16 November 2020 the Government laid the Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020. The regulations prevent the enforcement of evictions (other than in limited circumstances as set out below) from 17 November 2020 until 11 January 2021. The Government considered this necessary in order to protect public health and avoid placing additional burdens on the NHS and local authorities during the time when national restrictions were in place under the Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020 and during the following mid-winter period.
- 7.5 On 4 January 2021, as a result of the exponential rise in cases and pressure on the NHS, the Prime Minister announced a national lockdown and the Government published National Lockdown: Stay at Home Guidance. As a result of the national lockdown the Government believes that it is necessary to extend the restrictions on the enforcement of evictions in England, including the service of eviction notices, beyond the 11 January.
- 7.6 To ensure the measure remains proportionate to the public health risk identified, and in light of the competing public interest in ensuring access to justice, preventing harm to third parties, taking action against egregious behaviour and upholding the integrity of the rental market, the measure contains some limited exemptions from the ban on enforcing evictions. These exemptions are for those circumstances where the Government feels that the public health risk is sufficiently outweighed by the wider public interest. Allowing evictions to be enforced in these circumstances while the ban is in force is intended to ensure that the policy does not disproportionately negatively impact on landlords and enable them to re-let their properties to tenants in need. Although this means that some people will be evicted, restricting enforcement of evictions aside from under the most egregious grounds will substantially decrease the volume of people being evicted and thus better ensure local authority capacity to support them.
- 7.7 The exemptions are for cases where the public health risks are judged as likely to be lower; where harm to third parties may occur if the order is delayed; or where there is a need to uphold the integrity of the residential housing market by addressing the most egregious cases involving unlawful entry, misleading statements or substantial rent arrears. The measure therefore provides exemptions for:
- cases where the court is satisfied that the claim is against trespassers who are persons unknown; or

- cases where the court is satisfied that the order for possession was made wholly or partly on the grounds of anti-social behaviour, nuisance, false statements, domestic abuse in social tenancies, rent arrears of at least six months; or
- in cases where the person attending the property is satisfied that the dwelling house is unoccupied at the time of attendance, where the court is satisfied that order for possession was made wholly or partly on the grounds of death of the occupant.

7.8 These are the same exemptions that were contained in the Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020 (S.I. 2020/1290), subject to one amendment to the rent arrears exemption. In the earlier regulations, landlords could only seek to enforce evictions in cases with rent arrears of nine months or more which had accrued before the 23 March 2020. The Government believes that it is proportionate to widen that exemption to cases where a possession order was granted on the grounds of rent arrears and where more than six months of rent is outstanding. The Government has made this change in order to balance the impact of the extension of the restriction on the enforcement of evictions on landlords, while continuing to protect tenants from eviction.

7.9 The regulations require the court to be satisfied that one of the exemptions applies before an eviction can be enforced. While the prohibition is in force, when making an order for possession, the court will record whether the order falls within one of the exemptions. In cases where there is an existing possession order and an exemption is not identified on it, claimants may make an application to court under Part 23 of the Civil Procedure Rules in order for the court to determine whether one of the exemptions applies. The application must be made on notice to the defendant.

7.10 The regulations also permit warrants and writs of restitution to be enforced. These warrants and writs are issued in cases where a person who has been evicted from premises re-enters those premises illegally.

7.11 This instrument is intended to remain in force until the end of 21 February 2021, subject to approval of this instrument by a resolution of each House of Parliament within 28 days beginning with the day on which it is made. The Government will review whether it is necessary to extend the measures beyond that date, in accordance with the latest public health data and wider public health restrictions.

Commencement of the instrument

7.12 The instrument will come into force on 11 January 2021.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 There has been no public consultation in relation to this instrument.

11. Guidance

- 11.1 The Ministry of Housing, Communities and Local Government has published guidance for tenants, landlord and local authorities which sets out the changes that have been made in response to the Coronavirus pandemic. The Ministry of Housing, Communities and Local Government has also published guidance to support landlords and tenants in the social and private rented sectors to navigate the possessions process. That guidance will be updated to ensure the measures in this instrument are reflected.

12. Impact

- 12.1 This is a temporary measure lasting less than 12 months as part of the Government's Coronavirus emergency response and so requirements for a formal Regulatory Impact Assessment do not apply.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by enforcement agents, some of whom are small businesses.

14. Monitoring & review

- 14.1 This instrument does not include a statutory review clause. The provisions will expire at the end of 21 February 2021.

15. Contact

- 15.1 Tessa Wearing at the Ministry of Justice, Tessa.Wearing@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Parkin, Deputy Director for Civil Law and Justice, at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Parliamentary Under-Secretary of State Alex Chalk MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.