

EXPLANATORY MEMORANDUM TO

THE PUBLIC HEALTH (CORONAVIRUS) (PROTECTION FROM EVICTION AND TAKING CONTROL OF GOODS) (ENGLAND) REGULATIONS 2020

2020 No. 1290

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 Firstly, this instrument prevents the enforcement of evictions against residential tenants, other than in the most serious circumstances, during the period of time when the Health Protection (Coronavirus) (Restrictions) (England) (No.4) Regulations 2020 (“the national health protection regulations”) are in force and over the mid-winter period. This measure will prevent people being evicted at a time when accessing services may be more difficult and when pressure on public services is most acute. It 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.
- 2.3 Secondly, this instrument prevents the use of the taking control of goods procedure inside homes while the national health protection regulations are in force.

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 13 November 2020 and will come into force on the day following the day on which it is laid. 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 and Taking Control of Goods) (England) Regulations 2020 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.

7. Policy background

What is being done and why?

(i) Preventing the enforcement of evictions against residential tenants

7.1 The purpose of this measure is to protect public health by preventing people being evicted at a time when the risk of virus transmission is very high and it may be more difficult for them to access services, and to avoid placing additional burdens on the NHS and hindering local authorities in their public health response at a time when pressure on relevant public services is likely to be most acute.

- 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. This has included the introduction of new court rules regarding the arrangements and procedures for the resumption of possession proceedings in the courts. In addition, regulations in force until at least 31st 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. Landlords who served notice between 26 March and 28 August were required to give 3 months' notice. There will still be cases where the landlord has or obtains a writ or warrant of possession, which could lead to the enforcement of an eviction during the national lockdown.
- 7.4 Evictions can be carried out by County Court bailiffs or certified enforcement agents acting under the authority of a High Court Enforcement Officer (HCEO). These are collectively referred to as 'bailiffs' for the purposes of this section.
- 7.5 Since 20 September, the Lord Chancellor has asked bailiffs not to enforce evictions in areas subject to local lockdown regulations which place restrictions on gatherings in residential properties. Following the introduction of the Health Protection (Coronavirus, Local Covid-19 Alert Level) Regulations 2020, bailiffs were asked not to enforce evictions in areas designated as Local Alert Level High (2) or Local Alert Level Very High (3).
- 7.6 The Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020 ("the national health protection regulations") introduced a national lockdown in England from 5th November until 2nd December 2020. Following concern that the epidemic was growing rapidly, the government considered that failure to impose further significant restrictions nationally would lead to the number of infections continuing to increase, leading to more deaths, risking the NHS becoming overwhelmed and damaging the economy.
- 7.7 At a time when risk of transmitting the virus is high and a number of significant restrictions are in force, the Government also believes that it is necessary to prevent people being evicted. The extension of restrictions on enforcing evictions from local areas to the whole country means that the Government now considers that it is necessary to legislate rather than to rely on guidance to bailiffs. The Government considers that preventing the enforcement of evictions by bailiff action is a more proportionate response to the current public health threat than staying proceedings altogether.
- 7.8 The measure restricting the enforcement of evictions is intended to remain in force until 11th January 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. This is to ensure protection for tenants from being evicted both during the period while the national health protection regulations are in force and the subsequent mid-winter holiday period. During this time, public services and businesses may be closed or running at a reduced capacity and securing alternative accommodation may present

increased practical difficulties; the Government therefore believes it is right to prevent the enforcement of evictions, in order to reduce the risk of virus transmission and avoid placing additional burdens on the NHS and hindering local authorities in their public health response at a time when pressure on services is most acute.

7.9 To ensure the measure remains proportionate to the public health risk identified, in light of the competing public interest in ensuring access to justice, preventing harm to third parties and upholding the integrity of the rental market, the measure contains some limited exemptions from the ban on enforcing evictions. These exemptions are limited to circumstances where the Government feels that the competing interests of preventing harm to third parties or taking action against egregious behaviour, are sufficient to outweigh the public health risks. These are: 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 which cannot be attributed to the extraordinary circumstances faced by tenants since the pandemic was declared. 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, substantial rent arrears that predate 23rd March 2020; 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.

Allowing evictions to be enforced in these circumstances while the ban is in force is also 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 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 and thus better ensure local authority capacity to support them.

(ii) *Preventing enforcement agents from taking control of goods from residential properties*

7.10 The Taking Control of Goods procedure permits enforcement agents to take control of goods at residential properties and on the highway following completion of a mandatory compliance stage (during which contact can be made by means such as letters and telephone calls). This procedure is used by: privately employed enforcement agents, certificated enforcement agents and High Court Enforcement Officers; county court bailiffs (employed by Her Majesty's Courts and Tribunals Service (HMCTS)); bailiffs enforcing criminal fines (who may be employed privately or by HMCTS); and bailiffs acting for Her Majesty's Revenue and Customs. These are collectively referred to as 'enforcement agents' for the purposes of this section.

- 7.11 The Government believes it is important to allow the continuation of enforcement as an essential part of the administration of justice, where it is safe to do so (for both agent and debtor) according to public health guidance and Government restrictions.
- 7.12 During the first national lockdown, the Government legislated to prevent enforcement agents taking control of goods at residential properties or from the highway. This was due to the risks of transmission arising from the difficulty of observing the social distancing requirements in either scenario, at a time when significant national restrictions were in place to protect public health and there was not yet sufficient clarity over how such activity might be undertaken safely in the face of a novel threat to public health.
- 7.13 Following the end of the national lockdown, the restrictions on taking control of goods were lifted on 23rd August 2020. In order to ensure activity resumed safely, the Government published Covid-secure guidance for those using the taking control of goods procedure, setting out how enforcement agents should work during the pandemic. This guidance is titled *Working safely during COVID-19: enforcement agents (bailiffs)* and is available on Gov.UK. The Lord Chancellor also requested that enforcement agents should not enter homes to enforce debts and fines in areas subject to local lockdown regulations which place restrictions on gatherings in residential properties. Following the introduction of the Health Protection (Coronavirus, Local Covid-19 Alert Level) Regulations 2020, this request was updated to refer to areas designated as Local Alert Level High (2) or Local Alert Level Very High (3).
- 7.14 Following the introduction of a national lockdown in England from 5th November until 2nd December 2020 under the Health Protection (Coronavirus, Restrictions) (England) (No.4) Regulations 2020, the Government's view is that there should be a nationwide prohibition on enforcement agents taking control of goods inside residential properties during this period, due to the high risk of virus transmission at this time and the ongoing difficulty of maintaining social distancing requirements correctly within a home.
- 7.15 This measure does not prevent enforcement agents from taking other steps to enforce debts under the taking control of goods procedure, including: making contact by remote means such as telephone; visiting but not entering properties; taking control of goods located outside a property or on the highway; and enforcement at business premises. The Government believes that such steps may now be safely undertaken in line with the Government's published Covid-secure guidance for those using the taking control of goods procedure. The Government's view is therefore that this policy strikes a proportionate balance between protecting against the risk of virus transmission and allowing the continuation of the administration of justice.

Commencement of the instrument

- 7.16 The instrument will come into force the day after laying.

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 None.

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.

11.2 The restrictions on taking control of goods will be drawn to the attention of interested parties by the Ministry of Justice.

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.

13.2 In order to support businesses during the restrictions, the government has extended the furlough scheme to run from 5th November 2020 to 31st March 2021.

14. Monitoring & review

14.1 This instrument does not include a statutory review clause but the provisions preventing the enforcement of residential evictions expire on 11th January 2021 and the provisions preventing the taking control of goods expire when the Health Protection (Coronavirus) (Restrictions) (England) (No.4) Regulations 2020 expire.

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.