

EXPLANATORY MEMORANDUM TO

THE PUBLIC HEALTH (CORONAVIRUS) (PROTECTION FROM EVICTION) (ENGLAND) (NO. 2) (AMENDMENT) REGULATIONS 2021

2021 No. 362

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 extends the prevention of enforcement of evictions, including the service of notices of eviction, at residential premises, and including in repossessions cases, other than in the most serious circumstances, from 31 March 2021 until the end of 31 May 2021. By continuing to restrict the enforcement of evictions at a time when the pressure on public services is ongoing and there remains a significant risk of virus transmission, 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 19 March 2021 and will come into force on 30 March 2021, the day before the previous regulations are set to 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) (No. 2) (Amendment) 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 continue to protect public health by restricting the enforcement of evictions from residential premises, including in repossession cases, at a time when there is an ongoing threat to public health from the risk of coronavirus transmission and ongoing pressure on essential public services. 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 2020 and evictions were able to resume following this point
- 7.3 From 20 March 2020 until 31 October 2020, Financial Conduct Authority (FCA) guidance set out an expectation that mortgage firms should not commence possession proceedings, or the enforcement of repossession cases, except in exceptional circumstances. Thereafter FCA guidance advised that firms could commence or recommence repossession proceedings, but sets an expectation that they should not seek, or enforce, a warrant for possession or a warrant of restitution before 1 April 2021, except in exceptional circumstances. On expiry of that guidance evictions in repossession cases will still be restricted by the terms of these regulations.
- 7.4 A package of measures was introduced following the lifting of the stays to provide support for tenants. Those measures include regulations which 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. Those notice requirements apply to new cases where the landlord served notice on or after 29 August 2020 until 31 May 2021. Landlords who served notice between 26 March and 28 August 2020 were required to give 3 months' notice.
- 7.5 Temporary court rules have also been put in place regarding the arrangements and procedures for the resumption of, or new applications for, possession proceedings in the courts. These apply in all possession cases, and therefore to tenants and mortgagors. In residential mortgage cases, the lender will continue to need to comply with the Pre-Action Protocol when bringing a case. The Pre-Action Protocol aims to encourage parties to act fairly and reasonably with each other when resolving a case.
- 7.6 Following the re-introduction of national lockdown restrictions in England in November 2020, the Government legislated to restrict the enforcement of evictions (other than in limited circumstances). The Government considered this necessary in order to protect public health and avoid placing additional burdens on the NHS and local authorities. The restriction was first introduced on 17 November 2020 by the Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020 and has subsequently been renewed in response to ongoing developments in the coronavirus pandemic, including the re-introduction of national lockdown restrictions in England in January 2021. The restrictions on the enforcement of evictions in England are currently due to expire on 31 March under the Public Health (Coronavirus) (Protection from Eviction) (England) (No.2) Regulations 2021.
- 7.7 Following the announcement of the Roadmap for lifting national restrictions in England on 22 February, the Government considers that it is necessary to extend protections for renters and homeowners until the end of May, in order to support the Government's broader strategy for protecting public health and continue to help reduce pressure on essential public services. The requirement for landlords to give tenants an extended notice period of six months (other than in limited circumstances, as set out above) has been extended from 31 March to 31 May 2021. The Government is also, therefore, making the Public Health (Coronavirus) (Protection from Eviction) (England) (No.2) (Amendment) Regulations 2021 in order to extend the current restrictions on the enforcement of evictions from 31 March until 31 May 2021.

- 7.8 To ensure the measure remains proportionate to the public health risk identified, these regulations maintain the limited exemptions to the ban. These are for circumstances where the Government feels that the competing public interests in ensuring access to justice, preventing harm to third parties, taking action against egregious behaviour and upholding the integrity of the rental market sufficiently outweigh the public health risks. Allowing evictions to be enforced in these circumstances is intended to ensure that the policy does not have a disproportionately negative impact on landlords and enables them to re-let their properties to tenants in need. Although this means that some people will be evicted, restricting the 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.
- 7.9 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 regulations therefore provide 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.
- 7.10 These exemptions were first introduced by the November 2020 regulations and subsequently expanded by the Public Health (Coronavirus) (Protection from Eviction) (England) Regulations 2021 in January 2021, when the definition of the exemption under which landlords could seek to enforce an eviction in cases with extreme rent arrears was widened to include cases where the possession order was granted on the grounds of rent arrears and where more than six months of rent is outstanding. The regulations also were amended in January to permit the enforcement of writs and warrants of restitution. The Government believes that this is a necessary and proportionate approach in order to balance the impact of the extension of the restrictions on landlords and allow action to be taken against illegal behaviour, while continuing to protect tenants from eviction in the majority of cases. Where an individual residing in a property where an eviction is due to take place is self-isolating or displaying symptoms of COVID-19, bailiffs have been instructed not to enforce the eviction, which should be rescheduled for a later date. This provides an additional safeguard against the risk of virus transmission, in those cases where an eviction would otherwise be able to proceed on the basis of one of the exemptions listed above.
- 7.11 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.

- 7.12 This instrument is intended to remain in force until the end of 31 May 2021, subject to public health advice and progress of the national Roadmap, and 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.

Commencement of the instrument

- 7.13 The instrument will come into force on 30 March 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 It has not been possible to formally consult on this instrument, due to the fast-paced circumstances of the pandemic and the need to ensure that these measures begin promptly on 1 April. However, the Government has engaged widely with stakeholders during the course of the pandemic and has drawn on the information provided to inform the policy in the drafting of the 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 instrument will apply to landlords that are charities or voluntary bodies where they issue tenancies, such as housing association charities, local authorities where they provide social housing or operate as a Local Authority Housing Company and landlords who operate as small businesses. It will continue to restrict them from enforcing an order for possession of a property in most cases, subject to certain exemptions as set out above. This could have a financial impact where a landlord has had to wait longer before they can gain possession of (and subsequently re-let) a property. However, the exemptions provided for by the legislation will ensure that landlords are able to recover their properties in the most serious and urgent cases. The instrument also applies to mortgage lenders, who will continue to be restricted from enforcing orders for possession of properties. Mortgage lenders could also face a financial impact where they have had to wait longer before gaining possession of a property. 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 may be undertaken by small businesses such as landlords and enforcement agents, and to social housing providers. The policy intention is to protect tenants and public services, and the Government acknowledges that this may act to the detriment of some small businesses in the short-term, as these are temporary measures.
- 13.2 Given the temporary and urgent nature of the instrument, and the policy intention, no specific action is proposed to minimise regulatory burdens on small businesses. The Government has put in place a financial support package, including support for businesses to pay staff salaries through the Coronavirus Job Retention Scheme and support for the self-employed through the Self-Employment Income Support Scheme. Welfare support has also been extended, including an increase in Local Housing Allowance rates so that they cover the lowest 30% of market rents. This will help support renters to continue to pay their rent and mitigate the impact on landlords.

14. Monitoring & review

- 14.1 This instrument does not include a statutory review clause. The provisions will expire at the end of 31 May 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 Lord Wolfson QC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.