

SL(6)280 – The Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022

Background and Purpose

These Regulations make saving and transitional provisions in relation to the Renting Homes (Wales) Act 2016 (“the 2016 Act”).

On the date that the 2016 Act comes into force (1 December 2022) existing tenancies and licences in Wales will convert to occupation contracts (with certain exceptions as set out in Schedule 2 to the 2016 Act) and will be subject to the provisions of the new legislative regime.

These Regulations make saving and transitional provisions in relation to:

- particular processes relating to existing tenancies and licences (for example possession proceedings) that have been commenced on the date at which the 2016 Act comes into force;
- certain entitlements which exist for particular types of current tenancies (for example a request for improvement) that are preserved so that the parties to these existing tenancies are treated fairly when their tenancy undergoes conversion into an occupation contract; and
- confirmation that certain provisions relating to temporary accommodation will not apply until 12 months after the coming into force of the 2016 Act.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following 6 points are identified for reporting under Standing Order 21.2 in respect of this instrument.



1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

It is not clear why there are some express saving provisions, whilst other similar provisions are not set out in an express saving provision. It would be helpful to understand why certain provisions are expressly saved under the Regulations and whether the Welsh Government are relying on the general saving provision in regulation 19 where there is a difference in approach in not providing an express saving provision.

By way of example, regulations 2(1)(c) to (g) contain saving provisions in relation to the application of section 83A of the Housing Act 1985. This includes regulation 2(1)(f) in relation to section 83A(6), which sets out what a notice served under section 83A(4) must contain. Sections 83 and 83ZA of the Housing Act 1985 contain provisions that specify the requirements of notices in relation to possession proceedings. Although regulations 2(1)(a) and (b) respectively refer to the substantive provision within those sections, there is no express saving provision in relation to the content of notices contained in those sections.

Further, regulation 5(1)(e) saves the whole of section 143G of the Housing Act 1996. In contrast, regulation 4(1)(e) saves section 130(1) to (3) of the Housing Act. Sections 130(4) and 143G(4) make provision in relation to a tenant's right to buy. It is not clear why section 130(4) is not saved but section 143G(4) is saved.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In the Welsh text, in the italics above the preamble, the year "2022" is missing from the date after the words that correspond to "Laid before Senedd Cymru".

3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Some references do not identify where the provision can be found, namely:

- in regulation 3(1)(f), there is a reference to "Ground 14A", which is contained Schedule 2 to the Housing Act 1988 (in contrast, regulation 2(1)(f) identifies the Schedule and Act where "Ground 2A" is to be found);
- in regulation 3(2)(b), there is a reference to "section 8(1)(a)", which is contained in the Housing Act 1988 (in contrast, other paragraphs in the regulations have identified the Act if it is not already stated in the opening words, for example, regulation 2(2)(c)); and
- in regulation 5(1), the sections that are referred to later in each of sub-paragraphs (a), (b), (c) and (d) have not identified the Act in which they are found for example sub-paragraph (a) states "in accordance with section 143E" (in contrast, regulations 2(1), 3(1) and 4(1) refer to the specific Act).



4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In regulation 13(2), the inserted words of the modification “contract holder” is spelt incorrectly. The defined term in section 7 of the Renting Homes (Wales) Act 2016 includes a hyphen: “contract-holder”.

5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 13(2) modifies the Secure Tenancies (Right to Repair Scheme) Regulations 1985 by adding words that are to be read as if they have been inserted after “secure tenant” in each place it occurs. There are references to “the tenant” or “tenant” throughout those Regulations.

It is not clear whether references to “the tenant” and “tenant” should also be modified by inserting “or contract-holder” after them to achieve the legal effect of the modification.

6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In regulation 18(1), there are references to “category of dwelling” that have been specified in paragraph 1 of Schedule 1 to the Rent Officers (Universal Credit Functions) Order 2013. However, that paragraph uses “categories of accommodation” rather than “of dwelling”.

Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

7. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The terms defined by reference to the Rent Act 1977 are not clear. A reader would likely benefit from additional clarity from those terms:

- the term “protected shorthold tenancy” is defined by reference to the Rent Act 1977 – although the term is used within that Act, it is not defined under that Act, except by a cross-reference to the definition contained in the Housing Act 1980;
- the term “restricted contract” is defined in section 19 of the Rent Act 1977 (which is saved by Schedule 18 to the Housing Act 1988), but there is no specific reference to where in the Act the definition can be found – this could be confusing for a reader, particularly as section 19 of the Rent Act 1977 has been repealed (subject to the saving).

The Committee notes that these issues could cause problems with the accessibility of the Regulations.



8. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Regulation 12(2)(b) saves section 99B of the Housing Act 1985 as if section 99B(2)(b) to (f) were omitted. Section 99B(2)(b) to (f) specify persons that qualify for compensation for improvements carried out by a tenant. These include a joint tenant, a person in whom the tenancy was vested, a person to whom the tenancy was assigned and a spouse, civil partner or cohabitee of a tenant that undertakes the improvements (amongst others). This means that the saving provisions will only apply to an improving tenant, and those others identified in section 99B(2)(b) to (f) will lose their rights.

It is noted that in setting out the primary purposes of these Regulations, the Explanatory Memorandum states:

“to ensure that certain entitlements which exist in particular types of current tenancies (for example a request for improvement) are preserved so that the parties to these existing tenancies are treated fairly when their tenancy undergoes conversion into an occupation contract, with the correct balance being struck in respect of both parties’ rights and obligations”

Article 1 of the First Protocol to the European Convention on Human Rights protects a person’s enjoyment of their property – the courts have recognised that legitimate expectation in connection with property interests are within the scope of this right. The Explanatory Memorandum does not contain any details of a human rights impact assessment.

The Welsh Government is asked to confirm whether it has undertaken a human rights impact assessment in relation to these Regulations and to provide further information as to the outcome of such assessment.

9. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

No consultation has been carried out in relation to these Regulations. The Explanatory Memorandum to the Regulations notes that:

“As these Regulations are technical in nature and are not intended to make changes to Welsh Government policy a formal public consultation did not take place.”

However, on 15 July 2022 Julie James MS, Minister for Climate Change, announced the publication of the Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022 in draft form. In a written statement, the Minister explained that:

“Whilst these regulations do not require the approval of the Senedd in plenary, they are being published in draft form today so that they are available to stakeholders in sufficient time ahead of the 1 December coming into force date.”



Welsh Government response

A Welsh Government response is required in relation to points 1 to 8 only.

Committee Consideration

The Committee considered the instrument at its meeting on 28 November 2022 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee