

SL(6)353 – The Renting Homes (Wales) Act 2016 (Amendment of Schedule 12 and Consequential Amendment) Regulations 2023

Background and Purpose

These Regulations make amendments to Schedule 12 to the Renting Homes (Wales) Act 2016 (“2016 Act”). Schedule 12 to the 2016 Act deals with the conversion of tenancies and licences that were in existence prior to the 2016 Act coming into force on 1 December 2022.

Under Schedule 12 of the 2016 Act, the landlord of a converted occupation contract is required to give a written statement of that converted contract to the contract-holder before the end of the period of six months starting with the appointed day (“the information provision period”), that is, it must be given by 31 May 2023. The requirement to provide a written statement where there has been a change in the identity of the contract-holder was disapplied in relation to converted contracts during the information provision period.

The amendments to Schedule 12 to the 2016 Act therefore provide:

- where there has been a change in the identity of the contract-holder (under a converted or substitute contract) during the information provision period, the landlord will be required to provide a written statement within 14 days of either 1 June 2023 or, if later, the day on which the landlord becomes aware of the change in contract-holder;
- where a substitute contract comes into existence during the information provision period, the landlord will have 14 days from 1 June 2023 to provide a written statement; and
- where a substitute contract comes into existence after the information provision period, the landlord will have 14 days from the date of occupation under that substitute contract to provide a written statement.

These Regulations also make consequential amendments to Schedule 12 and the Renting Homes (Amendment) (Wales) Act 2021.

Procedure

Draft Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny



The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2002(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In the Welsh text, in regulation 4(a), in the new sub-paragraph (1A), the word “identity” at the beginning of the sub-paragraph has been translated differently from that already used in section 31 of the 2016 Act, and elsewhere in the 2016 Act such as in sections 39(2) and 42(2).

This means that the word “identity” is translated differently at the beginning of the new sub-paragraph (1A) when compared with the text from section 31(2), which is quoted for modification at the end of that sub-paragraph, even though they refer to the same thing.

A reader of the Welsh text may find this confusing. Although it is acknowledged that “hunaniaeth” could be a valid choice of word for “identity” in the translation of legislation, depending on the context, it would appear preferable for new inserted text to be consistent with the existing style and vocabulary of the original legislation. Such an approach would also be in accordance with the Welsh Government’s drafting guidance – see Writing Laws for Wales, paragraph 7.30.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

2. 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 Minister for Climate Change wrote to the Chair of the Legislation, Justice and Constitution Committee on 3 April 2023 in relation to these Regulations. The letter states:

“I am writing in relation to the timescales for the making of subordinate legislation in connection with the implementation of the Renting Homes (Wales) Act 2016 (‘the 2016 Act’).

...

Separately, the need to make an amendment to Schedule 12 of the 2016 Act before 31 May 2023, regarding the issuing of written statements of occupation contracts, has also been identified.”

3. 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 Explanatory Memorandum notes that:

“Under paragraph 11(1) of Schedule 12, the landlord of a converted occupation contract is required to give a written statement of that converted contract to the contract-holder



before the end of the period of six months starting with the appointed day ("the information provision period"), that is, it must be given by 31/05/23. Paragraph 11(1A) of Schedule 12 (which was inserted by the 2021 Act) provided that the requirement in section 31(2) of the 2016 Act (to provide a written statement where there has been a change in the identity of the contract-holder) was disapplied in relation to converted contracts during the information provision period.

However, it has become apparent that Schedule 12 did not make clear provision about written statements requirements after the end of the information provision period and particularly where, at the end of a converted contract, a substitute contract arises. A substitute contract is a type of contract (specified by paragraph 32 of Schedule 12) that arise after a converted contract ends."

The Explanatory Memorandum also explains that no formal consultation has been undertaken "*Due to the technical nature of the SI*". It is not clear whether the Welsh Government has promoted the amendments relating to written statements given that the Explanatory Memorandum states that the position was not clear.

Welsh Government response

A Welsh Government response is required in relation to the Technical Scrutiny point and the second Merits Scrutiny point.

Committee Consideration

The Committee considered the instrument at its meeting on 9 May 2023 and reports to the Senedd in line with the reporting points above.

