

Explanatory Memorandum to:

the Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022

&

the Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022

This Explanatory Memorandum has been prepared by the Climate Change and Rural Affairs Group of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the subordinate legislation listed above.

Julie James
Minister for Climate Change
18 August 2022

PART 1

1. Description

This Explanatory Memorandum (“EM”) provides information covering two closely related pieces of subordinate legislation which are being made under the Renting Homes (Wales) Act 2016 (‘the 2016 Act’) as amended by the Renting Homes (Amendment) (Wales) Act 2021 (‘the 2021 Act’). Both Statutory Instruments (“SIs”) make amendments to various schedules to the 2016 Act which have been identified as necessary to ensure the legislation operates as intended when brought into force. Both SIs are being made under the affirmative resolution procedure at the same time.

A brief description of each SI is as follows:

The Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022

This SI makes a series of amendments to Schedules 2, 3, 8A, 9, 9B and 9C to the 2016 Act.

The amendments this SI makes to these Schedules were identified as necessary during the development of the 2021 Act to ensure that changes in the way that accommodation related to bail and probation as well as immigration and asylum are provided are reflected ahead of the commencement of the 2016 Act.

Section 4 of this EM explains the Welsh Government’s rationale for making these amendments at this time and the impact of each amendment.

The Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022

This SI makes a series of amendments to Schedule 12 of the 2016 Act.

Schedule 12 sets out arrangements for tenancies and licences currently in existence which will convert into occupation contracts when the 2016 Act comes into force. The purpose of Schedule 12 is to ensure that the transition is as seamless as possible and that the parties to existing tenancies and licences are treated fairly when their tenancy or licence undergoes conversion into an occupation contract, with a balance being struck in respect of both parties’ rights and obligations.

A number of issues relating to the conversion process have been identified. This SI addresses those issues by means of amendments to Schedule 12. A full description of the purpose and effect of each is provided in section 4 of this EM.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

The powers in the 2016 Act under which the amendments in these two SIs are being made are as follows:

The Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022

Paragraph 17 of Schedule 2 enables the Welsh Ministers to amend that Schedule.

Paragraph 17 of Schedule 3 enables the Welsh Ministers to amend that Schedule.

Paragraph 13 of Schedule 8A enables the Welsh Ministers to amend that Schedule.

Paragraph 13 of Schedule 9 enables the Welsh Ministers to amend that Schedule.

Paragraph 11 of Schedule 9B enables the Welsh Ministers to amend that Schedule.

Paragraph 11 of Schedule 9C enables the Welsh Ministers to amend that Schedule.

Section 255 of the 2016 Act provides a power to make supplemental, incidental, consequential, transitional, transitory and saving provision in order to give full effect to the Act, or in consequence of any provision in the Act.

Section 256 of the 2016 Act makes provision about the making of regulations under the 2016 Act. Sections 256(3) and (4)(h), (i), (la), (m), (mb) and (mc) of the 2016 Act require that these Regulations are subject to the affirmative procedure.

The Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022

Paragraph 33 of Schedule 12 enables the Welsh Ministers to amend that Schedule.

Section 256 of the 2016 Act makes provision about the making of regulations under the 2016 Act. Sections 256(3) and (4)(n) of the 2016 Act require that these Regulations are subject to the affirmative procedure.

4. Purpose and intended effect of the legislation

The purpose and intended effect of the two SIs dealt with in this Explanatory Memorandum is as follows:

The Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022

This SI makes a series of amendments to Schedules 2, 3, 8A, 9, 9B and 9C to the 2016 Act.

Amendment to Schedule 2

Schedule 2, which is introduced by section 7 of the 2016 Act, lists a series of exceptions to the general rule set out in section 7 of the 2016 Act which determines whether a tenancy or licence is an occupation contract and thus subject to the provisions of the Act. The general rule is that a tenancy or licence will be an occupation contract if:

1. it is made between a landlord and an individual (or individuals) and it confers the right on that individual to occupy the dwelling as a home; and,
2. rent or other consideration is payable.

Part 3 of Schedule 2 lists those tenancies and licences that can never be occupation contracts under the 2016 Act, despite falling within section 7. These are: where the tenant or licensee is under 18 years of age, business tenancies, protected occupancies or statutory tenancies within the meaning of the Rent (Agriculture) Act 1976 and other agricultural-related tenancies under the Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1995, protected or statutory tenancies within the meaning of the Rent Act 1977, long tenancies (of 21 years or longer), tenancies or licences which relate to accommodation provided to members of the armed forces, and those which relate to direct access accommodation.

Regulation 2 of this SI adds to the list in Part 3 of Schedule 2 tenancies and licences which relate to bail and probation accommodation as well as to asylum and immigration accommodation (an exception to this rule is a tenancy or licence related to accommodation for asylum seekers currently provided under an assured or a secure tenancy, which will convert into a standard or secure occupation contract respectively¹). The rationale for adding these types of accommodation to Schedule 2 now by means of this amending SI is to provide landlords of these types of accommodation with absolute clarity in law that any such tenancy or licence can never be an occupation contract and therefore not subject to the provisions of the 2016 Act. The amendments also reflect some recent changes to the law relating to the provision of this accommodation.

Amendment to Schedule 3

Schedule 3, which is introduced by sections 11 and 12 of the 2016 Act, lists a range of occupation contracts which are exempted from the general rule that community landlords provide secure occupation contracts. Under sections 11(2) and 12(4), each such contract may be a standard contract, notwithstanding that it was made by, or taken over by, a community landlord. The exemptions include supported accommodation, accommodation for asylum seekers etc., homeless persons, and certain types of temporary accommodation. **Regulation 3** of this SI removes from this list reference to certain types of accommodation provided for asylum seekers, to reflect the fact that a tenancy or licence in relation to such accommodation can never be an occupation contract.

Amendment to Schedule 8A

Schedule 8A, which is introduced by sections 174, 174A, 195 and 195A of the 2016 Act, lists those types of standard contracts which can be ended with two months' notice under a landlord's notice or break clause (rather than the six months' notice period that applies in relation to all other standard occupation contracts). Those standard contract types include prohibited conduct standard contracts, accommodation for students in higher education, supported accommodation, accommodation for asylum seekers etc., accommodation for homeless persons, and

¹ This exception is made by Regulation 4(2) of the Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022 (see below)

certain types of temporary accommodation. **Regulation 4** of this SI removes from this list reference to certain types of accommodation provided for asylum seekers etc. for the same reasons as set out in relation to Regulations 2 and 3 above.

Amendment to Schedule 9

Schedule 9, which is introduced by sections 175 and 196 of the 2016 Act, lists those types of contracts which can be ended within the first six months of the occupation date, and also those fixed term contracts that may include a landlord's break clause earlier than the 18-month minimum that otherwise applies. These exemptions include prohibited conduct standard contracts, supported accommodation, accommodation for asylum seekers etc., accommodation for homeless persons, and certain types of temporary accommodation. **Regulation 5** of this SI removes from this list reference to certain types of accommodation provided for asylum seekers etc. for the reasons set out in relation to Regulations 2 and 3 above.

Amendment to Schedule 9B

Schedule 9B, which is introduced by section 186 of the 2016 Act, lists those types of fixed term standard contracts which may be terminated at the end of the fixed term period with two months' notice by means of a landlord's notice. This is something the 2016 Act generally does not permit. Where the contract-holder remains in occupation following the end of the fixed term, a new periodic standard contract will automatically be created (or the landlord and contract-holder may agree a new contract in the normal way, with an occupation date immediately following the end of the fixed term), after which a six-month landlord's notice may be issued to end the contract.

The types of fixed term standard contracts listed in Schedule 9B, under which it is considered reasonable for a landlord to have greater certainty over the ability to regain possession, include those relating to supported accommodation, accommodation provided for asylum seekers etc., accommodation for homeless persons, service occupancies, and certain types of temporary accommodation. **Regulation 6** of this SI removes from this list reference to certain types of accommodation provided for asylum seekers etc. for the reason set out in relation to Regulations 2 and 3 above.

Amendment to Schedule 9C

Schedule 9C, which is introduced by section 194 of the 2016 Act, lists those fixed term standard contracts which may include a landlord's break clause, which the 2016 Act generally does not permit. The types of fixed term standard contracts listed in Schedule 9C, under which it is considered reasonable for a landlord to be able to give notice under a break clause in the first two years of the contract include those relating to supported accommodation, accommodation provided for asylum seekers etc., accommodation for homeless persons, service occupancies, and certain types of temporary accommodation. **Regulation 7** of this SI removes from this list reference to certain types of accommodation provided for asylum seekers etc. for the reason set out in relation to Regulations 2 and 3 above.

Amendment to the Immigration Act 2016

Regulation 8 makes a necessary consequential amendment to the Immigration Act 2016 to ensure that when section 4 of the Immigration and Asylum Act 1999 is

repealed by paragraph 1 of Schedule 11 to the Immigration Act 2016 (when that paragraph fully comes into force), paragraph 7(3)(k)(i) of Schedule 2 (as inserted by regulation 2 of this SI) will no longer refer to section 4 of the 1999 Act.

Amendments to Schedule 6

Regulation 9 makes minor consequential amendments to Schedule 6 to the Renting Homes (Amendment) (Wales) Act 2021.

The Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022

These Regulations make a number of amendments to Schedule 12 of the 2016 Act.

Schedule 12 deals with the conversion of existing tenancies and licences into occupation contracts when the provisions of the 2016 Act come into force. It clarifies which types of current tenancies and licences will convert, and into which types of occupation contract. It also sets out the requirements that apply to converted contracts, including in relation to the provision of written statements, and how particular terms required under the 2016 Act will or will not be incorporated into converted contracts.

The amendments are as follows:

Regulation 5 inserts a new Paragraph 2A which provides that licences which are secure tenancies or Assured Agricultural Occupancies held by 16 or 17 year olds will convert into occupation contracts. The licensee will be the contract-holder and the 2016 Act will apply to the contract in the same way as it does to any other converted contract. Whilst 16 and 17 year olds will not be able to enter into new occupation contracts once the 2016 Act is brought into force, this amendment is being made to preserve the rights of those 16 and 17 years who, immediately before the appointed day, hold a licence under existing law in Wales.

Regulations 4(b), 8 & 14 relate to supported accommodation, making amendments to Paragraphs 2 and inserting new paragraphs 6A & 24A to provide the following:

- A landlord cannot stop a tenancy that relates to supported accommodation from converting and becoming an occupation contract.
- only an assured shorthold tenancy or a licence which relates to supported accommodation is permitted to convert into a supported standard contract. Part 5 of Schedule 2 to the 2016 Act cannot meaningfully apply to a licence which is more than 6months old, an amendment is included (to disapply Part 5 of Schedule 2 for any tenancy which existed immediately before the appointed day) to put this beyond doubt.
- sections 144 (mobility) and 145 (temporary exclusion) do not apply to a converted contract that is a supported standard contract and that was, immediately before the appointed day, an assured shorthold tenancy.

Regulations 7 and 13 expand the converted contracts which have effect as

introductory standard contracts and adds assured shorthold tenancies which were starter tenancies, provided the landlord was a registered social landlord or private registered provider of social housing (with certain exceptions). This ensures that these convert into Introductory Standard Contracts, alongside Introductory Tenancies, without the need for a landlord to issue a notice under section 13.

Regulation 10 adds a new paragraph 13A which clarifies that the deposit scheme provisions of the 2016 Act only apply to converted contracts that were assured shorthold tenancies immediately before the appointed day. This prevents any contract, not previously subject to deposit scheme requirements, being in breach of the deposit requirements of the 2016 Act immediately upon conversion.

Regulations 11 and 12 set out that where a converted contract was, before conversion, an assured shorthold tenancy which included a rent variation term, that term will be carried over into the converted contract and the landlord cannot use section 123 of the 2016 Act to vary the rent (which will be the standard rent variation mechanism for all new standard periodic contracts entered into once the 2016 Act comes into force). This amendment is necessary to ensure that when any existing tenancy which has a rent variation term, that term will be carried-over into the converted occupation contract.

Regulations 3 and 4(b) relate to the conversion of existing tenancies or licences which have accrued Assured Agricultural Occupancy ('AAO') status. AAOs automatically arise when an agricultural worker who has been provided with self-contained accommodation as part of their employment has undertaken that agricultural work for at least 91 weeks out of the preceding 104 weeks. AAOs provide significant security of tenure and succession rights which may be far more beneficial to the occupier than the right which attached to the underlying tenancy or licence. Whilst Welsh Government enquiries have confirmed that there are likely to be very few AAOs in existence in Wales (and whilst the 2016 Act will not allow for any new AAOs to arise after the appointed day) these provisions seek to preserve, as far as possible, the rights acquired by those who occupy property under an AAO. To this end a series of amendments have been made to Schedule 12 which most significantly ensure that a current AAO is largely treated, upon conversion, in the same way as assured tenancies will be treated upon conversion. AAOs will convert into a secure contract where the landlord is a community landlord, and into a periodic standard contract - to which section 173 will not apply - where the landlord is a private landlord. In addition, the provisions of the 2016 Act relating to succession will apply to them.

Regulations 19(b) and 19(c) remove Paragraph 32(4) of Schedule 12 and insert a new Paragraph 32(8). This amendment will ensure that a periodic standard contract that arises following the end of a converted fixed term standard contract will be treated as a substitute contract for the purposes of Schedule 12. However:

Regulation 15 amends paragraph 25A to provide that where a substitute contract is a periodic standard contract (arising under section 184(2) or within section 184(6)) the landlord must give six months' notice under section 173, and the landlord cannot give notice under section 173 within the period of four months starting with the date

the contract-holder became entitled to occupy the dwelling under the original tenancy or licence. Paragraphs 25B, 25C and 25D of Schedule 12 are omitted (regarding termination of a fixed term contract at the expiry of the fixed term and by use of landlord's break clause)

Regulation 4(a) makes an amendment to one of the provisions added by Regulation 2 of the *Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022* to Part 3 of Schedule 2 which excludes accommodation provided to certain groups from the requirements of the 2016 Act. The effect of this amendment is to ensure that if an asylum seeker in Wales is currently being provided with accommodation under an assured or secure tenancy or licence, that tenancy or licence will convert into either a standard or secure occupation contract as appropriate and be subject to the relevant provisions of the 2016 Act. This amendment is being made in recognition of the possibility that some asylum seekers in Wales currently have a level of security of tenure which would be lost if their existing assured/secure tenancy/licence did not convert, which would be a diminution of their current rights.

Regulations 6, 9, 16, 17, 18 and 19(a) all make minor drafting changes to correct typographical errors and inaccuracies, or to clarify the wording of the Schedule where these issues have been identified as part of the work to produce this amending SI.

5. Consultation

The amendments being made to the various Schedules of the 2016 Act by these two SIs are being made to address issues which have come to light since the 2016 Act was originally made, some as a result of changes made to, and by, other primary legislation – including the 2021 Act – and others which have emerged as work on the various pieces of subordinate legislation that underpin the 2016 Act as amended have been developed.

Due the technical nature of these two SIs and the fact that none of amendments they contain make any substantive changes to policy positions set out in the primary legislation, no formal consultation has been undertaken. However, several of the issues addressed by these amendments were raised with Welsh Government by external stakeholders seeking clarification on the application of the legislation in relation to particular types of accommodation. Detailed discussions have taken place with relevant stakeholders to explore these matters and have informed the development of the amendments.

6. Regulatory Impact Assessment

The amendments made by these Regulations are not expected to alter the policy (or its impact) in any significant way. As such, no RIA has been produced to accompany these Regulations. This is in line with the policy set out in the Welsh Ministers' RIA Code for subordinate legislation.