

# **SL(6)243 – The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022**

## **Background and Purpose**

Upon the coming into force of section 239 of the Renting Homes (Wales) Act 2016 (“the 2016 Act”), the majority of existing tenancies will be converted into occupation contracts by virtue of section 240.

At present, where an existing assured or assured shorthold tenancy does not contain a rent variation term, section 13 of the Housing Act 1988 (“the 1988 Act”) allows the landlord to vary the rent by serving a notice on the tenant. If the tenant is unhappy with the notice of variation, they may apply to a rent assessment committee for a determination of the rent for the dwelling. The rent assessment committee will determine the rent in accordance with section 14 of the 1988 Act, and this will become the rent for the dwelling, unless the landlord and tenant agree otherwise.

Sections 104 and 123 of the 2016 Act allow the landlord, under a secure contract or periodic standard contract respectively, to give a notice to the contract-holder varying the rent. The 2016 Act does not include a mechanism for the contract-holder to seek a determination of rent from a rent assessment committee.

The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022 (“the Regulations”) seek to replicate the existing provisions under sections 13 and 14 of the 1988 Act in respect of relevant converted contracts.

An occupation contract is a “relevant converted contract” if, immediately before the coming into force of section 239 of the 2016 Act, it was a tenancy to which section 13 of the 1988 Act applied. A contract-holder under a relevant converted contract will continue to have the right to apply to a rent assessment committee for a determination of the rent, following a rent variation notice from the landlord.

## **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 nine points are identified for reporting under Standing Order 21.2 in respect of this instrument.



## **1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.**

The Committee notes that there are inconsistencies between the English and Welsh texts of the Regulations.

In regulation 2, in the definition of “relevant improvement”, in paragraph (a), the words that correspond to “of the Act” are missing from the Welsh text.

There are two grammatical errors in regulation 6 of the Welsh text, which create confusion as to the interpretation of the opening words before paragraph (a):

- The words “gael ei osod” (“to be let”) contain the masculine form of the pronoun “ei”, causing the soft mutation of “gosod” (“let”). As this pronoun is referring back to “annedd” (“dwelling”), a feminine noun in Welsh, the phrase should be “gael ei *gosod*”, because there is no soft mutation after the feminine form of “ei”. The soft mutation indicates that the “ei” is masculine, which creates confusion as to which noun that pronoun replaces.
- The feminine pronoun “hi” is used in “ymwneud â hi” as the translation for “relates” when referring back to “...yr un math o gontract wedi ei drosi perthnasol” (“...the same type of relevant converted contract”). Use of the masculine form of “math” (rather than the feminine “yr un *fath*”) suggests that the masculine pronoun should be used for “relates”, so that it reads “ymwneud *ag ef*”. Use of the feminine pronoun therefore causes confusion as to the interpretation of the provision.

In the form in the Schedule, in question a) of Part 8, the words that correspond to “or licensee(s)” and “or licence” are missing from the Welsh text.

The Welsh Government is reminded that the Welsh and English texts of the Regulations have equal standing, and care must be taken to ensure consistency.

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

Regulation 2 provides that “relevant converted contract” has the meaning given by paragraph 15(3) of Schedule 12 to the 2016 Act, which is as follows:

*A converted contract is a relevant converted contract if immediately before the appointed day it was a tenancy to which section 13 of the Housing Act 1988 (c.50) (increases of rent under assured periodic tenancies) applied.*

Regulation 2 then defines “relevant preceding tenancy or licence” by reference to the definition of “relevant converted contract”, and “relevant tenant or licensee” by reference to the definition of “relevant preceding tenancy or licence”.

There are other references to “licence” and “licensee” in other definitions in regulation 2, in regulations 6 and 8 and in the prescribed form in the Schedule.



A converted contract is only a “relevant converted contract” if it was previously a *tenancy* to which section 13 of the 1988 Act applied. It is therefore unclear how a *licence* that is converted to an occupation contract by the 2016 Act could ever be a *relevant* converted contract.

Neither the Explanatory Note nor the Explanatory Memorandum make any reference to the Regulations applying in relation to licences or licensees.

The Welsh Government is asked to explain the basis for including the terms “licence” and “licensee” throughout the Regulations and in the prescribed form.

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

The definition of “relevant improvement” in regulation 2 appears to be based on the definition set out in section 14(3) of the 1988 Act (“the 1988 Act definition”). The 1988 Act definition refers to an improvement “carried out during the tenancy”. In contrast, paragraph (a) of the definition in regulation 2 refers to an improvement “carried out in relation to the relevant converted contract”. This drafting suggests that, under the Regulations, the improvement is to the terms of the contract, rather than to the dwelling.

As the Regulations seek to continue the application of section 14 of the 1988 Act to relevant converted contracts, it would appear that the drafting of paragraph (a) of the definition in regulation 2 is defective.

The Welsh Government is asked to explain why paragraph (a) of the definition in the Regulations differs from the 1988 Act definition.

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

Paragraph (b) of the definition of “relevant improvement” in regulation 2 is unclear.

The 1988 Act definition provides that a “relevant improvement” is one which was either:

- Carried out during the tenancy to which the rent variation relates, or
- Carried out during a previous assured or assured shorthold tenancy within the 21-year period before the date of service of the notice.

Paragraph (b) of the definition in regulation 2 does not appear to have the same effect as the second strand of the 1988 Act definition. In particular, the use of the defined term “relevant preceding tenancy” in paragraph (b)(ii) and (iii) of the definition in regulation 2 causes confusion. A previous tenancy can only be a “relevant preceding tenancy” if it existed before section 239 of the 2016 Act came into force and it became a relevant converted contract on or after section 239 came into force. This means that improvements carried out by the contract-holder during any previous tenancies are not within scope of paragraph (b), whereas these could have been within scope of the equivalent part of the 1988 Act definition.



The Welsh Government is asked to explain why the definition of “relevant improvement” in regulation 2 differs from the 1988 Act definition.

The Welsh Government is also asked to clarify the distinction between paragraphs (a) and (b) of the definition in regulation 2. These paragraphs would appear to cover the same circumstances, unlike the 1988 Act definition which clearly envisaged two separate sets of circumstances.

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

Regulation 6 sets out the assumptions to be made by a rent assessment committee when making a determination of rent for a dwelling under a relevant converted contract. Two aspects of this regulation are unclear:

- The words preceding paragraph (a) refer to the dwelling being let on the open market “under the same type of relevant converted contract”. Use of the defined term “relevant converted contract” does not make sense in this context. It appears that what is meant here (and in paragraph (a) itself) is “an occupation contract of the same type as the relevant converted contract”.
- Paragraph (c) sets out an assumption relating to relevant improvements. There is a lack of clarity as to what may be included in this assumption, particularly when paragraph (c) is read alongside the definitions of “relevant improvement” and “relevant tenant” in regulation 2, and the questions in Part 8 of the prescribed form in the Schedule.

The Welsh Government is asked to clarify its intentions in relation to these assumptions. The Welsh Government is also asked whether it considers that the drafting of regulation 6 is sufficiently clear to enable the reader to understand the meaning of the legislation.

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

Regulation 8(2) amends “regulation 2” of the Rent Assessment Committees (England and Wales) Regulations 1971 (“the 1971 Regulations”). It should instead refer to “regulation 2(2)”, to clearly identify the paragraph of regulation 2 that is being amended.

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

Regulation 8(2)(b) inserts definitions into the 1971 Regulations. The inserted definition of “relevant preceding tenancy or licence” is as follows:

*“relevant preceding tenancy or licence” means a tenancy or licence which existed before the appointed day and which on or after the appointed day became a relevant converted contract;*



However the definition of “the appointed day” in this context, set out in section 242 of the 2016 Act, has not been inserted into the 1971 Regulations.

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

Regulation 3(3) of the 1971 Regulations relates to the giving of notice of a hearing. Sub-paragraphs (a) and (b) set out the requirements in relation to two specific circumstances, whereas sub-paragraph (c) is a catch-all provision that applies “in every other case”.

Regulation 8(4) of the Regulations inserts the words “relevant tenant or licensee, or relevant contract-holder” into regulation 3(3)(c) of the 1971 Regulations. This makes the catch-all provision overly complex and difficult to understand.

The Welsh Government is asked whether it considered instead inserting a provision between sub-paragraphs (b) and (c) of regulation 3(3), to ensure that the notice requirements of the 1971 Regulations in relation to relevant converted contracts are clear.

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

Regulation 8(5)(a) purports to replace the words “assured tenancies or agricultural occupancies” in regulation 5(1)(b) of the 1971 Regulations. However the current wording in regulation 5(1)(b) is “assured tenancies or *assured* agricultural occupancies” (emphasis added). It is therefore unclear how the amendment as drafted could take effect.

## Merits Scrutiny

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

**10. 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 Regulations contain fairly complex provisions that will be of interest to contract-holders wishing to challenge a rent variation notice. The Welsh Government is asked whether there will be guidance available to assist contract-holders in understanding their rights under the Regulations.

The prescribed form set out in the Schedule to the Regulations requests information that is clearly highly relevant to a determination by a rent assessment committee. However the form contains very little guidance for contract-holders, who may struggle to answer the questions in sufficient detail (for example, in response to Part 8, the contract-holder may be unaware of the actions of any other former tenant). The Welsh Government is asked whether there will be guidance to accompany the prescribed form.

**11. 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 formal consultation has been carried out in relation to the Regulations. The Explanatory Memorandum provides the following explanation:

*Given the very narrow and technical nature of these regulations, the purpose of which is simply to preserve existing arrangements, it was decided that a traditional consultation approach was unnecessary. Instead, the draft SI was shared with a group of key stakeholders with an interest in these matters and their views were taken into consideration in finalising the regulations.*

The Welsh Government is asked whether the stakeholders consulted on the draft Regulations included representatives of landlords and of tenants.

## **12. 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.**

In a number of places the Regulations fail to follow the drafting guidance set out in Writing Laws for Wales (“WLW”). For example:

- In regulation 2, in the Welsh text, some of the definitions in the list are not ordered correctly according to the Welsh alphabet (WLW 4.15(2)).
- In regulation 8(2)(a) and (c) the form of words should be “for X substitute Y” instead of “replace X with Y” (WLW 7.3(2)).
- In the footnotes, statutory instruments should be referred to by citation rather than full title (WLW 6.10(6) and it is not necessary to repeat citations in subsequent footnotes (WLW 6.10(2)).

The Welsh Government is reminded of the need to follow relevant drafting guidance.

## **Welsh Government response**

### **Technical Scrutiny point 1:**

The Welsh Government thank the Committee for raising these points and will make the appropriate amendments before the Regulations come into force.

### **Technical Scrutiny point 2:**

The Welsh Government has considered technical scrutiny point 2 and respectfully refers the Committee to paragraph 15(3) of Schedule 12, as amended by the Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022/795, which provides that:

- (3) A converted contract is a relevant converted contract if—
- (a) immediately before the appointed day it was a tenancy or licence to which section 13 of the Housing Act 1988 (c. 50) (increases of rent under assured periodic tenancies) applied.

The Welsh Government does not therefore consider an amendment is necessary to achieve the intended legal effect.



### **Technical Scrutiny point 3:**

The Welsh Government thank the Committee for raising this point. Whilst the Welsh Government considers that the current drafting does adequately achieve the correct legal effect, amendments will be made to clarify that the improvements referred to, are those carried out in relation to the dwelling which is the subject of the converted contract.

### **Technical Scrutiny point 4:**

The Welsh Government thank the Committee for raising this point and will make the appropriate amendments before the Regulations come into force. The amendment will involve re-working the definition of "relevant improvement" so no further clarification is required response to this point.

### **Technical Scrutiny point 5:**

In response to the first bullet point in technical scrutiny point 5 the Welsh Government thank the Committee for raising this point and will make appropriate amendments before the Regulations come into force to bring clarification to the meaning of the legislation.

In relation to the second bullet point in technical scrutiny point 5, the Welsh Government consider that the intended effect is clear, in that any improvement not carried out pursuant to an obligation, or where an obligation arises but is not related to the specific improvement in question, then that improvement is discounted for the purposes of rent determination.

### **Technical Scrutiny point 6:**

The Welsh Government considers that, in practice, the amendments work because it is clear what amendments are required from the context of regulation 8 and the specific reference to the provisions in regulation 2 of the 1971 regulations which require amendment. Therefore, the Welsh Government considers that no further amendments are required.

### **Technical Scrutiny point 7:**

Welsh Government thank the Committee for raising this point and will make the appropriate amendments before the Regulations come into force.

### **Technical Scrutiny point 8:**

The Welsh Government does not consider that it is necessary to insert a provision between sub-paras (b) and (c) of regulation 3(3), to ensure that the notice requirements of the 1971 Regulations in relation to relevant converted contracts are clear. The Welsh Government is not of the view that the insertion as drafted, is overly complex or unclear.

### **Technical Scrutiny point 9:**

Welsh Government thank the Committee for raising this point and will make the appropriate amendments before the Regulations come into force.

### **Merit Scrutiny point 10:**



The prescribed form largely replicates the current form used by the Residential Property Tribunal (RPT). A guidance booklet is provided by the RPT to accompany this form and the Welsh Government will work with the RPT to make any necessary amendments to this guidance booklet.

**Merit Scrutiny point 11:**

Yes, stakeholders that represent both landlords and tenants were part of the stakeholder consultation group including National Residential Landlords Association, Guild of Residential Landlords, Shelter Cymru, Tenant Participation and Advisory Service, Citizens Advice and National Union of students.

**Committee Consideration**

The Committee considered the instrument and Welsh Government response at its meeting on 26 September 2022 and reports to the Senedd in line with the reporting points above.

