

Explanatory Memorandum for:

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

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
25 April 2023

PART 1

1. Description

This Explanatory Memorandum (“EM”) provides information covering subordinate legislation which is being made under the Renting Homes (Wales) Act 2016 (‘the 2016 Act’), as amended by the Renting Homes (Wales) (Amendment) Act 2021 (‘the 2021 Act’).

The Renting Homes (Wales) Act 2016 (Amendment of Schedule 12 and Consequential Amendment) Regulations 2023 amend certain paragraphs of Schedule 12 regarding the issuing of written statements of contract in relation to:

- a) substitute contracts, and
- b) converted contracts where there has been a change in the identity of the contract-holder during the information provision period (which ends on the 31 May).

In addition, as a result of those amendments a consequential amendment is also made to the 2021 Act.

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

None.

3. Legislative background

Paragraph 33 of Schedule 12 to the 2016 Act enables the Welsh Ministers to amend that Schedule.

Section 256(2) of the 2016 Act enables the Welsh Ministers to make the consequential amendment to the 2021 Act.

Section 256 of the 2016 Act makes provision about the making of Regulations under the 2016 Act. Sections 256(3), (4)(n) and (5) of the 2016 Act require that these Regulations are subject to the affirmative procedure.

The SI is being made under the affirmative resolution procedure.

4. Purpose and intended effect of the legislation

This SI makes amendments to Schedule 12 to the 2016 Act (“Schedule 12”). Schedule 12 deals with the conversion of tenancies and licences that were in existence prior to the 2016 Act coming into force on 1 December 2022. The purpose of Schedule 12 is to ensure that the conversion of such tenancies and licences 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.

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.

Example: A fixed term assured shorthold tenancy (AST) which existed prior to the 1 December 2022 automatically converted to a fixed term standard contract on the 1 December 2022. It will operate as a fixed term standard contract for the remainder of the period originally agreed at the start AST. A landlord must provide a written statement of this fixed term standard contract to the contract-holder by the 31/5/23. At the end of the fixed term contract should the contract-holder remain in occupation a periodic standard contract arises automatically, this is the substitute contract.

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

- (a) 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 (under section 31(2) of the 2016 Act) 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;
- (b) 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 (under section 31(1) of the 2016 Act);
- (c) 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 (under section 31(2) of the 2016 Act).

As a result of those provisions, consequential amendments to Schedule 12 and the 2021 Act are also made.

5. Consultation

Due the technical nature of the SI, and the fact that none of the amendments make any substantive changes to policy positions set out in the primary legislation itself, no formal consultation has been undertaken.

6. Regulatory Impact Assessment

Given that the effect of this SI is to preserve as far as is possible the balance of rights and entitlements that landlords and tenants/licensees enjoy, and ensure primary legislation operates in accordance with previously stated Welsh Government policy, no Regulatory Impact Assessment has been undertaken in relation to this SI.