

Explanatory Memorandum for:

The Renting Homes (Prescribed Forms) (Wales) Regulations 2022

The Renting Homes (Review of Decisions) (Wales) Regulations 2022

The Renting Homes (Deposit Schemes) (Required Information) (Wales) Regulations 2022

The Renting Homes (Safeguarding Property in Abandoned Dwellings) (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by Education and Public Services 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. I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Climate Change
10 March 2022

PART 1

1. Description

This Explanatory Memorandum (“EM”) provides information and a Regulatory Impact Assessment (“RIA”) covering four related pieces of subordinate legislation which are being made under the Renting Homes (Wales) Act 2016 (‘the 2016 Act’). The four Statutory Instruments (“SIs”) are all concerned with procedural and practical matters which will support the operation of the 2016 Act, and are all being made under the negative resolution procedure at the same time.

A single EM and RIA has been prepared for these four SIs in accordance with paragraph 3.8 of the Welsh Ministers’ *Regulatory Impact Assessment Code for Subordinate Legislation*, which states that “Where 2 or more pieces of subordinate legislation are closely linked and a single RIA could adequately address each of them, a single RIA may be prepared in respect of all those pieces of subordinate legislation”¹.

A brief description of each SI is as follows:

The Renting Homes (Prescribed Forms) (Wales) Regulations 2022 set out 38 prescribed forms of notice which are to be used by landlords or contract-holders in particular circumstances where the 2016 Act requires or authorises either party to provide certain information in writing. Landlords and contract-holders will be able to download these from the Welsh Government website and, once completed, they may be issued electronically in accordance with section 236(4) of the 2016 Act. Some forms also include guidance notes in order to make their purpose more easily understandable.

The Renting Homes (Review of Decisions) (Wales) Regulations 2022 relate to two types of occupation contract: introductory standard contracts and prohibited conduct standard contracts. The Regulations set out the procedures to be followed by a community landlord, or a charity providing a landlord function, when undertaking a review of a decision to terminate an introductory standard contract or a prohibited conduct standard contract, or to extend the introductory or probationary period, if the contract-holder has exercised their right to have that decision reviewed.

The Renting Homes (Deposit Schemes) (Required Information) (Wales) Regulations 2022. Landlords frequently require tenants to pay a deposit as security in case of, for example, any potential damage to the property caused by the tenant. However, the deposit does not belong to the landlord and so any deposit paid must be properly protected. The 2016 Act adopts the same approach to protecting deposits as current legislation, but extends the application of this approach to all contracts where a deposit is taken (current requirements apply only to assured shorthold tenancies). All deposits must be protected by the landlord through an authorised deposit scheme, as is currently the case.

¹ <https://gov.wales/welsh-ministers-regulatory-impact-assessment-code-for-subordinate-legislation>

This SI requires landlords to provide certain information to contract-holders in writing, including: details of the scheme administrator such as name, address, telephone number and email address; where their deposit is being held; how it will be repaid at the end of the contract; what deductions can reasonably be taken from it by a landlord to cover, for example, unpaid rent or damage; and the procedure for settling any disputes that may arise between the two parties in relation to the deposit.

The Renting Homes (Safeguarding Property in Abandoned Dwellings) (Wales) Regulations 2022. These Regulations set out how a landlord is required to deal with any property that does not belong to them which is left in a dwelling that has been abandoned by a contract-holder. This SI places a duty on the landlord to safeguard property left in the abandoned dwelling for four weeks from the day on which the contract is deemed to have ended.

The Regulations will apply only with respect to property left in abandoned dwellings. They will not apply to property left in dwellings where the contract has been ended for other reasons, such as following an eviction.

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

None.

3. Legislative background

The regulation-making powers in the 2016 Act under which all four of these SIs are being made are discretionary – in that they state that Welsh Ministers *may*, rather than *must*, make regulations.

The Renting Homes (Prescribed Forms) (Wales) Regulations 2022

Section 236(3) of the 2016 Act states the Welsh Ministers may prescribe the form of notices or documents which landlords and contract-holders are required to provide to the other party in certain circumstances. Section 236 also requires that:

- The notice or document must be in writing;
- The notice or document may be in an electronic form (subject to section 237(4) (see below) provided it –
 - (a) has the certified electronic signature of each person by whom it is required to be signed or executed; and,
 - (b) complies with such other conditions as may be prescribed.

Section 237(2) states that the notification or document may be given to a person –

- (a) by delivering it to the person,
- (b) by leaving it at, or posting it to, one of the places mentioned in subsection (3), or

- (c) if the conditions in subsection(4) are complied with, by sending it to the person in electronic form.

Section 237(3) specifies the places the form or document is deemed to be delivered as –

- (a) the person's last known residence or place of business;
- (b) any place specified by the person as a place where the person may be given notifications or documents; or
- (c) if the notification or document is given to a person in that person's capacity as a contract-holder, the dwelling subject to the occupation contract.

Section 236(4) provides for a notification or document be given to a person by sending it in an electronic form if –

- (a) the person has indicated a willingness to receive the notification or document electronically;
- (b) the text is received by the person in legible form; and
- (c) the text is capable of being used for subsequence reference.

The notification or document given to a person by leaving it at any of the places mentioned in subsection (3) is to be treated as having been given at the time at which it was left at that place.

These Regulations are also made in exercise of the powers in section 256(1), which provides that any power to make regulations under the 2016 Act:

- (a) is exercisable by statutory instrument,
- (b) may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas,
- (c) may be exercised so as to make different provision for different kinds or descriptions of occupation contract, unless the power applies only in relation to particular kinds or descriptions of occupation contract, and
- (d) includes power to make incidental, supplementary, consequential, transitory, transitional or saving provision.

The Renting Homes (Review of Decisions) (Wales) Regulations 2022

These Regulations are made under powers provided by section 203(5) of the 2016 Act, together with paragraph 4(7) of Schedule 4 and paragraph 5(7) of Schedule 7 to the 2016 Act. The powers state that the Welsh Ministers may prescribe the procedure to be followed by landlords in connection with reviews requested by contract-holders, in respect of:

- (a) decisions to terminate introductory standard contracts or prohibited conduct standard contracts under section 202 of the 2016 Act;

- (b) decisions to extend introductory periods (of introductory standard contracts) under paragraph 4 of Schedule 4 to the 2016 Act; and
- (c) decisions to extend probationary periods (of prohibited conduct standard contracts) under paragraph 5 of Schedule 7 to the 2016 Act.

The Renting Homes (Deposit Schemes) (Required Information) (Wales) Regulations 2022

Sections 45 to 47 of the 2016 Act set out provisions relating to deposit schemes. Section 45 requires that where a landlord receives a deposit in connection with an occupation contract, the landlord must, within 30 days of the date on which the deposit is received, comply with any initial requirements imposed by a scheme and give the required information as prescribed by these Regulations.

These Regulations prescribe the information that the landlord is required to give a contract-holder (or person who has paid the deposit on their behalf) under section 45(3) of the 2016 Act.

These Regulations are also made in exercise of the powers in section 256(1), which provides that any power to make regulations under the 2016 Act:

- (a) is exercisable by statutory instrument,
- (b) may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas,
- (c) may be exercised so as to make different provision for different kinds or descriptions of occupation contract, unless the power applies only in relation to particular kinds or descriptions of occupation contract, and
- (d) includes power to make incidental, supplementary, consequential, transitory, transitional or saving provision.

The Renting Homes (Safeguarding Property in Abandoned Dwellings) (Wales) Regulations 2022

Section 220 of the 2016 Act provides the ability for a landlord to recover possession of a dwelling which has been abandoned by the contract-holder, without recourse to the court.

Chapter 13 of Part 9 of the 2016 Act specifies the procedure a landlord must follow in order to recover possession of an abandoned dwelling. It also sets out remedies available to contract-holders if they have not abandoned the dwelling.

These Regulations are made under section 221(1) of the 2016 Act, which states that the Welsh Ministers may make regulations setting out how a landlord must safeguard property (other than the landlord's property) left in the abandoned dwelling.

These Regulations are also made in exercise of the powers in section 256(1), which provides that any power to make regulations under the 2016 Act:

- (a) is exercisable by statutory instrument,
- (b) may be exercised so as to make different provision for different cases or descriptions of case or different purposes or areas,
- (c) may be exercised so as to make different provision for different kinds or descriptions of occupation contract, unless the power applies only in relation to particular kinds or descriptions of occupation contract, and
- (d) includes power to make incidental, supplementary, consequential, transitory, transitional or saving provision.

4. Purpose and intended effect of the legislation

The 2016 Act makes it simpler and easier to rent a home in Wales, replacing various, complex pieces of existing legislation and case law with one clear legal framework. New occupation contracts will replace most current residential tenancies and licences, making the rights and obligations of both landlord and tenant or licensee (referred to in the Act as the ‘contract-holder’) much clearer.

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

The Renting Homes (Prescribed Forms) (Wales) Regulations 2022

The purpose of this SI is to ensure that those forms and notices that will be most commonly used, or where the provision of a prescribed form or notice would be of practical benefit, are provided by Welsh Ministers in a manner that is compliant with the requirements of the 2016 Act. Prescribing these forms and notices and providing templates for use by landlords and contract-holders on the Welsh Government’s website will help to ensure that all key information is included by the relevant party and not incorrectly presented or inadvertently omitted. This will minimise the likelihood of forms and notices being found to be invalid by the courts on ‘technicalities’, which will reduce potential costs by enabling proceedings to move forward in a timely manner.

The Renting Homes (Review of Decisions) (Wales) Regulations 2022

An introductory standard contract is a specific type of contract that can be used by community landlords, or charities providing a landlord function, as an alternative to a secure contract when letting a dwelling to a contract-holder. This type of contract runs for an initial 12 months and then automatically converts into a secure contract, although the landlord can seek a court order to extend the introductory period to a total of 18 months. Introductory standard contracts allow community landlords and charities to ascertain during the introductory period whether a contract-holder can sustain a secure contract. In instances where the contract-holder has demonstrated they will not be able to sustain a secure contract, for example due to antisocial behaviour, the landlord can seek to terminate by giving notice under section 173 of the 2016 Act. This means an introductory standard contract can be terminated more easily than is possible under a secure contract.

A prohibited conduct standard contract is a specific type of contract that can be used as an alternative to terminating a secure contract where the contract-holder has breached the term of their secure contract regarding antisocial behaviour or other prohibited conduct. The landlord can apply to the court for a secure contract to be replaced with a prohibited conduct standard contract, which, if made, provides for a 12-month probationary period during which the landlord can seek to end the contract more easily by issuing a notice under section 173 of the 2016 Act. During the probationary period however, the landlord is required to provide social support to the contract-holder with the aim of preventing any further antisocial behaviour or prohibited conduct. The probationary period can be extended for a further six months if the landlord requests this and the court agrees.

Where a landlord decides to end or extend the introductory period or probationary period of an introductory standard contract or a prohibited conduct standard contract respectively, the contract-holder is entitled to seek a review of the landlord's decision. This SI sets out the procedures that the landlord must follow if the contract-holder requests such a review. The SI provides that:

- any review requested is undertaken by someone other than the person who took the original decision, and if the review is to be undertaken by someone within the same organisation, that person must be senior to the person who made the original decision;
- an oral hearing must take place if so requested by the contract-holder to allow them the opportunity to make representations in person, or to be represented by another person. Whether or not a hearing is not requested, the contract-holder is able to make representations in writing which must be considered by the person undertaking the review;
- an oral hearing may be conducted virtually with the written consent of the contract-holder;
- the landlord must give written notice to a contract-holder of a reasonably convenient time, date and location for the hearing or, where the hearing is to be conducted virtually, the date, time and instructions on how to access that virtual hearing. Where the hearing is to be held in person, the date, time and location must be reasonable convenient for the contract-holder;
- the procedure at review will be determined by the person undertaking the review. The Regulations also specify certain rights of the contract-holder at an oral hearing, which include the right to be represented, accompanied and call persons to give evidence.

The SI also details the procedures that should be followed where a contract-holder does not attend the hearing or where a hearing is postponed or adjourned.

The Renting Homes (Deposit Schemes) (Required Information) (Wales) Regulations 2022

Section 45(1) and (2) of the 2016 Act requires that where a landlord receives a deposit in connection with an occupation contract, the landlord must, within 30 days, give the contract-holder (and any person who has paid the deposit on their behalf) such required information as may be prescribed (under section 45(3)) and comply with the initial requirements of an authorised deposit scheme.

These Regulations prescribe the required information which includes: the name, address, telephone number and email address of the deposit scheme administrator; details of what happens to the deposit at the end of the occupation contract, including circumstances in which the landlord may retain part or all of the deposit or where the landlord or contract holder is not contactable at the end of the occupation contract; and the procedures that are in place to manage any dispute that may arise at the end of an occupation contract in relation to repayment of the deposit.

The Renting Homes (Safeguarding Property in Abandoned Dwellings) (Wales) Regulations 2022

The current law on dealing with a tenant's possessions following a property being abandoned is complex, consisting of a mixture of common law and legislation which may apply differently depending upon particular circumstances (including whether the landlord is a local authority, housing association or private individual, and whether the tenancy or licence includes a clause that deals with situations where property is left behind and confirms that the landlord is entitled to remove it).

These Regulations make provision regarding how property (other than the landlord's property) left in an abandoned dwelling must be dealt with. They place a duty on a landlord to safeguard property left in the abandoned dwelling for four weeks from the day on which the contract has ended.

The Regulations aim to balance the interests of the landlord, who may incur costs when safeguarding property, and the interests of the contract-holder, who may later seek to recover personal property after the dwelling has been abandoned. The Regulations will apply only with respect to property left in abandoned dwellings. They will not apply to property left in dwellings where the contract has ended for other another reason, for example due to an eviction.

5. Consultation

Given the technical nature of the Renting Homes (Prescribed Forms) (Wales) Regulations 2022, a traditional consultation was not considered to be the most appropriate approach. Instead, a series of workshops were held with key stakeholders. These included an expert advisory group which considered every instance in the 2016 Act where information is required to be provided in writing, with the aim of determining which of these requirements would benefit from the provision of a prescribed form or notice. That group concluded that 38 forms and notices should be prescribed. Those that were chosen relate to the requirements in the 2016 Act that will be most commonly-used by landlords and contract-holders, and those where a prescribed form or notice will be practically beneficial. For instance,

forms and notices have been prescribed for circumstances where a landlord is serving a notice of possession or informing a contract-holder of a forthcoming variation of rent, but not for situations where a contract-holder is informing a landlord that they will be ending the contract and leaving the property, or where a landlord is providing a contract-holder with a minimum of 24 hours' notice that that they intend to enter the dwelling to undertake maintenance work or similar.

In relation to the Renting Homes (Review of Decisions) (Wales) Regulations 2022 and the Renting Homes (Deposit Schemes) (Required Information) (Wales) Regulations 2022, it was also felt that a traditional consultation approach was inappropriate given the very narrow and technical nature of these arrangements. Instead the draft Regulations were shared with a group of key stakeholders with an interest in these matters.

A formal consultation was however undertaken in relation to the Renting Homes (Safeguarding Property in Abandoned Dwellings) (Wales) Regulations 2022 as these cover issues with the potential to impact on a broad range of citizens. A summary of responses has been published on the Welsh Government website in relation to this consultation exercise.

In all cases feedback and responses from stakeholders were taken into account and reflected in the final versions of each of the SIs.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Three options have been considered in relation to the SIs covered by this RIA:

Option 1 – Do Nothing.

Option 2 – Do Minimum.

Option 3 – Make Regulations.

Option 3 is the preferred option in relation to all four SIs for the reasons set out below.

7. Costs and benefits

The potential costs and benefits of each of the options considered have been estimated as follows:

Option 1 – Do Nothing

It would theoretically be possible to allow for the provisions of the 2016 Act to come into force without the Welsh Ministers making regulations to prescribe certain forms or notices; or to set out the process to be followed where a contract-holder requests a review of a decision to extend an introductory or probation period or terminate an introductory standard contract or a prohibited conduct standard contract; or to prescribe the required information in relation to deposits; or to place requirements on landlords to safeguard property left in abandoned dwellings.

Such an approach would, however, place an increased burden on individual landlords and contract-holders, or their professional associations or representative bodies, to develop their own forms and notices; on community landlords and charities to devise their own arrangements for conducting reviews of decisions made in relation to introductory or prohibited conduct contracts; on all landlords to determine the appropriate information to be provided in relation to deposits; and on all landlords to understand and correctly apply current law in relation to the safeguarding of any property left in abandoned dwellings.

Costs and benefits

In all cases, not making regulations would result in a lack of clarity for landlords, contract-holders and other stakeholders. Furthermore, once the provisions of the 2016 Act have been brought into force, there would be – at least in the short to medium term – confusion and disruption both for landlords and for contract-holders in relation to the areas covered by these regulations.

In relation to forms and notices the absence of regulations would likely result in inconsistency in approach which could lead to claims being refused by courts on the

grounds that the forms and notices were incorrect. Similarly, review processes undertaken in relation to introductory or prohibited conduct contracts could be challenged and may be deemed to have been unsound or unfair. Arrangements made in relation to property left in abandoned dwellings could similarly be challenged and found to have not been appropriate or reasonable.

The Renting Homes (Prescribed Forms) (Wales) Regulations 2022 provide for 38 different instances which the expert advisory group (which advised Welsh Government) identified as either the most frequently occurring situations where a notice will be given, or those where a prescribed form or notice would be of practical benefit. Had Welsh Ministers not prescribed these forms and notices, landlords and contract-holders would be required to develop their own, and would have to ensure that each form or document contained all of the necessary information for it to comply with the relevant provisions of the 2016 Act. It is possible in such a scenario that key information may not be correctly incorporated, or unintentionally omitted as a result of stakeholders creating their own versions. Such forms and notices would then not comply with the requirements of the 2016 Act, would be invalid for enforcement purposes, and would likely be rejected by the courts, causing additional delays and incurring additional expense for all parties.

Furthermore, if the 38 prescribed forms and notices were not made available by the Welsh Ministers, stakeholders may also incur additional costs from seeking professional or legal advice to clarify which matters should be included in particular forms and notices to ensure they are compliant with the law. Costs could potentially also be incurred from design companies with regards to the creation of the forms and notices themselves if the user was not sufficiently IT literate to develop and design their own forms and notices.

It is not possible to accurately estimate what the potential financial costs to landlords and contract-holders would be if the prescribed forms and notices regulations were not made by the Welsh Ministers. This is because of the large number of potential scenarios that could arise and the multitude of variables that may be involved. However, by way of example, if, in attempting to prepare a specific form or notice which is compliant with the requirements of the 2016 Act and related legislation, a private landlord were to seek legal advice and the solicitor instructed took one hour to check whether all the forms and notices that the landlord had developed were legally correct, this could result in an additional cost to the landlord of £200. This is in addition to the value of the time the landlord has spent preparing the forms and notices. Furthermore, if a landlord who had drafted their own form or notice were to seek an order from the courts to gain possession, for example, and a court were to find that the form was not compliant with the law, the landlord would likely incur additional costs both from seeking to correct and reissue the form or notice, and in subsequently seeking possession through the court a further time. Given that there are some 100,000 private landlords with rental properties in Wales, the potential costs and disruption to the sector would likely be significant were Welsh Ministers not to make these Regulations.

In relation to the Renting Homes (Review of Decisions) (Wales) Regulations 2022, which set out the procedures to be followed where a contract-holder requests a review of a decision by a community landlord or charity to extend an introductory or

probationary period or terminate an introductory standard contract or a prohibited conduct standard contract: if the Welsh Ministers did not make these regulations it would be incumbent on community landlords to develop their own arrangements for dealing with such circumstances. It is likely that landlords would use the existing arrangements under which a tenant may request a review of a decision to terminate an introductory or demoted tenancy and adapt the systems they already have in place to facilitate reviews of this type. However, even if community landlords and charities were to work together to develop a national framework of their own in relation to reviews requested under the 2016 Act, any such arrangements could be subject to legal challenge by the contract-holder and it would then be for the courts to decide whether the processes followed were appropriate. This could result in additional expense and delay for landlords, and additional casework for the county court system in Wales, as well as ongoing uncertainty until such time as the development of case law determined what process was appropriate. These arrangements would then need to be codified and adopted by all community landlords and charities which issue the relevant contracts.

It is possible that similar scenarios could also arise in relation to the information provided to contract-holders regarding their deposit, and also in relation to the arrangements for safeguarding property left in abandoned dwellings.

In all cases, the potential scenarios described above would also adversely affect contract-holders who could find themselves having to pay fees and costs to solicitors and/or courts. They may also find themselves evicted under an introductory or prohibited conduct standard contract without recourse to an appropriate review arrangement, or lose part or even all of their deposit because they have not been provided with the correct information. Similarly, they may not be able to recover any property left following an abandonment because the rules and procedures regarding the landlord's duties in such situations were not clear to them.

There are no discernible benefits for landlords, contract-holders, the courts, or other stakeholders, in not making these regulations. It is conceivable that there may be potential financial benefits for solicitors and letting agents in the short term due to an increased level of business generated by private landlords seeking legal and professional advice in relation to the production of correct forms and notices, and in relation to the safeguarding of property where a dwelling has been abandoned, but these potential financial benefits would be negligible and very narrowly felt. Set against this small benefit, is the likely disruption across the private rented sector and the related financial harms that would result in the absence of the regulations.

Option 2 – Do Minimum

A potential alternative to making legally-binding regulations would be for the Welsh Ministers to issue non-statutory guidance.

In relation to forms and notices, this would mean the Welsh Ministers issuing the 38 forms that are proposed to be prescribed in the regulations, but without this being underpinned by a statutory instrument. Likewise, guidance could be issued in lieu of regulations to: suggest appropriate arrangements for conducting reviews of

decisions to extend introductory or probationary periods or to terminate introductory and prohibited conduct standard contracts; to describe the appropriate information to be given to contract-holders regarding their deposit; and to set out suggested arrangements that may apply if any property not belonging to the landlord were left in an abandoned property.

Costs and benefits

The costs and benefits of this approach in financial terms are difficult to quantify, as they are in relation to options 1 and 3. Whichever approach is taken, stakeholders will need to familiarise themselves with the new arrangements that will be introduced in relation to forms and notices, reviews of decisions, deposit scheme information and safeguarding property.

Such transitional costs, however, will not be limited to the specific matters covered by this RIA, which deal with relatively small elements within the major whole-system change being introduced by the 2016 Act itself. Those wider transitional costs are set out in general terms in the RIA to what is now the 2016 Act². More specific costs to stakeholders – in particular, landlords, letting agents and organisations which provide support and advice to tenants – of familiarising themselves with the new requirements were also set out in detail in the RIA to the Renting Homes (Model Written Statements of Contract) (Wales) Regulations 2022. This latter RIA is of particular relevance as it relates to the written contracts that landlords will be required to put in place. The contracts include references to the relevant forms and notices to be used in particular circumstances, and also include as terms in relevant contracts: review arrangements, deposit scheme information requirements, and safeguarding of property responsibilities. As such, landlords and their agents will need to familiarise themselves with the specific requirements set out in the four SIs covered by this RIA as part of their wider work to convert existing tenancies and licenses to occupation contracts³.

In conclusion, it is not possible to identify any particular benefits for stakeholders in dealing with these matters through guidance rather than regulations. Regulation-making powers were included in the 2016 Act so that clear and legally-binding arrangements could be set out in subordinate legislation. This will help ensure clarity and fairness, minimise the likelihood of disputes arising between landlords and contract-holders regarding these important matters, and enable any such disputes that may arise to be settled more easily. Not to use those powers to make appropriate regulations would not be justifiable.

Furthermore, not making these regulations would be a retrograde step given that arrangements equivalent to those included in the SIs relating to forms and notices, reviews of decisions and deposit schemes are currently set out in existing housing law (this does not apply to safeguarding property, where the current arrangements are underpinned by a combination of legislation and common law which is widely acknowledged to be unclear and in need of modernisation and consolidation).

² <https://senedd.wales/laid%20documents/pri-ld10098-em-r/pri-ld10098-em-r-e.pdf>

³ <https://senedd.wales/media/351bagyd/sub-ld14837-em-e.pdf>

For these reasons, the option of dealing with the matters covered by these four SIs through guidance alone has been discounted by the Welsh Ministers as there are no discernible advantages over the preferred option.

Option 3 – Make Regulations

This is the preferred option.

Costs and benefits

It is important to note at the outset of this analysis that none of the provisions in any of the four SIs covered by this RIA will introduce any *additional* financial costs for landlords or contract-holders (notwithstanding the costs of familiarisation referenced at option 2 above, which will apply to this preferred option also). This is because all of the arrangements and requirements included in these regulations replicate, or in some cases consolidate and simplify, equivalent requirements which already exist under current law. This includes, for example, the requirement to provide certain types of information in writing, arrangements for reviewing decisions taken by social landlords in relation to particular types of tenancy and licence, providing information in relation to deposit schemes, and safeguarding tenants' property.

The costs and benefits of this preferred approach of making Regulations are set out in the following sections in relation to each of the four SIs covered by this RIA.

The Renting Homes (Prescribed Forms) (Wales) Regulations 2022

Under this preferred approach, the Welsh Ministers have set out in Regulations the particular form of notices and documents which will be used most frequently, and those where it will be beneficial for landlords and contract-holders to have access to forms and notices which they know will be legally correct and therefore not likely to be rejected by the other party – or a court – on the basis of a technicality. In addition, so as to minimise costs to landlords, agents, contract-holders, and representative bodies, guidance notes have been included in the forms, where applicable, to make their purpose easier to understand. Landlords and contract-holders will be able to download these forms and notices from the Welsh Government website⁴ so as to further reduce costs and minimise the chances of errors occurring.

There will of course be some modest operational costs once the Renting Homes scheme comes into force, including the costs associated with completing and issuing relevant forms and notices in situations where these are required. However, in many cases, these will not be new costs because landlords are already required to issue certain equivalent forms and notices under existing housing law. In terms of savings to the sector, by prescribing these forms and notices in Regulations and providing downloadable templates for landlords and contract-holders to use, the potential costs

⁴ These downloadable templates were produced in-house by Welsh Government as part of the Renting Homes (Wales) Act implementation programme. Those costs have been absorbed within internal budgets and, consequently, have not been included in this analysis of costs.

set out at Option 1 above (and which Welsh Government acknowledges are difficult to quantify) to landlords and contract-holders will not arise.

The Renting Homes (Review of Decisions) (Wales) Regulations 2022

The provisions set out in this SI largely replicate and modernise existing arrangements in current housing law under which a tenant may request a review of a decision to terminate an introductory or demoted tenancy. As such, the relevant landlords already have systems in place to conduct reviews of this type. No additional costs are anticipated as it is not expected that the introduction of introductory standard contracts and prohibited conduct standard contracts (which largely mirror existing introductory and demoted tenancies) will lead to an increase in the use of these types of letting arrangements or greater demand from contract-holders for reviews.

The Renting Homes (Deposit Schemes) (Required Information) (Wales) Regulations 2022

There will be no additional costs arising from the requirements set out in this SI as they replicate arrangements already in place.

As is currently the case, if a landlord does not comply with the deposit protection requirements, the court may impose a financial penalty on the landlord. In addition, under the 2016 Act a landlord failing to protect the contract-holder's deposit will not be able to issue a landlord's possession notice until the deposit is protected correctly. However, those potential costs do not arise as a result of the provisions in this SI, which simply replaces current requirements set out in the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 with equivalent arrangements within the 2016 Act scheme, and which focusses solely on the information the landlord has to provide to the contract-holder in relation to how the deposit is to be protected.

The Renting Homes (Safeguarding Property in Abandoned Dwellings) (Wales) Regulations 2022

As mentioned previously, the current law is unclear in relation to landlords' duties to safeguard property left behind by a tenant or licensee where the property has been abandoned.

Under existing arrangements, if a landlord has served the correct notice, and made a suitable length of time available for the former tenant, or owner of the property, to collect any personal property and has not received any response, they may dispose of, or sell the property and use the proceeds to offset any reasonable costs that have been incurred in the removal, storage and sale of that property. However, the current law expects the best price to be obtained and the landlord to pay back to the tenant any amount above the landlord's reasonable costs.

Whilst these Regulations essentially replicate existing arrangements, they simplify and consolidate them within a single statutory instrument supported by guidance, which will make the process, and the responsibilities of both parties, much clearer than is currently the case.

As now, landlords will be able to require that contract-holders or where they have identified an owner of the property, meet the costs of removal, storage and delivery of any such property that they wish to recover during the four week period as a condition of the landlord returning that property. Also, as with current law, the landlord may sell any property unclaimed after the four-week period ends and use the proceeds to cover their costs and offset any rent arrears accumulated during the abandonment period, although any profit beyond this should be returned to the contract-holder.

At any time during the four-week period, the contract-holder or owner will be able to reclaim their property from the landlord. However, there may be a requirement to reimburse the landlord for any expenses incurred in the safeguarding of their property, for example the costs of removal or storage. The four-week period has been settled on as Welsh Government believes this to be a fair compromise between the interests of the landlord and the contract-holder: a landlord could incur an unreasonable level of expense if required to safeguard possessions for any longer than four weeks, and a requirement to do so may deter landlords from using the abandonment procedure to repossess the dwelling.

A landlord who considers the property is perishable, or the value of the property would not cover the costs of safeguarding, or would incur unreasonable expense or inconvenience, may dispose of it (for example, a landlord would not be expected to store items which have been discarded as household refuse or stored in a fridge).

There is evidence that many private landlords, especially smaller scale landlords, are unaware that they have responsibilities under current law to safeguard property left in a dwelling after the tenant has left. In a worst case scenario, this unfamiliarity can result in a landlord finding themselves on the receiving end of a claim made against them by a former tenant where they have disposed of property without following the correct procedure. In such situations a landlord may incur costs through seeking professional or legal advice to defend against the claim, as well as from recompensing the tenant if the court finds against them.

The Welsh Ministers' expectation is that, by consolidating and clarifying current requirements into a single statutory instrument supported by clear guidance, landlords and contract-holders alike will have a far greater understanding than is currently the case of the arrangements that apply in relation to any property left in an abandoned dwelling by a former contract-holder. It is anticipated that this will lead to fewer instances of landlords incorrectly disposing of property and an attendant reduction in claims being made against them, which will be of financial benefit to both parties. As mentioned above, the safeguarding duty only applies where a dwelling has been abandoned and in relation to property that is clearly of value, and as such will not result in landlords having to pay for removal and storage for any and all items left behind by a contract-holder. This will also lead to a potential reduction in costs for landlords compared to existing requirements.

8. Competition Assessment

None of these Regulations are expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.

9. Post implementation review

The implementation of these Regulations will be monitored and evaluated as part of the wider independent evaluation project commissioned for the 2016 Act.

It is proposed that this project will be commissioned for a two or possibly three year period. It will commence prior to the new legislation coming into effect, which will allow relevant baseline information to be collated and future information needs identified. The evaluation will include both process and impact evaluation. The process evaluation, which will be a more frequent element in the study, will consider the way in which landlords are implementing the legislation, identifying examples of good practice and what is working well. It will also consider any problems and difficulties encountered by all stakeholders so that action may be taken to resolve them at an early stage. The findings would be used to improve the adoption of the new legislation including, importantly, the use of the model contracts. The impact evaluation will consider the impact(s) of the new legislation against the desired effects of the 2016 Act.

A programme of monitoring and evaluation activity will be developed to allow reporting one year after the legislation has been commenced and at appropriate points thereafter.

The evaluation will use both qualitative and quantitative methods. The quantitative indicators may include:

- (i) Use of web-based information on the new legislation.
- (ii) The frequency of downloads of model contracts for use by landlords.
- (iii) Landlords' knowledge of their rights and obligations (sample survey).
- (iv) Contract-holders' knowledge of their rights and obligations (sample survey).
- (v) Landlords' views and experiences of the new legislation.
- (vi) Contract-holders' views and experiences of the new legislation.
- (vii) Level of requests for advice from agencies.
- (viii) Nature of requests for advice from agencies.
- (ix) Number of court cases.
- (x) Reason(s) for cases proceeding to court.

The above Information, and other information identified as relevant to the evaluation, would be compared and contrasted with the baseline data collected prior to the commencement of the new legislation.