

Draft Regulations laid before Senedd Cymru under section 256(3) and (4)(n) of the Renting Homes (Wales) Act 2016, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2022 No. (W.)

HOUSING, WALES

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Renting Homes (Wales) Act 2016 (anaw 1) (“the 2016 Act”) changes the renting landscape in Wales by, amongst other things, introducing the concept of “standard” and “secure” “occupation contracts”.

These Regulations amend Schedule 12 to the 2016 Act. Schedule 12 sets out provision about tenancies and licences that existed before the 2016 Act came into force and which convert into occupation contracts on the “appointed day” (the day on which the 2016 Act is fully brought into force). These are referred to as “converted contracts”. Schedule 12 is designed to ensure that the 2016 Act will work in relation to such contracts.

Regulation 5 inserts new paragraph 2A which provides that licences held by 16 and 17 year olds which are secure tenancies or assured agricultural occupancies (“AAOs”) 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.

These Regulations make the following amendments that concern supported accommodation and outline which tenancies and licences can, and cannot, be supported standard contracts (see Part 8 of the 2016 Act).

- Regulation 4(b) inserts new sub-paragraph (5) into paragraph 2. This amendment disapplies

Part 5 of Schedule 2 for any tenancy which existed immediately before the appointed day. The effect of this amendment is to ensure a landlord cannot stop a tenancy that relates to supported accommodation from converting and becoming an occupation contract. Although Part 5 of Schedule 2 cannot meaningfully apply to a licence which is more than 6 months old, the amendment puts this beyond doubt.

- Regulation 8 inserts new paragraph 6A which provides that only an assured shorthold tenancy or a licence (other than a licence which was a secure tenancy) which relates to supported accommodation is permitted to convert into a supported standard contract.
- Regulation 14 inserts new paragraph 24A which provides that 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.

These Regulations make the following amendments in relation to “starter tenancies”.

- Regulation 7 substitutes paragraph 5 to expand the converted contracts that have effect as an introductory standard contract (see section 16 of, and Schedule 4 to, the 2016 Act). The amendment adds (to the existing provision for introductory tenancies) assured shorthold tenancies that were starter tenancies provided the landlord was a registered social landlord or private registered provider of social housing (with certain exceptions).
- As a consequence of the amendment made to paragraph 5, paragraph 23 is amended (by regulation 13). Regulation 13(a) and (b) amend paragraphs 23(3)(c) and (6) to update the references, in paragraphs 1(7) and 2 of Schedule 4, to the “introduction date” of the contract to include the introduction date of the starter tenancy. Regulation 13(c) substitutes paragraph 23(7) to modify the application of the Act to deal with situations where an extension has already been given under a starter tenancy.

Regulation 10 inserts new paragraph 13A which provides that the deposit scheme provisions of the 2016 Act only apply to a converted contract that, immediately before the appointed day, was an assured shorthold tenancy.

Regulation 11 inserts new paragraph 13B which provides that where there is a converted periodic standard contract which, immediately before the appointed day, was an assured tenancy containing a term about rent variation, the rent can only be varied in accordance with that term, and the landlord cannot use section 123 to vary the rent.

Regulation 12 amends paragraph 15, which concerns variation of rent. Regulation 12(a) amends paragraph 15(1) to ensure there is no tension between that provision and paragraph 13B. In essence, this amendment reinforces that where a converted contract falls within paragraph 13B, paragraph 15 does not apply.

Regulation 12(b) amends paragraph 15(3) so that the contract-holder under the types of contract referred to in paragraphs 15(3)(b) or (c) can, under regulations made under paragraph 15(2), apply for a determination of rent for the dwelling.

A number of the amendments made by these Regulations concern the conversion of AAOs.

- Regulation 3 amends paragraph 1 to include some additional definitions. The most significant is the way in which “assured tenancy” is read in Schedule 12; the amendment removes any doubt that it includes an AAO which, immediately before the appointed day, was treated as an assured tenancy under section 24(3) of the Housing Act 1988.
- Regulation 4(b) inserts new sub-paragraph (6) into paragraph 2. The effect of this amendment is that existing AAOs that would not otherwise be capable of becoming occupation contracts (because no rent or other consideration is payable under them) will convert into occupation contracts on the appointed day.

Regulation 19(b) omits paragraph 32(4). The effect of this amendment is that a new contract which arises under section 184(2) or is within section 184(6) is a substitute contract for the purposes of Schedule 12. As a consequence of omitting paragraph 32(4), regulation 15 amends paragraph 25A.

The amendments to paragraph 25A provide that where a substitute contract is a periodic standard contract (which either arises under section 184(2) or is within section 184(6)) the landlord must give 6 months’ notice under section 173 and the landlord cannot give a section 173 notice within the period of 4 months, starting with the date on which the contract-holder become entitled to occupy the dwelling under the original tenancy or licence.

Regulation 19(c) inserts new sub-paragraph (8) into paragraph 32. This amendment means that in relation to a substitute contract that is a periodic standard contract arising under section 184(2), the minimum notice period under section 174 is 6 months (not 2 months). This amendment also means that in relation to a substitute contract that is within section 184(6), paragraphs 25A(2)(a), 25B, 25C and 25D are omitted.

These Regulations also make the following amendments:

- Regulation 4(a) disapplies paragraph 7(3)(k)(i) of Schedule 2 in relation to a tenancy or licence which immediately before the appointed day was a secure or assured tenancy; removing the prohibition on this type of asylum-seeker accommodation from converting to the relevant occupation contract on the appointed day.
- Regulation 6(a) and (b) make minor amendments to paragraph 4. Notice of a standard contract is not given “under” section 11(2)(b) of the 2016 Act; it is given under section 13. Section 11(2)(b) simply describes the notice that has to be given. These amendments seek to better reflect this position.
- Regulation 9 makes an amendment to rectify a minor drafting error.
- Regulation 16 amends paragraph 25B to provide that the provisions of that paragraph do not apply to an assured tenancy that was not an assured shorthold tenancy.
- Regulation 17 contains a minor amendment to put it beyond doubt that paragraph 25D could not apply to a fixed term standard contract that was a fixed term secure tenancy or (subject to some exemptions) a fixed term assured tenancy.
- Regulation 18 amends paragraph 29(1) to narrow its purported application to only periodic assured tenancies. Prior to the appointed day, in its application to Wales, Ground 7 of Schedule 2 to the Housing Act 1988 only applied to periodic assured tenancies and this amendment reflects that position.
- Regulation 19(a) makes textual amendments to aid clarity.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result,

it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before Senedd Cymru under section 256(3) and (4)(n) of the Renting Homes (Wales) Act 2016, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2022 No. (W.)

HOUSING, WALES

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

Made ***

*Coming into force in accordance with
regulation 1(2).*

The Welsh Ministers make the following Regulations in exercise of the power conferred on them by paragraph 33 of Schedule 12 to the Renting Homes (Wales) Act 2016(1).

In accordance with section 256(3) and (4)(n) of that Act, a draft of these Regulations has been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

1.—(1) The title of these Regulations is the Renting Homes (Wales) Act 2016 (Amendment of Schedule 12) Regulations 2022.

(2) These Regulations come into force on the day after the day on which they are made.

Amendments to Schedule 12

2. Schedule 12(2) to the Renting Homes (Wales) Act 2016 is amended as follows.

(1) 2016 (anaw 1).
(2) Schedule 12 was amended by section 18 of, and paragraphs 1 and 27 of Schedule 6 to, the Renting Homes (Amendment) (Wales) Act 2021 (asc. 3).

3. In paragraph 1(1), in the appropriate place insert—

““assured agricultural occupancy” (*“meddiannaeth amaethyddol sicr”*) has the same meaning as in Part 1 of the Housing Act 1988 (c. 50) (see section 24(1) of that Act);

“assured tenancy” (*“tenantiaeth sicr”*) includes a reference to an assured agricultural occupancy which is treated as an assured tenancy under section 24(3) of the Housing Act 1988 (as well as an assured agricultural occupancy which is an assured tenancy);

“converted AAO” (*“MAS wedi ei throsi”*) means a converted contract which immediately before the appointed day was an assured agricultural occupancy;”

4. In paragraph 2—

(a) after sub-paragraph (2) insert—

“(2A) Schedule 2 applies to a tenancy or licence which immediately before the appointed day was a secure tenancy or an assured tenancy as if paragraph 7(3)(k)(i) of that Schedule were omitted.”

(b) at the end insert—

“(5) Part 5 of Schedule 2 (special rules applying to supported accommodation) does not apply to—

(a) a tenancy which existed immediately before the appointed day;

(b) a licence which—

(i) immediately before the appointed day was a secure tenancy;

(ii) has a start date (within the meaning given in paragraph 13(5) of Schedule 2) falling more than 6 months before the appointed day.

(6) In their application to a tenancy or licence which immediately before the appointed day was an assured agricultural occupancy—

(a) section 7 (tenancies and licences that are occupation contracts) applies as if subsection (1)(b) (rent or other consideration must be payable) were omitted, and

(b) Schedule 2 applies as if paragraph 1(2) were omitted.”

5. After paragraph 2 insert—

“2A.—(1) Section 7(6) and paragraph 7(2) of Schedule 2 do not apply to a licence where immediately before the appointed day—

- (a) the licensee was aged 16 or 17, and
- (b) the licence was—
 - (i) a secure tenancy, or
 - (ii) an assured agricultural occupancy.

(2) Where sub-paragraph (1) applies, this Act applies to the contract-holder as if he or she were aged 18.”

6. In paragraph 4—

- (a) in sub-paragraph (1)—
 - (i) after “converted contract” insert “to which section 11 applies (whether or not under paragraph 3)”;
 - (ii) for “notice under” substitute “notice as described in”.
- (b) in sub-paragraph (2) for “does so” substitute “gives notice under section 13”.

7. For paragraph 5 substitute—

“5. A converted contract which immediately before the appointed day was—

- (a) an introductory tenancy, or
- (b) an assured shorthold tenancy—
 - (i) under which the landlord was a registered social landlord or a private registered provider of social housing, but not a fully mutual housing association or a co-operative housing association, and
 - (ii) which was expressed as being, or otherwise amounted to, a starter tenancy,

has effect as an introductory standard contract (see paragraph 23).”

8. After paragraph 6 insert—

“6A. A converted contract relating to supported accommodation has effect as a supported standard contract only if immediately before the appointed day the contract was—

- (a) an assured shorthold tenancy (see paragraph 24A for further provision about supported standard contracts that were assured shorthold tenancies), or
- (b) a licence, other than a licence which was a secure tenancy.”

9. In paragraph 12A, omit the “(1)” which precedes the text of that paragraph.

10. After paragraph 13 insert—

“Deposit Schemes

“13A.—(1) The provisions mentioned in sub-paragraph (2) do not apply to a converted contract unless, immediately before the appointed day, it was an assured shorthold tenancy.

(2) The provisions (which concern a requirement to use a deposit scheme) are—

- (a) sections 45 and 46;
- (b) Schedule 5;
- (c) paragraphs 4(2) to (5) of Schedule 9A.”

11. After the heading “Variation” and before paragraph 14 insert—

“13B. Section 123 (variation of rent) does not apply to a converted contract that is a periodic standard contract which immediately before the appointed day—

- (a) was an assured tenancy but not an assured shorthold tenancy, and
- (b) contained a term which made provision about variation of the rent under the tenancy or licence.”

12. In paragraph 15—

(a) in sub-paragraph (1) after “converted contract” insert “(other than a contract mentioned in paragraph 13B)”;

(b) for sub-paragraph (3) substitute—

“(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,

(b) it is a periodic standard contract which is a substitute contract (see paragraph 32)—

- (i) arising under section 184(2), or
- (ii) within section 184(6),

and which immediately before the appointed day was an assured tenancy, but not an assured shorthold tenancy, for a fixed term, or

(c) it is a secure contract which immediately before the appointed day

was an assured tenancy, but not an assured shorthold tenancy, for a fixed term.”

13. In paragraph 23—

(a) for sub-paragraph (3)(c) substitute—

“(c) the reference in paragraph 1(7) of Schedule 4 to the introduction date of the contract were a reference to—

(i) in relation to a converted contract which, immediately before the appointed day, was an introductory tenancy, to the day which was the beginning of the trial period under section 125(2)(a) or (b) of the Housing Act 1996 (c. 52);

(ii) in relation to a converted contract which, immediately before the appointed day, was a starter tenancy, to the introduction date of the tenancy as determined in accordance with sub-paragraph (5).”

(b) for sub-paragraph (6) substitute—

“(6) For the purposes of paragraph 2 of Schedule 4 the introduction date—

(a) in relation to a converted contract which, immediately before the appointed day, was an introductory tenancy, is the day which was the beginning of the trial period under section 125(2)(a) or (b) of the Housing Act 1996;

(b) in relation to a converted contract which, immediately before the appointed day, was a starter tenancy, is the introduction date of the tenancy as determined in accordance with sub-paragraph (5).”

(c) for sub-paragraph (7) substitute—

“(7) Paragraph 2(5) and (6) of Schedule 4 does not apply, but—

(a) a notice of extension given, in relation to a converted contract which was an introductory tenancy, under section 125A of the Housing Act 1996, and

(b) a notice, given in relation to a converted contract which was a starter tenancy, extending the period at the end of which the landlord and the tenant would enter into an assured tenancy (that is not an assured shorthold tenancy),

has effect as if given under paragraph 3 of Schedule 4 (and, regardless of the length of extension under a notice as described in paragraph (b), the introductory period ends 18 months after the introduction date of the starter tenancy (as determined in accordance with sub-paragraph 5)).”

14. After paragraph 24 insert—

“Supported standard contract that was an assured shorthold tenancy

24A. This Act applies to a converted contract which—

- (a) immediately before the appointed day was an assured shorthold tenancy, and
- (b) took effect on conversion as a supported standard contract,

as if sections 144 (mobility) and 145 (temporary exclusion) were omitted.”

15. In paragraph 25A—

(a) in sub-paragraph (2)(b)—

- (i) for “the references in subsections (1) and (2)” substitute “the reference in subsection (1)”;
- (ii) for “were references” substitute “was a reference”;

(b) after sub-paragraph (2)(b) insert—

“, and

- (c) in section 175, for subsections (2) and (3) there were substituted—

“(2) If the converted contract is a substitute tenancy or licence, the landlord may not give notice under section 173 before the end of the period of four months starting with the day on which the contract-holder became entitled to occupy the dwelling under the original tenancy or licence.

(3) For the purposes of subsection (2)—

- (a) a converted contract was a substitute tenancy or licence if—

- (i) the occupation date of the converted contract falls immediately after the end of a preceding tenancy or licence,

- (ii) immediately before the occupation date of the converted contract a tenant or licensee under the contract was a tenant or licensee under the preceding tenancy or licence, and a landlord under the

converted contract was a landlord under the preceding tenancy or licence, and

(iii) the converted contract relates to the same (or substantially the same) dwelling as the preceding tenancy or licence, and

(b) "original tenancy or licence" means—

(i) where the substitute tenancy or licence has an occupation date falling immediately after the end of a tenancy or licence which is not a substitute tenancy or licence, the tenancy or licence which preceded the substitute tenancy or licence;

(ii) where there have been successive substitute tenancies or licences, the tenancy or licence which preceded the first of the substitute tenancies or licences."

16. In paragraph 25B, after sub-paragraph (1) insert—

“(1A) The reference to a tenancy or licence for a fixed term in sub-paragraph (1)(a) does not include a reference to an assured tenancy that was not an assured shorthold tenancy.”

17. In paragraph 25D(1) after “applies to a fixed term standard contract” insert “(other than a tenancy or licence mentioned in paragraph 26(2) or (3))”.

18. In paragraph 29(1) for “an assured tenancy” substitute “a periodic assured tenancy”.

19. In paragraph 32—

(a) in sub-paragraph (3)—

(i) in paragraph (a) for “who immediately before the occupation date of the contract” substitute “who, immediately before the day on which the contract-holder became entitled to occupy the dwelling under that contract,”;

(ii) in paragraph (b) for “date” substitute “day”;

(b) omit sub-paragraph (4);

(c) after sub-paragraph (7), insert—

“(8) This Schedule applies to a substitute contract which—

(a) arises under section 184(2) as if paragraph 25A(2)(a) were omitted;

(b) is within section 184(6) as if paragraphs 25A(2)(a), 25B, 25C and 25D were omitted.”

Name

Minister for Climate Change, one of the Welsh
Ministers

Date