

SL(6)226 – The Renting Homes (Wales) Act 2016 **(Amendment of Schedule 12) Regulations 2022**

Background and Purpose

These Regulations make a series of amendments to Schedule 12 to the Renting Homes (Wales) Act 2016.

Schedule 12 sets out arrangements for tenancies and licences currently in existence which will convert into occupation contracts on the “appointed day” (i.e. the day on which the 2016 Act is brought into force). These are referred to as “converted contracts”. The Explanatory Memorandum to these Regulations states that, *“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 and licence undergoes conversion into an occupation contract, with a balance being struck in respect of both parties’ rights and obligations.”*

These Regulations seek to address a number of issues that have been identified relating to the conversion process. These include:

- Providing that licences held by 16 and 17 year olds which are secure tenancies or assured agricultural occupancies (“AAOs”) convert into occupation contracts;
- Making a number of other amendments concerning the conversion of AAOs;
- Making amendments that concern supported accommodation and outline which tenancies and licences that can, and cannot, be supported standard contracts;
- Making amendments in relation to “starter tenancies”;
- Providing 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;
- Providing 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 of the 2016 Act to vary the rent;
- Making an amendments so that the contract-holder under certain types of contract can, under regulations made under paragraph 15(2) of Schedule 12 to the 2016 Act, apply for a determination of rent for the dwelling;
- Providing that where a substitute contract is a periodic standard contract (which either arises under section 184(2) or is within section 184(6) of the 2016 Act) the landlord must give 6 months’ notice under section 173 of the 2016 Act and the landlord cannot give a section 173 notice within the period of 4 months, starting with the date on which the contract-holder became entitled to occupy the dwelling under the original tenancy or licence;



- Providing that, in relation to a substitute contract that is a periodic standard contract arising under section 184(2) of the 2016 Act, the minimum notice period under section 174 of the 2016 Act is 6 months (not 2 months);
- Amendments to clarify the effect of certain provisions and rectify minor drafting errors.

Procedure

Draft Affirmative

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

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

1. 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 consultation has been carried out in relation to these Regulations. The Explanatory Memorandum to these Regulations (which also cover the Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022) notes that:

“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.”

2. 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.

These Regulations amend primary legislation, namely Schedule 12 to the Renting Homes (Wales) Act 2016. The Committee notes that the Legislation, Justice and Constitution Committee of the Fifth Senedd reported on the Renting Homes (Amendment) (Wales) Bill during Stage 1 proceedings. The Report references the existence of Henry VIII powers and the clarifications sought at the time from the Minister in relation to the justification for certain regulation-making powers in that Bill being Henry VIII powers. The Minister’s response was:



“The Schedules to the 2016 Act contain a power for the Welsh Ministers to amend them, as we will need to review the matters contained within those Schedules as the housing landscape evolves over time. We need to have the flexibility to react to those changes and make appropriate provision within the various Schedules, as necessary. The Bill therefore adopts the same approach. The alternative would seem to be regulations which would also amend primary legislation or, alternatively, would need to be read alongside the primary legislation, resulting in detail falling outside of primary legislation into secondary legislation, which can itself attract criticism so far as scrutiny and accessibility of the law issues are concerned.”

Welsh Government response

A Welsh Government response is not required.

Committee Consideration

The Committee considered the instrument at its meeting on 11 July 2022 and reports to the Senedd in line with the reporting points above.

