

**Explanatory Memorandum to the Renting Homes (Model Written Statements of Contract) (Wales) Regulations 2022 and the Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (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 Renting Homes (Model Written Statements of Contract) (Wales) Regulations 2022 and the Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022. I am satisfied that the benefits justify the likely costs.

**Julie James**  
**Minister for Climate Change**  
**12 January 2022**

## **PART 1**

### **1. Description**

The Renting Homes (Model Written Statements of Contract) (Wales) Regulations 2022 ('the Model Written Statements Regulations') prescribe three model written statements of occupation contract for use by landlords under the new framework established by the Renting Homes (Wales) Act 2016 ('*the 2016 Act*'). The model written statements relate to secure contracts, periodic standard contracts and fixed term standard contracts.

The Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022 ('the Explanatory Information Regulations') prescribe the explanatory information that must be included in the written statements of all occupation contracts.

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

None.

### **3. Legislative background**

Section 29(1) of the 2016 Act requires the Welsh Ministers to prescribe model written statements of contracts for such kinds or descriptions of occupation contract as they think fit.

Section 32(4) of the 2016 Act provides that a written statement of an occupation contract must contain explanatory information about such matters as may be prescribed.

Section 256(1) of the 2016 Act provides that any power to make regulations under the 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.

These Regulations are being made under the negative resolution procedure.

### **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 licenses, making the rights and obligations of both landlord and tenant or licensee (referred to in the Act as the 'contract-holder') much clearer. Central to this is the requirement, under section 31 of the Act, for a landlord to provide a 'written statement' of the occupation contract to the contract-holder.

The purpose of the Model Written Statements Regulations is to provide model written statements that encourage consistency in the way written statements are drafted, and provides a reliable aid for the creation of written statements that are compliant with the legal requirements of the 2016 Act. In accordance with the requirement set out in section 29(2) of the 2016 Act, the model written statements incorporate without modification all the fundamental and supplementary provisions that are applicable to the contracts that are prescribed.

To add further to the consistency and clarity of written contracts, section 32(4) of the 2016 Act states that a written statement "must contain explanatory information about such matters as may be prescribed." The Explanatory Information Regulations prescribe the matters about which information must be given to the contract-holder in order to convey the purpose and value of their written statement.

## **5. Consultation**

A twelve week public consultation ran from 24 March 2021 to 16 June 2021 on the two sets of draft Regulations. The consultation was drawn to the attention of a wide audience of key stakeholders including private landlord representative groups, social landlords, tenant representative groups and housing charities.

Forty-six responses to the consultation were received from a broad range of stakeholders including examples of all of those listed in the preceding paragraph as well as individual tenants and private landlords.

The responses contained contrasting views on the suitability of the draft model written statements and the proposed mandatory explanatory information. Whilst there was support for both, many consultees were concerned by the layout, format, ordering and length of the draft model written statements, and by the formality of the language used in the terms of the contracts. Some consultees recommended the addition of different terms to the model written statement or the omission of existing terms. A substantial majority of consultees disliked the suggested means by which the different types of terms would be identified in the model written statements.

In response, the Welsh Government has acknowledged the concerns raised in relation to the length of the model written statements and the accessibility of the language used in the terms but noted that the language used and the overall length of the written statements necessarily reflects provisions set out elsewhere in legislation. Nevertheless, the Welsh Government has committed to address some of the concerns raised through the production of separate guidance that provides a

simplified explanation of the terms included in the model written statements. In the case of the Explanatory Information Regulations, the concerns are in part answered by the fact that the requirements of the regulations are translated into 'explanatory information' set out in the model written statements, which thus provide easy to follow templates. The Welsh Government has revised the means by which the different types of terms are identified in the model written statements in response to stakeholder concerns.

A summary of the consultation responses and a fuller Government response is available at:

[Renting Homes \(Wales\) Act 2016 draft regulations | GOV.WALES](#)

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **6. Options**

The overall policy objective is to maximise consistency and clarity of written statements of occupation contracts so that renting a home in Wales is as simple and straightforward as possible. Three options for achieving this objective have been considered. As section 29(1) of the 2016 Act requires the Welsh Ministers to prescribe model written statements of contracts for such kinds or descriptions of occupation contract as they think fit, a ‘business as usual’ or ‘do nothing’ option is not amongst those options.

The options considered are:

- Option 1 – Do Minimum: prescribe Model Written Statements relating to the three occupation contracts likely to be most frequently issued in the private and social rented sectors respectively – the periodic and fixed term standard contracts and the secure contract – but do not prescribe any explanatory information to be included in written statements;
- Option 2 – prescribe Model Written Statements for the three types of occupation contract most frequently issued in the private and social rented sectors respectively – and also prescribe explanatory information to be included in all written statements;
- Option 3 - prescribe Model Written Statements for the six types of occupation contract specifically identified in the 2016 Act – and also prescribe explanatory information to be included in all written statements.

### **7. Costs and benefits**

The implementation of the system of renting homes in Wales established by 2016 Act will see certain costs attributable to landlords (including private and community landlords) and letting agents arising from the need to produce and issue a written statement of occupation contract to every contract holder. There are also certain costs attributable the Welsh Government in connection with creation of the Model Written Statements. These costs represent the baseline from which it is possible to calculate any additional costs that might arise from the three identified options.

In order to produce a written statement of an occupation contract (in the absence of a model written statement), a landlord or letting agent will first need to familiarise themselves with the all the fundamental and supplementary provisions applicable to that contract (as set out in the 2016 Act and the relevant regulations, including the Renting Home (Supplementary Provisions) (Wales) Regulations 2022) including the identification of those fundamental provisions that may be omitted or modified as

terms in a contract. They will then need to convert all existing contracts into written statements of occupation contracts and continue to produce new written statements for occupation contracts entered into in the future. The costs for landlords of undertaking these tasks were set out in the Regulatory Impact Assessment (RIA) that accompanied the 2016 Act. Taking those costs and updating them to take into account price increases and other changes that have occurred in the intervening period, the following represents a summary of the likely costs to landlords of producing written statements:

### Private Landlords

The anticipated cost to the approximately 100,000 private landlords in Wales of familiarising themselves with the legislation is approximately £10.2m. This is calculated on the assumption that familiarisation will take one day per landlord at a cost of approximately £102 (based on UK median hourly earnings).

Landlords or their appointed agents will be required, within six months of this legislation coming into force, to issue written statements of converted contracts to all contract-holders - that is, their existing tenants. The total cost of issuing contracts based on an estimate of 205,000 private rented properties (less 15 per cent to take account of contract-holders not requiring a converted contract because they leave the property within six months of the legislation coming into force) is estimated to be approximately £1.79M (£261.5K for printing, £592.5K for administration and £225K for postage).<sup>1</sup>

The RIA for the 2016 Act also factored in the possibility that some private landlords will wish to seek legal advice when converting a contract. Assuming that no more than one hour of legal advice at a cost of around £200 would be required, and only around one in five landlords (20,000) would pursue such advice, this equates to a cost of £4M. Given private landlords would probably wish to keep costs to a minimum, many can be expected to seek information from websites and other sources of information.

### Community landlords

The anticipated cost to the 59 community landlords<sup>2</sup> in Wales of familiarising themselves with the legislation is approximately £68K (assuming 2.5 days of familiarisation for five officers per local authority and registered social landlord, one

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<sup>1</sup> The cost of doing this was based on the cost of printing a copy of a contract (£1.50), administration and processing each contract (£3.40), and postage (£1.29). The administration and process cost was based on 15 minutes per contract and UK median hourly earnings. The postage cost was calculated on the basis of Royal Mail non-business postage rates for a large letter.

<sup>2</sup> Local authorities with retained housing stock, Registered Social Landlords and 'de minimus' housing associations

day of familiarisation for a lawyer in each of the eleven authorities that retained their housing stock, plus one day of staff time for each of the 'de minimus' housing associations). The amount is calculated on the basis of salary rates for the equivalent Welsh Government grades.

The estimated cost to community landlords of issuing converted contracts for the 230,000 social rented properties in Wales is approximately £1.16M (£345K for printing, £713K for administration and £103k for postage).<sup>3</sup>

Although they will receive information and briefing on the new legislation from the Welsh Government and from Community Housing Cymru, their representative body, it is possible some housing associations may choose to seek independent legal advice. For the sake of completeness, the RIA for the 2016 Act estimated the cost if all housing associations, including the "de minimus" organisations, were to obtain advice. This amount would now be approximately £70K.

On the basis that good quality information and briefing is provided by the Welsh Government and Community Housing Cymru, the actual cost would be expected to be considerably less.

### Costs to Welsh Government

The RIA for the 2016 Act estimated the cost of creating the model written statements based on the composition of a typical policy development team and the input of legal professionals. Taking into account likely cost increases in the intervening period, the estimated cost of issuing model written statements is around £50K.

**Option 1 – Do Minimum: prescribe Model Written Statements relating to the three occupation contracts likely to be most frequently issued in the private and social rented sectors respectively – the periodic and fixed term standard contracts and the secure contract – but do not prescribe any explanatory information to be included in written statements;**

### Costs

Under this option, the costs to landlords would be roughly be the same as those outlined above.

The provision of model written statements for the most frequently used contracts would arguably reduce the need for private landlords, in particular, to seek legal

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<sup>3</sup> The cost of printing a copy of the converted contract was estimated to be £1.50. Administration and processing each contract was estimated to be £3.10, based 15 minutes of staff time costed in accordance with the equivalent Welsh Government grade rate. Postage per converted contact is estimated to be £0.45. This assumes that converted contracts will be distributed along with mail already being sent to out contract-holders and is based on the additional cost of a large letter that accommodates the additional weight of the converted contract.

advice. A model written statement provides landlords with a template to follow which they know to be compliant with the law – and which to some extent will negate any need for legal advice except where they wish to depart from it. There is, however, no way to accurately calculate what the extent of that saving might be. In any case, because the provision of a model written statement is a requirement of the Act, its existence was a factor already built in to the original cost estimates set out in the RIA for the 2016 and consequently into the updated costs set out above. Therefore, there are no *additional* costs or savings associated with this option for landlords

Furthermore, as the cost of producing and maintaining model written statements was factored into the cost of implementing the Act and maintaining it more generally, there would be no additional costs to the Welsh Government associated with this option.

### Benefits

There are no benefits to landlords or contract-holders arising from this option additional to those already set out in the RIA that accompanied the 2016 Act. In summary, under this option, it would become relatively straightforward for landlords to issue a written statement of the occupation contract. A landlord opting to use the freely available model contract will have a contract that is legally correct with a consequent saving in legal fees, and will be able to use, essentially, the same written statement across all their properties (depending on the nature of occupation). Furthermore, someone renting a home will benefit by having a written statement they know is fair and legally correct, which is applied consistently to different properties they may rent over time, and which provides security against unfit conditions and unfair eviction. The use of model written statements will produce greater clarity on rights and responsibilities under the occupation contract, and the greater consistency across the sector will enable access to more detailed support and guidance if problems do arise.

### **Option 2 – prescribe Model Written Statements for the three types of occupation contract most frequently issued in the private and social rented sectors respectively – and also prescribe explanatory information to be included in all written statements**

#### Costs

Compared with Options 1, there would be some extra cost to landlords in providing the required explanatory information to contract-holders. This would arise from the cost of printing and providing an extra two to three sides of information in relation to each written statement that is provided. Based on the figures included in the RIA that accompanied the Act, this cost would be around £43.5K in the first year of implementation (assuming an additional printing of £0.10 per contract across the private and social rented sectors) and around £10K per year thereafter (assuming contracts in the private rented sector last on average around 2.5 years)



In addition, drafting, consulting on and issuing regulations prescribing explanatory information would result in additional costs to the Welsh Government in terms of staff time. The total cost of this is likely to be up to, but no more than, £10K.

### Benefits

As with Option 1, both private and community landlords would benefit from this option because it will provide them, at no cost, with model written statements covering most of the contracts they are able to issue under the new Renting Homes scheme.

However, this option, unlike Option 1, would also benefit contract-holders, who will be provided with explanatory information that conveys the purpose and value of their written statement, illustrating and underlining its significance to them and ensuring that written statements are as effective as possible in improving the operation of the rented sector.

Taking into account the extent of these benefits, as well as the very modest additional costs to landlords and the Welsh Government which would arise, Option 2 is considered the most cost effective option. Costs at the individual landlord/property level are expected to be relatively modest and are considered unlikely to have any significant impact on the structure of the rented sector. For these reasons, this option is preferred.

### **Option 3 – prescribe Model Written Statements for the six types of occupation contract specifically identified in the 2016 Act– and also prescribe explanatory information to be included in all written statements**

#### Costs

As with Option 2, there would be some extra cost to landlords in providing the required explanatory information to contract-holders – this is estimated to be around £43.5K in the first year of implementation and around £10K per year thereafter. (assuming contracts last on average around 2.5 years)

As with Option 2, drafting, consulting on and issuing regulations prescribing explanatory information would also result in additional costs to the Welsh Government in terms of staff time. The total cost of this is likely to be up to, but no more than £10K.

However, by comparison with both Option 1 and Option 2, producing six rather than three model written statements would result in an additional cost to the Welsh Government of up to £10K. There might also be small additional costs in the future associated with six rather than three model written statements, in the event that the regulations require updating.

## Benefits

Compared with option 1 and 2, community landlords would benefit from this option because it will provide them, at no cost to them, with model written statements covering all of the types of contract they are able to issue under the new Renting Homes scheme. This means that they need not incur any additional effort in producing written statements for the less frequently used contract types, if they choose to use the model written statements. That said, guidance that the Welsh Government intends to issue separately in relation to the distinctive elements of the three less frequently used contract types is likely to serve the same purpose of reducing the effort that community landlords need put into producing written statements for these contracts. There might also be a small saving in relation to the independent legal advice sought by community landlords, if model written statements are provided for the less frequently used contracts. However, as the total value of this advice was only estimated at around £70K, and these contracts only make up a small proportion of the contracts that community landlords would make, the notional saving might only be around £7K (i.e. 10% of the total).

Taking into account the marginal benefits of this option compared with Option 2, and the additional costs (albeit also marginal) to the Welsh Government of this option, this option is not preferred.

## **8. Competition Assessment**

The Regulations are not 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 to 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.