

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

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2022 No. (W.)

HOUSING, WALES

**The Renting Homes (Wales) Act
2016 (Housing Association
Tenancies: Fundamental
Provisions) Regulations 2022**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Chapter 3 of Part 2 of the Renting Homes (Wales) Act 2016 (anaw 1) (“the 2016 Act”) introduces the concept of fundamental provisions which are:

- (a) provisions of the 2016 Act; and
- (b) other provisions which are fundamental provisions by virtue of section 22(1)(a) of the 2016 Act,

that are incorporated as terms of occupation contracts or particular kinds or descriptions of occupation contract (subject to sections 20(1) and (2) and 21 of the 2016 Act) and so form part of the contract between a contract-holder and a landlord.

Once a fundamental provision is included in an occupation contract, it is referred to as a “fundamental term” of the contract.

Section 20 of the 2016 Act allows landlords and contract-holders to agree not to incorporate fundamental provisions into an occupation contract (subject to certain exceptions). However, this is subject to the test that non-incorporation of the term would improve the position of the contract-holder. Landlords and contract-holders are also able, by agreement, to modify fundamental provisions, provided that the modification would improve the position of the contract-holder (again, subject to certain exceptions).

Section 22(1) of the 2016 Act enables the Welsh Ministers to make regulations which specify that any

provision of any enactment is, or is not, a fundamental provision applicable to an occupation contract.

Regulations 3 and 4 of these Regulations provide that sections 104 (secure contracts: variation of rent) and 123 (periodic standard contracts: variations of rent) of the 2016 Act are not fundamental provisions of occupation contracts that are housing association tenancies (within the meaning given by Part 6 of the Rent Act 1977 (“the 1977 Act”)).

Regulation 5 makes consequential amendments to sections 104, 123, 252 (minor definitions) and 253 (index of terms) of and Schedule 1 (overview of fundamental provisions incorporated as terms of occupation contracts) and Schedule 12 (conversion of tenancies and licences existing before commencement of Chapter 3 of Part 10) to the 2016 Act.

Regulation 6 makes consequential amendments to section 93 of the 1977 Act (increase in rent without notice to quit) and inserts a new subsections (2A), (2B) and (2C). Subsection (2A) provides that where a housing association tenancy is a secure or periodic standard contract, the rent payable to the landlord (meaning a housing association, housing trust or the Welsh Ministers) may be increased, from the beginning of any rental period, by a written notice specifying the date on which the increase is to take effect and given by the landlord to the contract-holder not later than four weeks before that date. New subsection (2B) provides that a notice of increase does not take effect if, before the date specified in the notice, the contract-holder gives notice to end the contract. New subsection (2C) further provides that the notice of increase will take effect if, before the date specified in that notice, the notice to end the contract ceases to have effect under section 167(3) or 172(3) of the 2016 Act.

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.

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2022 No. (W.)

HOUSING, WALES

**The Renting Homes (Wales) Act
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Tenancies: Fundamental
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Made

*Coming into force in accordance with
regulation 1*

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 22(1)(b)(1) and 256(1) and (2)(2) of the Renting Homes (Wales) Act 2016(3).

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

Title and commencement

1. The title of these Regulations is the Renting Homes (Wales) Act 2016 (Housing Association Tenancies: Fundamental Provisions) Regulations 2022 and they come into force on the day on which section 239 of the Act comes into force.

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- (1) Section 22 was amended by section 18 of and paragraphs 1 and 3 of Schedule 6 to the Renting Homes (Amendment) (Wales) Act 2021 (asc 3).
- (2) Subsection 256(2) was amended by sections 14 and 18 of and paragraphs 1 and 21 of Schedule 6 and paragraphs 1 and 6 of Schedule 5 to the Renting Homes (Amendment) (Wales) Act 2021 (asc 3).
- (3) 2016 anaw 1.
- (4) There are amendments to section 256(4), none of which is relevant to these Regulations.

Interpretation

2.—(1) Words and expressions used in these Regulations have the same meaning as they have in the Act.

(2) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Renting Homes (Wales) Act 2016;

“housing association tenancy” (“*tenantiaeth cymdeithas dai*”) has the same meaning as in Part 6 of the Rent Act 1977(1) (see section 86(2) of that Act).

Sections 104 and 123 of the Act not fundamental provisions of occupation contracts that are housing association tenancies

3. Section 104 of the Act (secure contracts: variation of rent) is not a fundamental provision applicable to a secure contract which is a housing association tenancy.

4. Section 123 of the Act (periodic standard contracts: variation of rent) is not a fundamental provision applicable to a periodic standard contract which is a housing association tenancy.

Consequential amendments to the Act

5.—(1) The Act is amended as follows.

(2) In section 104, at the end of subsection (4) insert “, except a secure contract which is a housing association tenancy”.

(3) In section 123, at the end of subsection (4) insert “, except a periodic standard contract which is a housing association tenancy”.

(4) In section 252 (minor definitions), in the appropriate place insert—

“housing association tenancy” (“*tenantiaeth cymdeithas dai*”) has the same meaning as in Part 6 of the Rent Act 1977 (c. 42) (see section 86 of that Act);”.

(5) In section 253 (index of terms), in table 2, after the entry for “housing association”, in the left hand column insert “housing association tenancy” and in the right hand column, insert “section 252”.

(1) 1977 c. 42.

(2) Section 86 was amended by sections 77 and 152 of and Schedules 10 and 26 to the Housing Act 1980 (c. 51), section 4 of and paragraph 35 of Schedule 2 to the Housing (Consequential Provisions) Act 1985 (c. 71), article 2 of and paragraph 1 of the Schedule to the Government of Wales Act 1998 (Housing) (Amendments) Order 1999 (S.I. 1999/61) and article 5 of and paragraphs 9 and 11 of Schedule 2 to the Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866)..

(6) In Schedule 1 (overview of fundamental provisions incorporated as terms of occupation contracts)—

- (a) in Part 1 (secure contracts), in the entry in table 3 for sections 103 to 109, in the third column (notes), after “rent is payable”, in the first place where it appears, insert “and which are not housing association tenancies (as to which, see section 93 of the Rent Act 1977 (c. 42))”;
- (b) in Part 2 (periodic standard contracts), in the entry in table 4 for sections 122 to 128, in the third column (notes) after “rent is payable”, in the first place where it appears, insert “and which are not housing association tenancies (as to which, see section 93 of the Rent Act 1977 (c. 42))”.

(7) In Schedule 12 (conversion of tenancies and licences existing before commencement of Chapter 3 of Part 10), in paragraph 14(2)—

- (a) after “does not apply to”, insert “—
(a)”;
- (b) after “rent” insert “, or
(b) an increase in rent under section 93 of the Rent Act 1977 (c. 42).”.

Consequential amendments to section 93 of the Rent Act 1977

6.—(1) Section 93(1) of the Rent Act 1977 (increase in rent without notice to quit) is amended as follows.

(2) In subsection (1)—

- (a) after “weekly or other periodical tenancy”, insert “but not an occupation contract”;
- (b) for “in this section”, substitute “in this subsection and subsection (2)”.

(3) After subsection (2) insert—

“(2A) Where a housing association tenancy is a secure contract or a periodic standard contract, the rent payable to the housing association or, as the case may be, the housing trust or the Welsh Ministers (in this subsection called “the landlord”), may be increased with effect from

(1) Section 93 was amended by sections 77 and 140 of and paragraph 5 of Schedule 10 and Part 2 of Schedule 17 to the Housing Act 1988 (c. 50), sections 77 and 152 of and Schedule 10 and Schedule 26 to the Housing Act 1980 (c. 51), section 152 of and Part 6 of Schedule 18 to the Government of Wales Act 1988 (c. 38), article 5 of and paragraphs 9 and 12 of Schedule 2 to the Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I. 2010/866) and article 2 of and paragraph 1 of the Schedule to the Government of Wales Act 1998 (Housing) (Amendments) Order 1999 (S.I. 1999/61).

the beginning of any rental period by a written notice of increase specifying the date on which the increase is to take effect, and given by the landlord to the contract-holder not later than four weeks before that date.

(2B) A notice of increase given under subsection (2A) does not take effect if, before the date specified in that notice, the contract-holder gives a notice to end the contract.

(2C) But the notice of increase does take effect if, before the date specified in that notice, the notice to end the contract ceases to have effect (see section 167(3) or 172(3) of the Renting Homes (Wales) Act 2016 (anaw 1)).”.

(4) After subsection (5) insert—

“(6) In this section, the following terms have the same meaning as in the Renting Homes (Wales) 2016 (anaw 1) (see sections 7 and 8 of that Act)—

- (a) contract-holder;
- (b) occupation contract;
- (c) periodic standard contract;
- (d) secure contract,

and “notice to end the contract” means a notice under section 163 or 168 of that Act.”.

Name

Minister for Climate Change, one of the Welsh Ministers

Date