

SL(6)227 – The Renting Homes (Wales) Act 2016 (Amendment) Regulations 2022

Background and Purpose

These Regulations amend Schedules 2, 3, 8A, 9, 9B and 9C to the Renting Homes (Wales) Act 2016 (“the Act”) and make consequential amendments to the Immigration Act 2016 and the Renting Homes (Amendment) (Wales) Act 2021.

For the purposes of these Regulations:

- Schedule 2 to the Act lists those tenancies and licences that can never be occupation contracts under the Act, despite falling within the general rule set out in section 7 of the Act, which determines whether a tenancy or licence is an occupation contract and therefore subject to the provisions of the Act.
- Schedule 3 to the Act lists a range of occupation contracts which are exempted from the general rule under sections 11 and 12 of the Act that community landlords provide secure contracts.
- Schedule 8A to the Act lists those types of standard contracts which can be ended with not less than two months’ notice under a landlord’s notice or break clause (rather than the six months’ notice period that applies in relation to all other standard occupation contracts).
- Schedule 9 lists those types of contracts which can be ended within the first six months of the occupation date.
- Schedule 9B lists those types of fixed term standard contracts which may be terminated at the end of the fixed term period with two months’ notice by means of a landlord’s notice.
- Schedule 9C lists those fixed term standard contracts which may include a landlord’s break clause, which the Act generally does not permit.

Regulation 2 adds tenancies and licences which relate to bail and probation accommodation as well as to asylum and immigration accommodation to the list in Part 3 of Schedule 2, meaning they will not generally be occupation contracts under the Act.

Regulations 3 to 7 amend Schedules 3, 8A, 9, 9B and 9C to the Act to remove reference to certain types of accommodation provided for asylum seekers etc. from the list of exemptions in each of those Schedules.

Regulation 8 makes a consequential amendment to the Immigration Act 2016 to ensure that when section 4 of the Immigration and Asylum Act 1999 is repealed, paragraph 7(3)(k)(i) of Schedule 2 (as inserted by regulation 2 of this SI) will no longer refer to section 4 of the 1999 Act.



Regulation 9 makes consequential amendments to Schedule 6 to the Renting Homes (Amendment) (Wales) Act 2021, related to the provision in regulations 3 and 5.

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

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

These Regulations amend the the Immigration Act 2016 and the Renting Homes (Amendment) Wales Act 2021 in reliance on enabling powers contained in section 255 of the Act.

The italic text at the head of these Regulations and the preamble each refer to sections 256(3) and (4)(h), (i), (la), (m), (mb) and (mc) of the Act, which require that regulations that amend Schedules 2, 3, 8A, 9, 9B and 9C to the Act are subject to the affirmative procedure.

Section 256(5) of the Act requires regulations to be subject to the affirmative procedure where they are made under the Act and amend, modify or repeal any provision of an Act of Parliament or a Measure or Act of the Senedd. It would therefore appear that the italic text at the head of these Regulations and the preamble should also refer to section 256(5) of the Act.

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

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.

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 of Schedule 12) 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.”

3. 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 the Renting Homes (Wales) Act 2016, the Immigration Act 2016 and the Renting Homes (Amendment) (Wales) Act 2021. 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 power. 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 required on the Technical Scrutiny point.

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.

