

**Explanatory Memorandum to The Regulation of Private Rented Housing
(Rent Repayment Orders) (Supplementary Provisions) (Wales)
Regulations 2016**

This Explanatory Memorandum has been prepared by Housing Policy Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with:

Standing Order 27.1

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Regulation of Private Rented Housing (Rent Repayment Orders) (Supplementary Provisions) (Wales) Regulations 2016

Carl Sargeant

Cabinet Secretary for Communities and Children

21 October 2016

1. Description

These Regulations supplement the provisions of sections 32 and 33 of the Housing (Wales) Act 2014 (“the 2014 Act”) which deal with rent repayment orders. Specifically, they deal with the making of rent repayment orders by a residential property tribunal (“the tribunal”) on the application of a licensing authority, a local housing authority or a tenant of a dwelling.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative background

These Regulations are made by the Welsh Ministers pursuant to the power conferred on them by section 34(1) of the 2014 Act.

These Regulations follow the negative resolution procedure

4. Purpose & intended effect of the legislation

As part of the enforcement provisions, sections 30 to 34 of the 2014 Act provides for applications to tribunal for rent stopping orders and rent repayment orders (where licensing offences have been committed).

Under section 34 of the 2014 Act the Welsh Ministers have the power to make regulations containing supplementary provisions in relation to rent repayment orders in sections 32 and 33 of the 2014 Act, as they consider appropriate. These Regulations specifically deal with the making of rent repayment orders by the tribunal on the application of a licensing authority, a local housing authority or a tenant of a dwelling.

In particular, these Regulations are required to make supplementary provisions in relation to rent repayment orders to secure that persons are not unfairly prejudiced by rent repayment orders, for example where there may have been over-payments in housing benefit, universal credit or otherwise.

These Regulations also make provision specifying the purposes for which monies received by a licensing authority or a local housing authority under a rent repayment order may be applied.

Rent repayment orders cannot be made unless the tribunal is satisfied as to a number of matters. The matter that is relevant for the purposes of these Regulations is that housing benefit or one or more relevant awards of universal credit have been paid (whether or not to the appropriate person) (section 33(1)(b)), for a period during which it appears to the tribunal that an offence under section 7(5) or section 13(3) of the 2014 Act has been committed.

Where the tribunal is satisfied that a person has been convicted of an offence under either section 7(5) or 13(3) of the 2014 Act and that housing benefit or a relevant award of universal credit was paid, section 33(1)(b) requires the tribunal to make a rent repayment order.

This rent repayment order must require the person to pay to the authority an amount equal to the total amount of housing benefit paid or relevant award of universal credit paid. In this regard, the person making this payment must, at the time that the housing benefit (or relevant award of universal credit was paid), have been entitled to receive the periodical payments in respect of which the housing benefit or relevant award of universal credit was paid.

The total amount of housing benefit or relevant award of universal credit paid is in respect of the period during which it appears to the tribunal that an offence under section 7(5) or 13(3) of the 2014 Act was committed.

The tribunal has discretion to make the rent repayment order for such an amount as is reasonable in the circumstances.

These Regulations also permit a local housing authority that has made an application for a rent repayment order to seek leave from the tribunal to amend its application where it believes that there has been an overpayment of housing benefit or a relevant award of universal credit. The application is in respect of the amount of housing benefit or a relevant award of universal credit that the authority believes is properly payable pursuant to the Housing Benefits Regulations 2006 or the Housing Benefit (Persons who have attained the qualifying age for state pensions credit) Regulations 2006.

In addition, these Regulations list the authorised purposes for which a licensing authority or local housing authority may use an amount recovered under a rent repayment order for reimbursement of their costs and expenses associated with:-

1. Making an application to impose a rent repayment order;
2. Dealing with an application for a licence under Part 1 of the 2014 Act (Regulation of private rented housing);
3. Prosecution of a landlord for carrying out duties which require a licence when they do not hold one.

These Regulations also require the licensing authority or local housing authority to pay into the Welsh Consolidated Fund amounts received under a

rent repayment order that are not applied for the purposes described within the Regulations.

5. Consultation

As the Department for Work and Pensions have responsibility for the payment of benefits, they were consulted about the approach in terms of repayment of rent which was made up of housing benefits, universal credit or other relevant benefits. They confirmed that they were content with the approach as set out in these Regulations.

These Regulations have not been subject to a wider public consultation as the mechanisms for rent repayment orders are already used for other applications, for example in Unlicensed Houses in Multiple Occupation which are already used by the tribunal. The Regulations are also technical in nature and bring into force provisions which already formed part of the wider consultation surrounding the 2014 Act.

6. Regulatory Impact Assessment (RIA)

No separate RIA has been prepared as the Impact Assessment prepared for the 2014 Act is relevant (Part 2, section 7). A copy may be obtained from the Housing Policy Division, Welsh Government, Rhydycar Business Park, Merthyr Tydfil, CF41 1UZ.