

## **Explanatory Memorandum to the Renting Homes (Fitness for Human Habitation) (Amendment) (Wales) Regulations 2022**

This Explanatory Memorandum has been prepared by the Climate Change and Rural Affairs 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 (Fitness for Human Habitation) (Amendment) (Wales) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Julie James MS,  
Minister for Climate Change  
25 October 2022.

## **PART 1**

### **1. Description**

This Explanatory Memorandum (“EM”) relates to the Renting Homes (Fitness for Human Habitation) (Amendment) (Wales) Regulations 2022.

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

None.

### **3. Legislative background**

These regulations are being made under the negative resolution procedure.

Section 91 of the Renting Homes (Wales) Act 2016 (‘the 2016 Act’) requires a landlord, under a secure contract, a periodic standard contract, or a fixed term standard contract made for a term of less than seven years, to ensure that the dwelling is fit for human habitation (‘FFHH’). Section 94(1) of the 2016 Act requires the Welsh Ministers to prescribe matters and circumstances to which regard must be had when determining whether a dwelling is FFHH and section 94(2)(b) enables the Welsh Ministers to prescribe matters and circumstances which may arise because of a landlord’s failure to keep the dwelling in repair. Section 94(3) enables the Welsh Ministers to impose requirements on landlords for the purpose of preventing those matters or circumstances from arising and to prescribe that if those requirements are not complied with, the dwelling is to be treated as if it were unfit for human habitation.

Using those powers, the Welsh Ministers made the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 (S.I. 2022/6 (W. 4)) which prescribe the matters and circumstances to which regard must be had when determining whether a dwelling is fit for human habitation and impose requirements on a landlord for the purpose of preventing any matters or circumstances which may cause a dwelling to be unfit for human habitation from arising.

### **4. Purpose and intended effect of the legislation**

These regulations make the following amendments to the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022:

- A technical amendment that updates the reference to the Electrical Wiring Regulations BS7671 to reflect the latest published edition.

- Amendments to regulations 6(3), 6(4), 6(5) and 7(5) to extend the period within which the landlord must provide the contract-holder with a copy of the electrical condition report from seven days to 14 days. The time period for providing written confirmation of remedial work to the contract-holder under 6(5) is similarly extended.

## **5. Consultation**

No formal consultation has taken place as these regulations make only technical amendments or extend time periods which have no material impact upon the determination of fitness for human habitation.

## **PART 2**

### **6. Regulatory Impact Assessment**

Updating the regulations to refer to the latest published edition of the Electrical Wiring Regulations BS7671 (regulation 6(8)) is a factual amendment being made to update subordinate legislation and which does not alter the policy (or its impact) in any significant way or how it is applied in a given situation. As such, in accordance with the exceptions set out in paragraph 3.2 of the Welsh Ministers RIA Code, no RIA has been undertaken in respect of this change.

However, the following RIA sets out the options considered by Welsh Ministers in deciding **to extend the periods under regulations 6(3), 6(4), 6(5) and 7(5)**.

- Option 1: Continue with existing timescales for regulations 6(3), 6(4), 6(5) and 7(5).
- Option 2: Extend the period from the current seven days to 14 days for regulations 6(3), 6(4), 6(5) and 7(5).

Option 1: Continue with timescales for regulations 6(3), 6(4), 6(5) and 7(5).

As part of the Welsh Government's engagement with stakeholders on implementation of the 2016 Act, some concerns have been raised by larger social landlords regarding practical difficulties in complying with the seven day period for issuing the contract-holder with a copy of the electrical condition report (and other documents) under regulations 6(3), 6(4), 6(5) and 7(5). Some larger social landlords have as many as 10,000 dwellings that, over time, will require regular testing. These landlords requested an extension to the allowed time to ensure there is no issue in complying with the regulations. The Welsh Government has acknowledged that, depending on when these testing requirements fall for individual dwellings, the

requirement to test and provide a copy of the test certificate to the contract-holder within seven days will be difficult to meet.

Whilst systems for electrical testing and the production of certificates can be managed online, under which a seven day turnaround is achievable, there remain systems in use where a hard copy paper report is still provided. As larger social landlords can also be obliged to authorise the report following the inspection before it is issued, this exacerbates the difficulty in complying with a seven-day requirement. In some instances, therefore, there is a possibility that the report cannot be returned to the contract-holder within seven-days, meaning the dwelling would be deemed unfit for human habitation solely because of that delay.

Option 2: Extend the period from the current seven days for regulations 6(3), 6(4), 6(5) and 7(5). The preferred option.

In considering the issue raised by stakeholders around the seven-day period and following discussions with accredited industry bodies, the Welsh Government proposes to extend the seven-day period to a 14-day period. Whilst we consider the seven day could be met in many cases, we recognise that larger social landlords may face difficulties in doing so. Additionally, we do not wish a dwelling to be considered unfit for human habitation, where an electrical inspection has been carried out in accordance with the regulations, simply because issuing the report to the contract-holder is slightly delayed. Whilst it is important that the contract-holder is provided details of the inspection promptly, we do not consider that an additional seven days is of any real consequence. This is particularly the case as the inspection of the electrical installation will already have been undertaken and, should any serious issue be present, it will have been dealt with at the time by the electrician.

### Costs

There are no additional costs associated with the preferred option. Landlords will still be required to provide contract-holders with a copy of the electrical condition report but will be given an additional seven days in which to do so.

### Benefits

Providing landlords with additional time to meet the requirements of the regulations will help avoid the possibility of a delayed report resulting in a dwelling being deemed technically unfit, thereby potentially causing concern to the contract-holder, even though there is no substantive problem.

## Competition Assessment

The competition filter test has been completed. The Regulations are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses.