

## **Explanatory Memorandum for the Renting Homes (Rent Determination) (Converted Contracts) (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 (Rent Determination) (Converted Contracts) (Wales) Regulations 2022. I am satisfied that the benefits justify the likely costs

Julie James  
Minister for Climate Change  
18 July 2022

## **PART 1**

### **1. Description**

The purpose of these regulations is to preserve an entitlement which is currently available to certain tenants with an assured or assured shorthold tenancy: namely the ability to refer a rent variation notice from their landlord to a Rent Assessment Committee to seek a rent determination.

These regulations will provide that when existing tenancies which include such a provision convert into occupation contracts this entitlement will carry over, and, as is currently the case, a Rent Assessment Committee will be able to take into account a range of factors to determine what, in its opinion, is an appropriate rent for the dwelling. Again, as with current arrangements, unless the landlord and tenant agree otherwise, the rent determined by the Rent Assessment Committee will be the rent payable under the contract.

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

None.

### **3. Legislative background**

When the Renting Homes (Wales) Act 2016 (“the 2016 Act”) comes into force, existing assured and assured shorthold tenancies will convert into secure or standard occupation contracts. Sections 104 and 123 of the 2016 Act allow landlords to vary the rent of secure and periodic standard contracts respectively by giving contract-holders a notice setting out a new rent to take effect on the date specified in the notice. A rent variation, under these provisions, can take place a maximum of once every 12 months.

Some existing assured and assured shorthold tenancy agreements may not include a rent variation term. Where this is the case, section 13 of the Housing Act 1988 allows the landlord to issue a notice informing the tenant of a rent variation and when it will take effect. If the tenant believes the variation is unreasonable, they can request that a Rent Assessment Committee makes a determination as to an appropriate level of rent for the dwelling. The Rent Assessment Committee determines a rent for the dwelling by drawing comparisons with other properties, based on certain assumptions. The rent determined by the Committee may be higher, lower, or the same as that proposed in the notice issued by the landlord.

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

There is no provision in the 2016 Act to enable contract-holders to seek a rent determination by a tribunal. However, a regulation-making power was included in the 2016 Act to preserve the current arrangements for those assured and assured shorthold tenancies which will convert into occupation contracts.

The approach taken in these regulations will allow for a continuation of the current arrangements whereby a Rent Assessment Committee will be the tribunal to which a contract-holder can apply for a determination of rent.

The regulations also set out the operational and procedural arrangements that must be followed by the Committee in carrying out its functions, and the factors it must take into consideration when undertaking a determination, which replicate the current arrangements.

## **5. Consultation**

Given the very narrow and technical nature of these regulations, the purpose of which is simply to preserve existing arrangements, it was decided that a traditional consultation approach was unnecessary. Instead, the draft SI was shared with a group of key stakeholders with an interest in these matters and their views were taken into consideration in finalising the regulations.

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

### **6. Options**

#### **Option 1. Make the Regulations**

Paragraph 15(2) of Schedule 12 to the 2016 Act states that the Welsh Ministers must make regulations which allow for contract-holders of particular occupation contracts (relevant converted contracts) upon receipt of a notice of variation of rent, to apply to a prescribed person or persons for a determination of the rent. Rent Assessment Committees arranged by the Residential Property Tribunal for Wales are currently the mechanism by which such determinations are made in Wales. The Tribunal undertakes a range of functions of which Rent Assessment Committees forms a small part (over the past five years an average of only 12 appeals per year were considered).

In implementing the 2016 Act, it was always the Welsh Ministers' intention that a Rent Assessment Committee formed by the Residential Property Tribunal for Wales should continue to act as the prescribed person or persons, retaining its current rent determination function in relation to those converted contracts to which these regulations apply. The only potential alternative to retaining the current arrangements would be to prescribe a different body to act as the prescribed person or persons. However, such an approach would require additional financial support from the Welsh Government and cause disruption to existing provision. Given that the Residential Property Tribunal for Wales is continuing to deliver its current rent determination function satisfactorily, there is no rationale for considering such an alternative.

Since it represents a continuation of the status quo, there are, in reality, no additional costs or benefits associated with the Residential Property Tribunal continuing to act as the prescribed person or persons and retaining its rent determination function in relation to those converted contracts to which these regulations apply.

This is therefore the preferred option.

#### **Option 2. Do Nothing.**

This is an unusual situation in that the 'do nothing' option would actually represent a more significant policy change than the preferred option. This is because if, post-implementation, a contract-holder with a relevant converted contract were unable to refer a rent variation notice to a tribunal they would be in a less favourable position than is currently the case. Such an outcome appears unfair and is not desirable.

It is also worth noting that if these regulations were not made, Welsh Ministers would be in breach of the duty the 2016 Act places on them to make these regulations.

For these reasons, this option was therefore discounted.

## **7. Competition Assessment**

These Regulations are not expected to impact on levels of competition in Wales or the competitiveness of Welsh businesses. Committees will continue to factor-in the rental values of similar properties let on similar terms as part of their determinations.

## **8. 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. 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 will 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.