

SL(6)133 – The Renting Homes (Wales) Act 2016 (Amendment of Schedule 9A) Regulations 2022

Background and Purpose

These [Regulations](#) amend Schedule 9A to the Renting Homes (Wales) Act 2016 (“the 2016 Act”) to include two additional requirements with which landlords are required to comply.

Schedule 9A was inserted into the 2016 Act by the Renting Homes (Amendment) (Wales) Act 2021. Schedule 9A already prevents a landlord from issuing a notice under sections 173, 186, or under a landlord’s break clause, in certain circumstances.

These Regulations place two further restrictions on a landlord’s ability to issue a notice seeking possession. The prohibitions are:

- if an energy performance certificate (“EPC”) has not been provided – a valid EPC is required whenever a property is built, sold, or rented; or
- if the notice relates to health and safety – the relevant health and safety circumstances are that the landlord has failed to:
 - ensure working smoke alarms and, where required, carbon monoxide alarms, are installed;
 - obtain an electrical condition report, or to give the contract holder such a report or written confirmation of certain other electrical work; or
 - comply with the Gas Safety Regulations 1998 by providing to the contract-holder, or displaying, a relevant gas safety certificate.

These Regulations are intended to operate alongside other relevant provisions in Part 4 of the 2016 Act, which deals with the condition of dwellings let by landlords, as well as associated subordinate legislation, including the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 and the Renting Homes (Supplementary Provisions) (Wales) Regulations 2022.

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

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

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

1. 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

Regulations 3 and 4, which insert new paragraphs 3A, 5A, 5B and 5C into Schedule 9A to the 2016 Act, prevent a landlord giving notice if there are breaches of certain statutory obligations. Any provision that interferes with an individual's property or use of that property will potentially engage Article 1 Protocol 1 to the European Convention on Human Rights.

The Explanatory Memorandum does not contain a justification for the interference with human rights. The Welsh Government is asked to provide details of the human rights assessment that it undertook in relation to Regulations 3 and 4.

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

These Regulations amend primary legislation, namely the Renting Homes (Wales) Act 2016. 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 this Henry VIII power and the clarifications sought at the time from the Minister in relation to the justification for the power (like all other regulation-making powers in that Bill) being a 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.

Committee Consideration

The Committee considered the instrument at its meeting on 31 January 2022 and reports to the Senedd in line with the reporting points above.

