

Government Response: The Renting Homes (Review of Decisions) (Wales) Regulations 2022

Technical Scrutiny point 1:

The Welsh Government's view is that the Act and the Regulations are clear that all such reviews will always be undertaken by the landlord (or an officer of the landlord), as is the case under current law, and as such we do not feel that an amendment is required in this regard.

Technical Scrutiny point 2:

These Regulations replicate current review arrangements, and the Welsh Government is not aware of any instances where such a problem has ever arisen in practice. As such we do not propose making any amendments to the Regulations. However, the operation of these provisions in practice will be kept under review by the Welsh Government.

Merit Scrutiny point:

Regulation 9(a) allows for the hearing to go ahead in the absence of the contract-holder, but it is not correct to interpret this as allowing the hearing to go ahead regardless of the circumstances. Rather, regulation 9(b) enables the reviewer to exercise discretion as to whether the hearing should go ahead, or for the review to be conducted by other means (for instance a desk-based exercise rather than a hearing), or potentially to be rearranged if the person undertaking the review is aware of any circumstances which might account for the absence of the contract-holder or their representative.

Similarly, Regulation 10 allows for a contract-holder to request a postponement of a hearing, but again provides the landlord with discretion as to whether a postponement is justified.

Given the nature of the occupation contracts that fall within these Regulations, most landlords will be Community landlords (or private individuals who are exercising functions of a public nature). Any such landlord considering a request pursuant to these Regulations would, consequently, have a duty under public law to do so fairly, and to account for their decision if challenged.

In both cases, the Regulations seek to strike a fair balance between the landlord's right to seek to terminate or extend a particular type of occupation contract, and the contract-holder's right for such decisions to be subject to review. Regulations 9 and 10 allow the landlord to exercise discretion so as to enable the contract-holder to attend a hearing or seek postponement, but also to prevent abuse of the system (for example if a contract-holder has repeatedly failed to attend previously-arranged hearings, or sought postponement without good reason, in order to prevent a decision being taken).