

Explanatory Memorandum to:

**the Renting Homes (Wales) Act 2016 (Consequential Amendments)
Regulations 2022**

**the Renting Homes (Wales) Act 2016 (Housing Association Tenancies:
Fundamental Provisions) Regulations 2022**

This Explanatory Memorandum has been prepared by 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 subordinate legislation listed above.

Julie James
Minister for Climate Change
21 June 2022

PART 1

1. Description

This Explanatory Memorandum (“EM”) provides information covering two related pieces of subordinate legislation which are being made under the Renting Homes (Wales) Act 2016 (‘the 2016 Act’). The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (the ‘*Consequential Amendment Regulations*’) make necessary amendments to primary legislation as a consequence of the provisions of the 2016 Act. The Renting Homes (Wales) Act 2016 (Housing Association Tenancies: Fundamental Provisions) Regulations 2022 (the ‘*Housing Association Tenancies Regulations*’) limits the application of certain provisions of the 2016 Act in relation to a specific form of tenancy and makes minor consequential amendments to primary legislation to reflect this. Both SIs are being made under the affirmative resolution procedure at the same time.

A single EM has been prepared for these two SIs as they are closely linked and a single EM can adequately address the two them.

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

No specific matters identified

3. Legislative background

The powers enabling the Consequential Amendment Regulations to be made are contained in section 255 of the 2016 Act. As the amendments made by the Consequential Amendment Regulations are to primary legislation, section 256(3) and (5) of the 2016 Act require that these Regulations are subject to the affirmative procedure. The powers enabling the Housing Association Tenancies Regulations to be made are contained in section 22 of the 2016 Act. Section 256(3) and (4)(b) of the 2016 Act require that the Housing Association Tenancies Regulations are also subject to the affirmative procedure.

4. Purpose and intended effect of the legislation

The purpose and intended effect of two statutory instruments dealt with in this Explanatory Memorandum is as follows:

The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022

These Regulations make amendments to primary legislation in consequence of the provisions of the 2016 Act.

Generally, these amendments either:

- a. ensure that existing provision in primary legislation continues to have appropriate effect by
 - i. referencing the relevant occupation contracts alongside references to existing types of tenancies
 - ii. or by including the terminology used in the 2016 Act
- or
- b. where the provisions of the 2016 Act are intended to replace elements of existing law or the existing law is incompatible with that set out in the 2016 Act, by disapplying that law.

These amendments are necessary to implement the 2016 Act, provide coherence, clarity and ensure consistency of the law.

The Renting Homes (Wales) Act 2016 (Housing Association Tenancies: Fundamental Provisions) Regulations 2022

The 2016 Act introduces fundamental provisions which if included in an occupation contract become a fundamental term of that contract.

Section 22(1) of the 2016 Act enables the Welsh Ministers to make regulations which specify that any provision of any enactment is, or is not, a fundamental provision applicable to an occupation contract.

The Renting Homes (Wales) Act 2016 (Housing Association Tenancies: Fundamental Provisions) Regulations 2022 provide that the relevant sections of the 2016 Act dealing with the variation of rent are not fundamental provisions applicable to occupation contracts that are housing association tenancies (within the meaning given by Part 6 of the Rent Act 1977 ("the 1977 Act")).

These Regulations make consequential amendments to the 2016 Act and the 1977 Act for these types of tenancies, so that where a housing association tenancy is a secure or periodic standard occupation contract, the current arrangements which apply to variation of rent for these tenancies continues to apply. The effect of this is that existing enhanced rights in relation rent protection enjoyed by such tenants are preserved.

5. Consultation

No formal consultation has taken place as these Regulations make only consequential technical amendments.

6. Regulatory Impact Assessment

The amendments made by these Regulations are not expected to alter the policy (or its impact) in any significant way. As such, no RIA has been produced to accompany these Regulations. This is in line with the policy set out in the Welsh Ministers' RIA Code for subordinate legislation