

SL(6)247 – The Renting Homes (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2022

Background and Purpose

The Renting Homes (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2022 (“the Regulations”) make amendments to secondary legislation as a consequence of the provisions of the Renting Homes (Wales) Act 2016 (“the 2016 Act”).

Generally, these amendments either:

- (a) ensure that existing provision in primary legislation continues to have appropriate effect by referencing the relevant occupation contracts alongside references to existing types of tenancies 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.

The Explanatory Memorandum to the Regulations states that these amendments are necessary to implement the 2016 Act, provide coherence and clarity, and ensure consistency of the law.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following six points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In the Welsh language version of the Regulations, in Schedule 1, at the heading of paragraph 3, the word “Regulations” is missing from the translation of the name of the statutory instrument, even though it is correct in the paragraph itself.



2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In Schedule 1, at paragraph 17(b)(iii)(aa) and (bb), the descriptions are misleading by beginning with the words “in paragraph (a), in the definition of [X].” The drafting suggests that the two definitions appear “in paragraph (a)” which is a subdivision of “paragraph 4(1)” (i.e. “paragraph 4(1)(a)”).

However, there is more than one paragraph (a) in paragraph 4(1) as each definition contains a “paragraph (a)”. Therefore, the words should be drafted in a different order, “in the definition of X, in paragraph (a)”.

The same issue arises in paragraph 17(b)(ix)(aa) and (bb), and 17(b)(xvii)(aa) and (bb).

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In Schedule 1, at paragraphs 19(b)(ii) and (iii) the text provides that the inserted text should be “...after “assured **monthly** periodic tenancy” ...”.

But the word “monthly” does not appear in regulation 3(d) and (e) of the 1997 Regulations, only “assured periodic tenancy”.

4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

In Schedule 1, at paragraph 19(c)(iv)(ii), the description says “in the words before paragraph (a)”. But there is more than one “paragraph (a)” in Note 3, therefore the description should be described in a more specific manner, as is done elsewhere in paragraph 19(c)(iv)(jj) and other paragraphs which use the words “first paragraph” each time if there is more than one paragraph (a) or (b) in the Note.

5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In Schedule 1, in paragraph 20(a), the location of the amendment is referred to as “**paragraph** (a)” however “**sub-paragraph** (a)” is correct. Paragraph 20(b), correctly refers to “sub-paragraph (b)” which shows an inconsistency here.

6. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In Schedule 1, at paragraph 21(a), in both languages, the equivalent definition should be included in brackets after the new definition “secure contract”, as required by the guidance in paragraph 4.15(6) in Writing laws for Wales.

Secondly, in the English language 2003 Regulations, the word “and” appears after the last but one definition, “the Common Travel Area”. If the new definition “secure contract” is inserted “at the appropriate place in alphabetical order” it will appear at the end of the



present list of definitions. Therefore another provision is required to remove the word “and” in the English text, and a full stop is required instead of a semi colon at the end of the definition of “secure contract”.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

Technical Scrutiny point 1

Response

Welsh Government thank the LJCC for raising this point and will make the appropriate amendment before the Regulations come into force.

Technical Scrutiny point 2:

Response

Welsh Government take the view that the descriptions are not misleading. It is apparent where the amendments are required to be made as the relevant definitions are referenced appropriately. In our view, the amendment achieves the necessary legal effect so no amendment is needed.

Technical Scrutiny point 3:

Response

Welsh Government thank the LJCC for raising this point and will make the appropriate amendment before the Regulations come into force.

Technical Scrutiny point 4:

Response

Whilst Welsh Government acknowledges that for consistency purposes, the words “first paragraph” could have been used. However, the Welsh Government is of the view that paragraph 19(c)(iv)(ii) of Schedule 1 is clear as drafted. Although there is a second paragraph (a) in Note 3, the words “assured monthly periodic tenancy” only appear in the words before the first paragraph (a) so there would be no doubt where the insertion is to be made. In our view, no amendment is needed.

Technical Scrutiny point 5:

Response

Welsh Government are of the view it is clear where the amendment is to be made. However, in order to improve consistency, the appropriate amendment will be made before the



Regulations come into force.

Technical Scrutiny point 6:

Response

Welsh Government are of the view the amendment is clear and achieves the necessary legal effect. However, the appropriate amendment will be made before the Regulations come into force.

Legal Advisers

Legislation, Justice and Constitution Committee

26 August 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee