

SL(6)242 – The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022

Background and Purpose

These Regulations make amendments to primary legislation in 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 these Regulations states that these amendments are necessary to implement the 2016 Act, provide coherence and clarity, and ensure consistency of the law.

A draft of these Regulations was laid before the Senedd on 21 June 2022 but subsequently withdrawn on 11 July 2022, following the report of this Committee. An amended version of the draft Regulations was laid before the Senedd on 15 July 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

The following 7 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

Regulation 16(2) inserts the wording “in England” after “dwelling-house” in section 1(1) of the Housing Act 1988. However, the phrase “dwelling-house” appears in two instances in section 1(1) and it is not clear if the wording “in England” should be inserted after one or both of those instances.



This point was previously reported in relation to the earlier draft of these Regulations. In its response of 18 July 2022, the Welsh Government explained that the Regulations had been withdrawn and corrected, including in relation to this specific point. However, it appears that this point has not been rectified.

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

In regulation 18(5)(c)(iv), reference is made to “the Renting Homes (Wales) Act **2106**” (emphasis added). This should instead refer to “the Renting Homes (Wales) Act **2016**” (emphasis added).

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

Regulation 18(5)(i)(i) omits and inserts wording into paragraph 12(2) of Schedule 10 of the Local Government and Housing Act 1989. However, from the wording of the amendment, it is not clear that the inserted wording substitutes the omitted wording. It does not necessarily follow that new text will be inserted in the same place as old text which has been omitted.

Following the Welsh Government’s own drafting guidelines in “Writing Laws for Wales”, the amendment could have been drafted as “for “[*omitted text*]” substitute “[*new text*]”.

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

Regulation 25(9) omits certain wording from section 143E of the Housing Act 1996 (“the 1996 Act”). It appears that paragraph 9(b) of Schedule 29 to the Coronavirus Act 2020 (as amended) (“the 2020 Act”) only required that those provisions *be read* in the way suggested by regulation 25(9), rather than inserting the wording that regulation 25(9) seeks to omit. Regardless, that provision of the 2020 Act expired on 25 March 2022. Clarification is sought as to why regulation 25(9) has been considered necessary.

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

Regulation 29(3) inserts references to contract-holders alongside tenants in two places in section 153 of the Housing and Regeneration Act 2008. There is a third reference to tenants in subsection (7) which has not been amended. Subsection (3), which is amended, requires the Regulator of Social Housing to make arrangements for bringing certain proposals to the attention of its tenants. As subsection (7) requires the Regulator of Social Housing to also make arrangements for bringing agreed proposals to the attention of its tenants, it would appear that subsection (7) also requires amendment to require agreed proposals to the attention of its contract-holders.



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

Regulation 32(3) amends the Energy Act 2011 to exclude a property where the landlord is a community landlord from what is a “domestic private rented property” under section 42 of that Act. The existing provision refers to registered social landlords. As the definition of community landlord under section 9 of the 2016 Act includes additional bodies such as local authorities, it appears that the provision is extended to bodies other than registered social landlords. Clarification is sought as to whether this is the intention of the amendment.

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

In regulation 34, in the Welsh text, the numbering is incorrect on from paragraphs (8) to (12) which are numbered incorrectly as paragraphs (7) to (11).

In addition, in the Welsh text, the earlier correctly numbered paragraph (7) is incorrectly indented right as regards its formatting, along with sub-paragraphs (a) and (b) of that paragraph. Sub-paragraphs (c) and (d) of that paragraph (7) have also been incorrectly numbered as a further pair of sub-paragraphs (a) and (d) in that paragraph.

Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

8. 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.

Regulation 1 provides that various parts of regulation 25 are stated to come into force once section 120 of, and various paragraphs of Schedule 8 to, the Housing and Planning Act 2016 come into force. Neither the Explanatory Memorandum nor the Explanatory Notes give any indication as to when these provisions are expected to be brought into force.

This point was previously reported in relation to the earlier draft of these Regulations. In its response of 18 July 2022, the Welsh Government explained that it does not have any information about when the relevant provisions of the Housing and Planning Act 2016 will be brought into force.

9. 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.

In reviewing these amendments, the Committee notes that in several instances the Welsh Government does not appear to have adhered to its own drafting guidelines, as set out in “Writing Laws for Wales”. The Committee encourages the Welsh Government to adhere to its own standards when drafting legislation.



10. 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.

No consultation has been carried out in relation to these Regulations. The Explanatory Memorandum to the Regulations notes that:

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

Welsh Government response

A Welsh Government response is required in relation to points 1-7 above only.

Legal Advisers

Legislation, Justice and Constitution Committee

7 September 2022

