

# **SL(6)229 – 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, disapply 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**

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 31 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 10 inserts wording into section 60A of the County Courts Act 1984 (“the 1984 Act”). Section 60A is not yet in force, it will be brought into force when section 191 of the Legal Services Act 2007 comes into force. The Welsh Government is asked to explain why regulation 2 does not state that regulation 10 is to come into force immediately after section 191 of the Legal Services Act 2007 comes into force.

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

Further in relation to regulation 10, the current wording of section 60A(3) of the 1984 Act refers in paragraph (a) to the Housing Act 1985 (“the 1985 Act”), then goes on in paragraph (b) to refer to “that Act”, meaning the 1985 Act referred to in the previous paragraph (a).



However, regulation 10(2)(a)(i) inserts a new paragraph (aa) which will sit in between the existing paragraphs (a) and (b). The new paragraph (aa) refers to the 2016 Act. When this new wording is inserted it is highly likely that upon first reading these provisions readers will think that the Act referred to in paragraph (b) is the 2016 Act not, as it should be, the 1985 Act. The Welsh Government is asked to provide its view in this regard and confirm whether any steps will be taken to remedy this.

### **3. 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.

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

There are several issues in these Regulations which arise when cross-referring to existing legislation:

- a. Regulation 6(2) refers to Schedule 1 of the Sexual Offences Act 1956 (“the 1956 Act”). However, the 1956 Act has a First Schedule rather than Schedule 1;
- b. Regulation 7 inserts new wording into the Land Compensation Act 1973 (“the 1973 Act”). There are several cross-referencing errors in this regulation:
  - i. Regulation 7(2)(a)(ii) makes a reference to “sub-paragraph (v)” but this should refer to “paragraph (v)”;
  - ii. There is also a typographical error in regulation 7(2)(a)(ii) where the words to be inserted into the 1973 Act should be “or (f)” not “of (f)”;
  - iii. In regulation 7(2)(b)(i) there is reference to “sub-paragraph (e)(iii)”, this should be “paragraph (e)(iii)”;
  - iv. Regulation 7(2)(b)(ii) inserts new wording into section 29(4) of the 1973 Act. It is stated that the new wording is to be inserted after sub-paragraph (iv), but it does not state which paragraph it refers to. The correct reference is paragraph (e)(iv), not sub-paragraph (iv).
- c. Regulation 10 inserts new wording into the 1984 Act. There are two cross-referencing errors in this regulation:
  - i. Regulation 10(2)(a) inserts new wording into section 60A of the 1984 Act. It refer to “paragraph (3)”, but this should be “subsection (3)”.
  - ii. Regulation 10(2)(b) inserts new definitions into section 60A of the 1984 Act. The opening words refer to “paragraph (7)” but this should be “subsection (7)”. In



the definition of “prohibited conduct standard contract” the words “of the” are repeated. There should also be semi-colons at the end of each definition.

- d. Regulation 11(5) inserts new wording into section 32 of the 1985 Act. There are two cross-referencing errors in this regulation:
- i. The heading of section 32 of the 1985 Act is referred to as “power to dispose of land held for the purposes of this Act”, but the word “Act” should read “Part”.
  - ii. In the new subsection (3A)(d)(ii), reference is made to Schedule 3 to the 2016 Act and it is not clear whether the wording in parentheses is intended to be a summary of what Schedule 3 does or whether it is the title of Schedule 3. The wording used is “various forms of occupation contract made with community landlords which may be standard contracts”, but the heading of Schedule 3 is “occupation contracts made with or adopted by community landlords which may be standard contracts”.
- e. Regulation 11(19) refers to the heading of section 247 of the 1985 Act as “changes of ownership of land to be notified to local housing authority”. The heading of section 247 of the 1985 Act is “changes of ownership **or occupation** of land to be notified to local housing authority” (emphasis added);
- f. Regulation 14(2) amends section 283(3A) of the Insolvency Act 1986. The regulation references subsection (3A) but “3A” has not been bracketed;
- g. Regulation 16(3) inserts a new section 1A into the Housing Act 1988 (“the 1988 Act”). At subsections (2) and (4) of that new section 1A, reference is made to “paragraph (3)”. As these references are made in relation to a sub-division of a section of an Act of Parliament, these references should instead read “subsection (3)”;
- h. Regulation 18 amends the Local Government and Housing Act 1989 (“the 1989 Act”). The following cross-referencing errors are noted in that regulation:
- i. Regulation 18(5)(c)(iii) refers to “sub-paragraph 3” of paragraph 2 of Schedule 10 to the 1989 Act. The “3” should be bracketed.
  - ii. Regulation 18(5)(d)(ii) refers to “sub-paragraph 5(a)” of paragraph 4 of Schedule 10 to the 1989 Act. The “5” should be bracketed.
  - iii. Regulation 18(5)(h)(iv) refers to “sub-paragraph 3(c)” of paragraph 11 of Schedule 10 to the 1989 Act. The “3” should be bracketed.
  - iv. Regulation 18(5)(i)(i) refers to “section 24 (incorporation and modification of supplementary terms)”. This should instead read “section 24 (incorporation and modification of supplementary **provisions**)” (emphasis added).
- i. Regulation 19 amends the Coal Mining Subsidence Act 1991 (“the 1991 Act”). The following cross-referencing errors are noted in that regulation:



- i. Regulation 19(2)(a) inserts a new sub-paragraph (4)(f) into paragraph 1 of Schedule 4 to the 1991 Act. In doing so, the regulation states, "(a) in sub-paragraph (4), after (e), insert–". It should state, "(a) in sub-paragraph (4), after **paragraph** (e), insert–" (emphasis added);
- ii. Regulation 19(2)(b) inserts a new sub-paragraph (7) into paragraph 1 of Schedule 4 to the 1991 Act. However, the regulation refers to this sub-paragraph being inserted after "paragraph (6)", rather than "**sub**-paragraph (6)" (emphasis added).
- j. Regulation 23(2) inserts a new section 1(8) into the Landlord and Tenant (Covenants) Act 1995. In doing so, the regulation reads "After subsection 1(7)...". It should read, "After **section** 1(7)..." (emphasis added).
- k. There are instances of incorrect chapter numbers being cited when referring to Acts of Parliament in the Regulations:
  - i. Regulation 14(2)(a) makes reference to "the Rent Act 1977 (c. 47)". This should read "the Rent Act 1977 (**c. 42**)" (emphasis added). 1977 c. 47 would take readers to the Local Authorities (Restoration of Works Powers) Act 1977;
  - ii. Regulation 16(3) makes reference to "the Local Government and Housing Act 1989 (c. 49)". This should read "the Local Government and Housing Act 1989 (**c. 42**)" (emphasis added). 1989 c. 49 does not correspond to an Act of Parliament.

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

Regulation 11(5)(b) inserts new a new subsection (3A) into section 32 of the 1985 Act. The new subsection (3A) refers to a supported standard contract. However, no definition of a supported standard contract appears in the 1985 Act. Regulation 11 goes on to insert a definition of a standard contract into the 1985 Act but not a supported standard contract.

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

Regulation 11(8) inserts new wording into the 1985 Act to set out where in that Act the new definitions inserted by regulation 11(7) will appear. Regulation 11(7) inserts a new definition for an "occupation contract" but this is not included in regulation 11(8). There are also no opening and closing quotation marks around the wording to be inserted by regulation 11(8) (the same issue arises in relation to regulations 11(18) and 11(25)).

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

Regulation 11(11)(b) omits wording from section 85ZA of the 1985 Act which is the result of the omission of section 85ZA(8) effected by regulation 11(11)(a). Regulation 11(11)(b) therefore removes the words "and (8)" from section 85ZA(9), but does not remove the plural



“subsections” in the preceding wording. The amendment should therefore substitute “subsections (7) and (8)” with “subsection (7)” in order for the legislation to make sense.

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

Regulation 11(23) amends section 554 of the 1985 Act. However, the structure of the amendments set out in regulation 11(23)(b) makes it unclear how such amendments are to take effect. It appears that regulation 11(23)(b)(i) should actually be regulation 11(23)(b) and that regulation 11(23)(b)(ii) should actually be regulation 11(23)(c) in order for this regulation to make sense.

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

Regulation 16(4) omits certain wording from section 8(4A)(a) and (4B) of the 1988 Act. However, it appears that paragraph 6(c) 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 16(4), rather than inserting the wording that regulation 16(4) seeks to omit. Regardless, that provision of the 2020 Act expired on 25 March 2022. Clarification is sought as to why regulation 16(4) has been considered necessary.

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

Regulation 16(9) inserts a definition of “secure contract” into section 45 of the 1988 Act by linking the term to its meaning in section 8 of the 2016 Act. It appears that the word “same” is missing from the associated explanation. The regulation should read, ““secure contract” has the **same** meaning as in the Renting Homes (Wales) Act 2016 (anaw 1) (see section 8 of that Act);” (emphasis added).

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

Regulation 18(5)(c)(iv) inserts a definition of “the 2016 Act” into paragraph 2(6) of Schedule 10 to the 1989 Act. It appears that the intention is to insert this definition after the definition of the “Housing Act 1988,” but, as currently drafted, the regulation suggests that the definition of “the 2016 Act” is to be inserted immediately after the words “Housing Act 1988,”.

A semi-colon should also appear within the quoted term relating to the 1988 Act, rather than a comma. It currently reads “Housing Act 1988,” (emphasis added), but should read “Housing Act 1988;”.

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



Regulation 18(5)(d)(v) inserts the wording “or an occupation contract” into paragraph 4(7)(a) of Schedule 10 to the 1989 Act. In the English text, the closing quotation marks around the inserted wording are missing. This error does not occur in the Welsh text.

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

Regulation 18(5)(e)(iv) inserts a new sub-paragraph (3)(cc) into paragraph 6 of Schedule 10 to the 1989 Act. In the Welsh version of the Regulations, there is a typographical error, as the new paragraph (cc) begins “n relation to...”, rather than “in relation to...” (emphasis added). This error does not occur in the English version.

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

Regulation 18(5)(f)(v) amends paragraph 9(4) of Schedule 10 to the 1989 Act to insert wording after “assured periodic contract” in both places it occurs. However, “assured periodic contract” does not appear in paragraph 9(4) of Schedule 10. It appears that the regulation should refer to “assured periodic **tenancy**” (emphasis added), which does appear twice in the paragraph.

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

Closing quotation marks around the wording are missing from some provisions:

- a. Regulation 18(5)(h)(i) inserts the wording “or the periodic standard contract” into paragraph 11(1)(a) of Schedule 10 to the 1989 Act;
- b. Regulation 34(4)(a):
  - i. in paragraph (i), in the English text, there is a missing set of closing quotation marks between the 2 semi-colons at the end of the definition of “contract-holder”; and
  - ii. in paragraph (ii), there is a missing set of closing quotation marks at the end of “or an occupation contract”.

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

Regulation 18(5)(h)(ix) inserts wording into paragraph 11(8)(c) of Schedule 10 to the 1989 Act, after “assured periodic tenancy”. However, “assured periodic tenancy” appears in the text appearing after paragraph (c), rather than within that paragraph. Therefore, the regulation should refer to paragraph 11(8) of Schedule 10 to the 1989 Act, rather than paragraph 11(8)(c).

This defect has a knock-on effect in relation to regulation 18(5)(h)(x). That regulation inserts a new paragraph (d) into paragraph 11(8) of Schedule 10 to the 1989 Act. As the regulations appear to have considered the wording appearing after paragraph 11(8)(c) to form part of paragraph (c), regulation 18(5)(h)(x) causes the wording currently appearing after paragraph



11(8)(c) to subsequently appear after the new paragraph (d). This does not appear to have been the intention of regulation 18(5)(h)(ix) and (x).

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

Regulation 22(4)(a) inserts wording into section 69(3)(c) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”). In doing so, reference is made to “that Act”. However, “that Act” is not defined for the purposes of the section and it is not clear to which Act of Parliament it refers. Preceding section 69(3)(c), reference is made in section 69 to the Leasehold Reform Act 1967, the Housing Act 1996, and the Commonhold and Leasehold Reform Act 2002.

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

Regulation 22(4)(b) inserts a new subsection (3A) into section 69 of the 1993 Act. Paragraph (a) of that new subsection appears to contain a drafting error in that it states “(see section 18 (see also section 19) [sic] of that Act)”. Whilst the references to section 18 and 19 of the 2016 Act appear correct, that sentence requires amending.

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

Regulation 22(5)(h) inserts a new paragraph 5 into Schedule 9 to the 1993 Act. However, the new paragraph 5 does not substitute the pre-existing paragraph 5, nor does that appear to be the intention of the regulation. Therefore, as currently drafted, Schedule 9 to the 1993 Act would contain two versions of paragraph 5. The regulation should instead insert the provision as “paragraph 4A”.

**20. Standing Order 21.2(viii) – that it uses gender specific language.**

These Regulations include gender specific language in two places:

- a. Regulation 24(3)(b)(ii), which inserts new sub-paragraph (7) into paragraph 7 of Schedule 7 to the Family Law Act 1996, includes the use of “his” in three places; and
- b. Regulation 25(15)(b), which inserts text into section 160A(8) of the Housing Act 1996 (“the 1996 Act”), includes the use of “he”.

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

Regulation 24(3)(b) inserts text following “Chapter 1 of Part V of the Housing Act 1996”, but appears to be missing “or” from the start of the inserted text.

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



Regulation 25(4)(d) substitutes "Subsection (1)(A)" in section 124(3) of the 1996 Act, but there is no subsection (1)(a). It appears that this should be "Subsection (1A)".

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

Regulation 25, which amends the 1996 Act, includes a number of omissions that do appear to be incorrect:

- Regulation 25(9)(a) omits section 143E(3)(a)(ii) of the 1996 Act, but there is no subsection (3)(a)(ii) in section 143E. It is not clear which provision should be omitted.
- Regulation 25(11) omits the wording "or 143H" from section 143I(1) of the 1996 Act, but the wording within that section is "or 143H(3)".

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

Regulation 27(2)(b) includes, in the new paragraph 3A(1), the text "referred to in this Part as "the 2016 Act"", but the definition is only used in paragraph 3A, and there are not any Parts in Schedule 7 to the Commonhold and Leasehold Reform Act 2002. It appears that the reference to "Part" should be to "paragraph".

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

Regulation 32 amends the Prevention of Social Housing Fraud Act 2013 to add references to "secure contract" alongside existing references to "assured tenancies". Within those sections amended by Regulation 32, there are references to "tenant" and "tenancy". It would appear that in place of those terms, the legislation should refer to "contract-holder" and "occupation contract". It is noted that the Consumer Rights Act 2015 is amended by Regulation 34 to insert references to "contract-holder" and "occupation contract" alongside tenant and tenancy respectively.

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

Regulation 32(5)(d) provides for the insertion of text, but does not include a reference to the subsection to be amended. It is not clear how the amendment could operate without a reference to the provision to which it applies.

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

Regulation 33(2) includes a reference to "the tenant's share (within the meaning given by that section)". It appears that the text should be "the tenant's **total** share (within the meaning given by that section)" because "total share" is a defined term in section 7(7) of the 1993 Act.





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

Regulation 34(4)(b) provides for the substitution of text within the definition of “long lease”. Subparagraph (ii) refers to “paragraph (a), but following the amendment to the paragraphs within the definition, this appears to be incorrect, and should instead refer to “subparagraph (i)”.

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

Regulation 34(4)(b) provides for the substitution of text within the definition of “long lease”, and specifically inserts the text “has the meaning given by paragraph 8 of Schedule 2 to the Renting Homes (Wales) Act 2016 (anaw 1)”. Paragraph 8 of Schedule 2 to the 2016 Act uses the term “long tenancy”, and it would appear appropriate to reference that term within the inserted text.

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

In Regulation 33(12)(a), the definition of “occupation contract” is inserted after the definition of “looked after, accommodated or fostered”. Elsewhere in these Regulations, the phrase “in the appropriate place in the alphabetical order insert” has been used when introducing new definitions. It would seem more appropriate here to use that latter approach, as the English and Welsh text are introducing the new definition after different definitions because of the different order of definitions in both language texts.

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

In Regulation 34(4)(b), the amendment that begins “in the definition of “long lease”...” is incorrectly numbered as subparagraph (b). It appears that this should be numbered as paragraph (iii), as it also is amending a definition found within section 88(1).

As a result, it appears that subparagraph (c) is also incorrectly numbered and should be subparagraph (b) (due to the earlier incorrect referencing).

## Merits Scrutiny

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

**32. 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. The Welsh Government is asked to provide further information in this regard.

**33. 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.**

Although the Committee notes that they do not form part of these Regulations themselves, over 50 errors have been found in the footnotes to these Regulations which have been notified separately to Welsh Government officials. Footnotes are a useful tool for readers of legislation only insofar as they are accurate and the Committee therefore encourages the Welsh Government to ensure that this is the case.

**34. 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.

**35. 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 all reporting points save for point 35.

## Committee Consideration

The Committee considered the instrument at its meeting on 11 July 2022 and reports to the Senedd in line with the reporting points above.

