

SL(6)270 – 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A draft of these Regulations was laid before the Senedd on 21 June 2022 but subsequently withdrawn on 11 July 2022, following the report of this Committee.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. This amended version was withdrawn on 10 October 2022, following the report of this Committee. A further amended version, which is the subject matter of this report, was laid on 11 October 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 2 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 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 amendment expands the provision to exclude standard contracts with bodies other than registered social landlords. Clarification is sought as to whether this is the intention of the amendment.

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

In its report on an earlier draft of these Regulations, the Committee noted that regulation 34(2) included a reference to “the tenant’s share (within the meaning given by that section)”, but that it appeared 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 Leasehold Reform, Housing and Urban Development Act 1993 (“1993 Act”).

In its response of 18 July 2022, the Welsh Government disagreed and stated that:

“The current drafting reflects the wording in the definition of “domestic tenancy” set out at section 2(1)(a)(ii) of the Housing (Wales) Act 2014.”

The wording in regulation 34(2) is “the tenant’s share (within the meaning given by that section)”, with “that section” referring to section 7(7) of the 1993 Act. Further it is noted that regulation 35(4)(a)(iii), which amends section 88 of the Consumer Rights Act 2015, includes a reference to “tenant’s total share (within the meaning given by that section)”, which again is a reference to section 7(7) of the 1993 Act.

It is noted that the definition of “domestic tenancy” in section 2(1)(a)(ii) of the Housing (Wales) Act 2014 includes a reference to “the tenant’s share (within the meaning given by that section)”, which again refers to section 7(7) of the 1993 Act. However, it would appear that the reference to “tenant’s share” in the Housing (Wales) Act 2014 may also be incorrect as the definition contained in the 1993 Act is “total share”. It therefore appears that the reference to “tenant’s share” in regulation 34(2) is incorrect.

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

3. 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 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 earlier drafts 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.

4. 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

Technical Scrutiny point 1

The Welsh Government confirms it was the intention of the amendment to exclude property where the landlord is a community landlord from the definition of what is a “domestic PR property”. This is to reflect the current legal position, as Local Authority tenancies cannot be assured tenancies by virtue of section 1 of and Schedule 1 to the Housing Act 1988. The purpose of the relevant provisions within the Chapter 2 of the Energy Act 2011 is to impose obligations on landlords of property in the private rented sector in relation to energy efficient measures. Accordingly, the amendment made by regulation 32(3) is necessary to reflect the intention of section 42 of the Energy Act 2011.

Technical Scrutiny point 2

The Welsh Government remains of the view that the meaning of “tenant’s share”, in paragraph (a)(ii) of the definition of “domestic tenancy” at section 2(1) of the Housing (Wales) Act 2014, is clear within the context of that provision. Regulation 34(2) simply makes amendments to that definition of “domestic tenancy” which are consequential upon the Renting Homes (Wales) Act 2016.

Legal Advisers

Legislation, Justice and Constitution Committee

26 October 2022



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