



Housing Services Implications of Renting Homes (Wales) Act 2016

1. Purpose

To raise awareness and provide an update to Cabinet on the implications of the Renting Homes (Wales) Act and to request that introductory tenancies and its successor under the Act are no longer used.

2. Context

The Renting Homes (Wales) Act 2016 simplifies how we will rent properties in Wales whether it be social landlord or the private rented sector. The Act gives us two types of landlords, namely:

- community landlords (primarily local authorities and registered social landlords); and
- private landlords (all other landlords).

Under the Act tenants and licensees are called 'contract-holders' who will have an 'occupation contract' (which replaces tenancy and licence arrangements).

There are two types of occupation contracts:

- Secure contract: For use by community landlords; and
- Standard contract: This is the default contract for the private rented sector (PRS) but can be used by local authorities and RSLs in certain circumstances (e.g. a 'Supported standard contract' within supported accommodation).

The Act has major implications for us in terms of our landlord functions in relation to our Council house stock and homelessness temporary accommodation responsibilities.

2. General information about the Act

This is a new piece of legislation introduced by Welsh Government with the main components coming into effect on 1 December 2022 (originally it was 15 July). The legislation will affect every tenant and landlord in public and private rented sector in Wales. The Act gives additional rights to tenants, supporting the Welsh Government view that tenants should be given a secure occupation contract. The Council is still the landlord and will continue to provide the same housing service.

In summary from the 1 December:

- The Council is now called a community landlord
- A tenant under the Act is called a contract-holder
- Our secure tenancies convert to secure occupation contracts on 1 December 2022.
- Any existing introductory tenancies convert to introductory standard occupation contracts on 1 December 2022.
- Tenancy start date is now called occupation date.
- Tenancy agreement is now called a written statement of terms and sets out the contract's rights and responsibilities.
- Notices cannot be served unless there is an up to date electrical and energy performance certificate.
- The Court must consider the contract-holder's circumstances and that it is reasonable to make a possession order.
- Landlords will have to give a written statement within 14 days of a contract starting or face financial penalties.

The main implications of the Act are summarised and highlighted below.

3. Council Housing Stock

Introductory tenancies under the Act are replaced with Introductory Standard Contracts which do not have the same legal power. However, existing legislation tackling ASB has not been changed.

The Act brings in two grounds for possessions – breach of contract (includes, rent arrears, ASB, excessive noise, verbal abuse, and physical assault. It also includes domestic abuse) and Estate Management grounds.

The Act introduces 29 considerations on Fitness for Human Habitation and has an impact on our repairing and maintenance obligations. If we do not respond in a timely manner, the contract holder can ask the court to award compensation equivalent to a day's rent for every day they have been inconvenienced. This is in addition to any disrepair claims.

The Fitness for Human Habitation obligations require landlords to ensure that a valid Gas Safety Certificate, Electrical Inspection condition report, and Energy Performance Certificate are provided to the contract-holder. Under the new law, a

contract-holder is entitled to withhold rent for any period when the property is unfit, which includes failing to meet these requirements. A landlord will not be able to serve a Notice until such time as they follow these requirements.

There are improved succession rights for contract holders to pass on their home. Such as, in the event a contract-holder dies, they now have the reassurance of added security that the contract may pass on to family members residing at the home. Both 'priority' and 'reserve' successors are now able to take over the 'Occupation Contract', subject to meeting the requirements of the Act. A Priority successor is a spouse/civil partner (or living as either). Reserve Successors can be a family member/carer (living at the property for 12 months prior to the contract-holder's death).

Both Priority and Reserve successors must have no other home to occupy at the time of death and must be 18+ years old to hold the contract when they succeed. If there is more than one person eligible to succeed, a Priority successor will have priority over a Reserve.

Legal note on carer's

During the 12 months before the contract-holder's death, the carer must have provided substantial care regularly for the contract-holder or a member of the contract-holder's family who lived at the property. The carer must not have provided the care because of a contract of employment or other contract with anyone. Being given board and lodging does not count as a contract. The carer must have lived at the property as their only and main home or lived with the contract-holder throughout the 12 months before their death. The carer must have no other property which they are entitled to occupy as a home.

We must give two months' notice of any increase in rent and only one increase is permitted within 365 days. For us this means we can only increase our rents once each year on 4 April. The implication is that we would need full Council approval for the annual rent increase to be made before February. Any delay in the legal notification would push back the date we can increase the rent for Council contract holders (tenants).

The Act also brings in changes to smoke alarms and carbon monoxide detectors. The landlord must ensure that, during each period of occupation, on each storey of the property there is a smoke alarm which is:

- a) In repair and proper working order.
- b) Connected to the property's electrical supply.
- c) Linked to every other smoke alarm in the property which is connected to the electrical supply.

Similarly, that landlord must ensure that, during each period of occupation, a carbon monoxide alarm which is in repair and proper working order is in each room of the property which contains a gas appliance, an oil-fired combustion appliance or a solid fuel burning combustion appliance.

4. Homelessness, Temporary Accommodation, Simple Lets and Supported housing.

For this part, the Act does differ slightly in terms of different contracts, and conditions used. When it comes to homelessness the WG would like to ensure those applicants, where we owe them a duty to rehouse, are progressed in a timely manner onto a secure contract. Fitness For Human Habitation, repairing obligations and safety requirements all apply except that the contracts used here do not have any succession rights. The main points here are that:

- Notices must be brought to Court within 6 months of notice date. This used to be 12 months.
- On 1 December, all existing Assured and Assured Shorthold Tenancies will convert to standard periodic occupation contracts.
- Standard periodic occupation contract will require a 6 months' notice to end the contract, effectively making it a 12-month contract. A two-month notice is allowed where there is a breach of contract.
- As stated above, a Notice can only be served by the landlord on a contract holder if there is a Gas Safety Certificate, an EPC (rating A to E), a 5 year electrical certificate in place, in addition to two hard wired smoke alarms and a working CO detector at the property on sign up. There can be no serious

condition issues that fall short of the Fitness For Human Habitation obligations.

- An increase in the 'no fault' notice period from two to six months. The Act seeks to protect contract-holders from 'retaliatory evictions' where occupiers are at risk of eviction for complaining about the condition of a property. It therefore allows the court to refuse to make an order for possession, where it is satisfied that the landlord is seeking to avoid complying with its Fitness For Human Habitation obligations. In addition, where the court refuses possession on this basis, the landlord will be unable to give a further 'no grounds' notice to terminate, for at least a further six months after the date of the court's refusal.
- If a homeless client is in B&B accommodation for more than 12 months then they will be need to be issued with Standard contract; and
- The Act changes the way we deal with temporary, supported, and shared accommodation and it strengthens the contract-holder's rights towards secure occupation.

5. Changes we have been making

- Updated all our legal agreements and contracts so that they are compliant with the Act.
- New procedures written to reflect the requirements of the Act.
- Policies reworded to comply with the Act.
- Amended letters, forms, notices and documents to ensure they contain the correct terms under the Act
- IT systems updated with new format for system generated letters/notices/forms.
- Web pages updated to ensure correct terms are used.
- Converted our existing tenancies to Secure Occupational Contracts in line with the Act requirements.
- All new "tenancies" from 1st December will be issued with a secure contract.
- All existing tenancies will convert to the new contracts on 1st December 2022. We then have 6 months to give "written statements" to all of our existing "tenants"; and

- Only one rent increase permitted per year and two months' notice now required. We are looking at rent increase letters going out before February to take effect on 4 April.

6. Decision required on Introductory Tenancies

The Renting Homes Project Group has been established to oversee the implementation and introduction of the Act. This work has included consideration of the use and effectiveness of Introductory Tenancies, which under the provisions of the Act will be replaced by Introductory Standard Contract on the 1st of December.

A review by the Group regarding the use and effectiveness of Introductory Tenancies shows that there is no practical or operational reason to continue with the use of these or adoption of the Introductory Standard Contracts after the implementation of the Act in December. If approved, the use of Introductory Tenancies should not be issued beyond the date of this report, and we will not adopt the use of Introductory Standard Contracts on 1 December.

Under the current legislation, when the introductory period of an introductory tenancy ends, the tenancy itself does not come to an end. However, the legal status of the tenancy changes, to a secure tenancy.

Under the Renting Homes Act, the position with introductory contracts is different. Under the new Act, at the end of the probationary period the introductory contract comes to an end, and a new secure occupation contract is automatically created on the relevant date.

Whilst this may seem like a minor change, this has a bearing on the administration of these contracts and the collection of rents, making it more onerous to use introductory contracts. For example, all of our current tenancies start on a Monday, and operate on the basis of a rent week which commences on a Monday and ends on a Sunday. Under the new Act, this will no longer be possible, as these new secure contracts will automatically be created on other days of the week.

The Authority currently has a single standard tenancy agreement, which applies to all our introductory and secure tenants. Under the new Act, this will no longer be possible. Should we continue with the use of introductory contracts, we will need to have different Written Statements of Contract for our introductory and secure contracts, to reflect the differences between them. We will also need to have

different Written Statements of contract for our new and existing tenants, to reflect the different terms which apply to them

Due to the requirement of the legislation, if we continue to use introductory contracts it is likely that we will need to have at least 5 different Written Statements of Contract to deal with out new and existing introductory and secure contract-holders. This will make the use and administration of these agreements significantly more complex than at present.

Breach of contract (Prohibited Conduct/Anti-social behaviour)

The way we deal with Anti-Social Behaviour (ASB) will also change under the Act. Whilst many of the ASB remedies are completely unaffected, a new process is added to the two traditional “eviction” options (possession and demotion). The landlord may now apply for one joint contract-holder to be removed from the contract based on their prohibited conduct.

Where the landlord is satisfied that there is behaviour falling within the Prohibited Conduct clause, the options which are created by the Renting Homes (Wales) Act 2016 are:

- Seek possession against the contract holder or holders based on Breach of Contract.
- Seek a court order demoting the secure contract by imposing a Standard Periodic Contract.
- Where the conduct is on the part of one joint contract-holder only, the landlord can seek to end the contract for that one contract-holder.

Judges will need to consider when contemplating reasonableness whether a lesser remedy is available. The Act introduces a new appeals system in which the contract holder can ask the Courts to review a decision to serve the notice in the first place.

When it comes to ASB we can still use these legal remedies, such as:

- Injunctions
- Acceptable Behaviour Contract
- Mediation
- Community Trigger
- Community Remedy
- Warning letters

- Community Protection Notice
- Criminally related Antisocial Behaviour Orders
- Closure orders
- Criminal Behaviour Order
- Public Spaces Protection Order; and
- Dispersal orders.

While that Act is enshrined in law and as such, we must follow the requirements, we do have discretion as to whether to continue to use the replacement of Introductory tenancies now called Introductory Standard Contracts. Over the years, Introductory tenancies have been a useful tool in combatting anti-social behaviour and other breaches early in the tenancy and before it became a full secure tenancy. However, their effectiveness has been watered down in recent times due to extended notice periods during Covid. Renting Homes will re-introduce those lengthy periods.

Legal Note

One of the circumstances where we as a community landlord may use a standard contract is where it is an introductory contract. A section 13 notice is required, and the notice must set out the reason the contract is a standard one and explain that the contract holder can apply to the court for a review of the decision to serve it. If a S13 notice is not served on time for any reason, their contract will be a secure contract by default.

The Introductory contract operates as a periodic standard contract for the “introductory period”. When it ends a new secure contract arises. It is no longer an Introductory Contract at that point. The introductory period can be extended to up to 18 months by serving a prescribed notice not less than 8 weeks before it is due to expire, although the decision to do that is subject to a review and challenge to the court.

The same rules on S13 notices apply to temporary accommodation.

What will remain under Renting Homes is the fact that a landlord has a mandatory ground for possession by service notice. So, provided the correct notice has been validly served (and all of the conditions for service are met) then subject to any

review, the court must grant a possession order. However, as a result of the notice period combined with the lengthy period before which notice can be served, court possession proceedings cannot commence during the first year of the occupancy.

7. Recommendations

Recommendation One: From 1 December 2022 the council will not issue introductory standard occupation contracts under the Renting Homes (Wales) Act 2016.

Recommendation Two: That the Council's previous decision electing to operate an introductory tenancy regime shall be revoked with immediate effect.