

COMMUNITY & HOUSING OVERVIEW AND SCRUTINY COMMITTEE

Date of Meeting	Wednesday 16 th November 2022
Report Subject	Renting Homes (Wales) Act 2016
Cabinet Member	Cabinet Member for Housing and Regeneration
Report Author	Chief Officer (Housing & Communities)
Type of Report	Strategic

EXECUTIVE SUMMARY

The Renting Homes Act is the biggest change to housing law in Wales for decades. From 1 December 2022 the Renting Homes (Wales) Act 2016 will change the way all landlords in Wales rent their properties.

The Renting Homes (Wales) Act 2016 aims to simplify the process of renting a home in Wales and to provide parties with more information about their rights and obligations. The Act is now partially in force, for the purpose of making regulations and issuing guidance.

The report provides an overview of the new Act and the changes that will be brought into effect from 1st December 2022

RECOMMENDATIONS

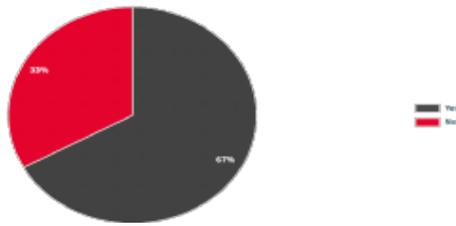
1	Community, Housing and Assets, Overview and Scrutiny Committee to note changes proposed to the way all landlords in Wales rent their properties for implementation from 1 December 2022.
2	Community, Housing and Assets, Overview and Scrutiny Committee to note the use of discretion provided in the Act to remove the use of introductory tenancies from our policy

REPORT DETAILS

1.00	EXPLAINING THE RENTING HOMES (WALES) ACT 2016
1.01	The Renting Homes (Wales) Act is the biggest change to housing law in Wales for decades. From 1 December 2022 the Act will change the way all landlords in Wales rent their properties.
1.02	The Renting Homes (Wales) Act 2016 aims to simplify the process of renting a home in Wales and to provide parties with more information about their rights and obligations. The Act is now partially in force, for the purpose of making regulations and issuing guidance.
1.03	Once fully enacted, the Act will create a completely new system for residential tenancies in Wales. It is intended to entirely replace the secure, assured, assured shorthold and assured agricultural occupancies tenancy regimes which currently operate under the Housing Act 1985 and Housing Act 1988.
1.04	Tenancies under the Rent Act 1977 and Rent (Agriculture) Act 1976 will remain unaffected.
1.05	Who is affected by the new law? All social and private tenants will see some changes: <ul style="list-style-type: none">• in the way their contracts are provided• in the way their homes are maintained• to how they communicate with their landlords All social and private landlords, including those who rent their properties through management companies or agents, will need to: <ul style="list-style-type: none">• comply with the new law• make the necessary updates to their properties and paperwork
1.06	Tenants Under the new law tenants and licensees will become 'contract-holders'. Tenancy agreements will be replaced with 'occupation contracts'. The new law will make renting easier and provide greater security. For contract-holders this will mean: <ul style="list-style-type: none">• receiving a written contract setting out your rights and responsibilities• an increase in the 'no fault' notice period from two to six months• greater protection from eviction• improved succession rights, these set out who has a right to continue to live in a dwelling, for example after the current tenant dies• more flexible arrangements for joint contract-holders, making it easier to add or remove others to an occupation contract
1.07	Landlords

	<p>For landlords this will mean:</p> <ul style="list-style-type: none"> • A simpler system, with two types of contract: ‘Secure’ for the social rented sector and ‘Standard’ for the private rented sector. • Ensuring homes are fit for human habitation (FFHH). This will include electrical safety testing and ensuring working smoke alarms and carbon monoxide detectors are fitted. • Abandoned properties can be repossessed without needing a court order.
1.08	<p>Occupation contract</p> <p>Once the Act is implemented most existing current tenancies and licenses will be converted into occupation contracts. The occupation contract will sit on top of a tenancy or license and will set out the rights and obligations of each party.</p> <p>The Act introduces the concept of a ‘landlord’ and a ‘contract holder’, who will enter into an occupation contract with one another. Landlords will also be grouped into one of two groups:</p> <ul style="list-style-type: none"> • Community landlords (as defined by section 9 of the Act and includes local authorities, housing associations and Registered Social Landlords) • Private landlords (any landlord in Wales who is not a community landlord) <p>There are two types of occupation contract:</p> <ul style="list-style-type: none"> • Secure contract: This replaces secure tenancies issued by local authorities and assured tenancies issued by housing associations that are Registered Social Landlords (RSLs); and • Standard contract: This is the contract that will mainly be used in the private rented sector (where you have a landlord who is not a council/local authority or a RSL), but can be used by local authorities and RSLs in some circumstances (e.g. a ‘supported standard contract’ for supported accommodation). <p>Whilst generally, a secure contract will be used by community landlords and standard contracts will be used by private landlords, there are exceptions to this contained within the Act (section 11 and schedule 2).</p> <p>As part of the Act, there are discretions for community landlords like Flintshire to decide whether to use Introductory Tenancies from 1st December 2022.</p> <p>Our legal partners, Hugh James, have been having discussions with their clients about whether or not they will continue to use Introductory Contracts from December 2022. Hugh James ran a poll across those clients to provide an overall view.</p> <p>The first question was to establish the use of introductory or starter tenancies currently:</p>

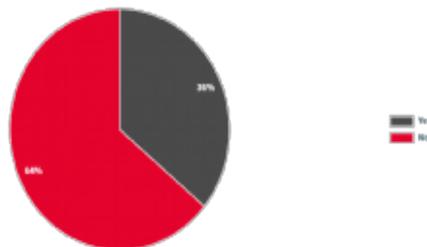
Do you use introductory or starter tenancies at the moment?



The responses were equally split between RSL and local authority clients. Around 66% of respondents currently use introductory or starter tenancies.

The next question was to establish the views of clients who are currently using such tenancies and whether they will use them up to and beyond December 2022

Are you currently planning to use introductory contracts when the Renting Homes (Wales) Act comes into force?



The survey found that approximately half of those who currently use introductory or starter tenancies are planning to no longer use them

Under current legislation one of the main benefits to the council of using introductory tenancies is the ability to terminate that tenancy in a timely way to protect from escalating rent arrears or long drawn out court proceedings.

Under the new Act the process for ending a tenancy is the same for both introductory and secure contracts, and as such, it is recommended to end the use of introductory tenancies and have one contract for all tenants.

1.09

Written Statement

The Occupation Contract will have to be set out in a 'written statement'. The purpose of the written statement is to confirm the terms of the contract.

This written statement must contain all the 'required contractual terms'. These are:

- Key matters: For example, the names of the landlord and contract-holder and address of the property. These must be inserted in every contract.

	<ul style="list-style-type: none"> • Fundamental Terms: Covers the most important aspects of the contract, including how the landlord gets possession and the landlord's obligations regarding repairs. • Supplementary Terms: Deals with the more practical, day to day matters applying to the occupation contract. For example, the requirement to notify the landlord if the property is going to be left unoccupied for four weeks or more. • Additional Terms: Addresses any other specifically agreed matters, for example a term which relates to the keeping of pets. <p>New contracts can be given in hardcopy or, if the contract-holder agrees, electronically. We are planning to hand deliver all our converted contracts within 6 months from 1st December. The contract does not need to be signed.</p> <p>All landlords will be obliged to issue contract holders with a written statement within fourteen days of the contract holder becoming entitled to occupy the dwelling. The occupation contract will not be enforceable until the landlord has provided a written statement to the contract holder.</p>
1.10	<p>Joint contract</p> <p>Contract-holders can be added or removed from occupation contracts without the need to end one contract and start another. This will make managing joint contracts easier and help people experiencing domestic abuse by enabling the abuser to be targeted for eviction.</p> <p>This is a real positive and will assist with some of the issues that our residents have experienced with Universal Credit claims around joint tenancies.</p>
1.11	<p>Enhanced Succession Rights</p> <p>Enables both a 'priority' and 'reserve' person ('successor') to succeed to the occupation contract. This allows two successions to the contract to take place, for example, a husband or wife followed by another family member. In addition, a new succession right for carers is created.</p> <p>All previous successions will be wiped clean giving all contract holders a clean slate, this is to ensure that there are no challenges on previous successions.</p>
1.12	<p>Fitness for Human Habitation</p> <p>Landlords must ensure properties are fit for human habitation (FFHH). This will include, for instance, electrical safety testing and ensuring working smoke alarms and carbon monoxide detectors are fitted.</p> <p>There is a general obligation on all landlords to ensure that the dwelling is fit for human habitation at the start of the contract and throughout the time the contract is operational.</p>

	<p>The obligation on landlords to keep the structure and exterior in repair and keep installations for the supply of water, gas or electricity, for sanitation, for space heating, and hot water in repair and proper working order.</p> <p>Landlords are not liable to do any work where they cannot do so at reasonable expense,</p> <ul style="list-style-type: none"> • to make good damage caused by fire, storm, flood or other accident • repair anything that the tenant is entitled to remove from the premises • or anything which does not affect the contract holder's enjoyment of the property <p>Landlords are also not required to do any work which is due to the tenant causing damage or not taking proper care of the property or its contents.</p> <p>Rent will not be payable for any period during which the property is not fit for human habitation. However, concerns must have been raised with your landlord and contract holders should continue to pay rent. If there is a dispute, this is a matter for the Court to decide the landlord has complied with the fitness obligation, and the contract holder may be required to pay back any rent owed.</p> <p>Landlords have a reasonable time to carry out works once they become aware that the works are necessary. Landlords must give 24 hours' notice to access a property for the purposes of undertaking such repairs.</p>
1.13	<p>Abandonment Procedure</p> <p>Landlords can repossess an abandoned property without needing a court order, after serving a four-week warning notice and carrying out investigations to be sure the property is abandoned.</p>
1.14	<p>Protection against 'retaliatory eviction'</p> <p>Landlords cannot issue a no fault notice just because of a complaint that the home is in a poor state of repair. The Court would need to be satisfied that the landlord hasn't issued the notice to avoid carrying out the repair.</p>
1.15	<p>Private Rented Sector</p> <p>There is greater security for people who live in the private rented sector (PRS) under the new law:</p> <ul style="list-style-type: none"> • A landlord must give you at least six months' notice (a 'section 173' notice in the Act) to end the contract, providing the tenant does not break a term of the contract, often called a 'no fault' notice (increased from two months' notice). • No fault notices cannot be issued until six months after the tenant moves in (the 'occupation date' of the contract). • If the landlord has not acted on the 'no fault notice' (so they haven't used it to try to get possession of the property), they can't issue another one for six months.

	<ul style="list-style-type: none"> • If the tenant has a fixed term contract (which says how long the contract is for) the landlord cannot normally issue a notice to end the contract. If the tenant does not leave, the fixed term contract will usually become what is called a 'periodic standard contract' at the end of the fixed term, and the landlord will have to serve a six-month no fault notice to bring this to an end. • Landlords cannot include a break clause (to regain possession) in fixed term standard contracts of less than two years. If the fixed term is two years or more, the landlord cannot give notice until at least month 18 of the fixed term contract, and will have to give the tenant at least six months' notice.
1.16	<p>Termination of occupation contract</p> <p>Under both a secure contract and a periodic standard contract, the contract holder can terminate the contract early by giving no less than four weeks' notice to the landlord. Under a fixed term standard contract, the contract holder's ability to terminate the contract early depends on whether there is a break clause in the contract.</p>
1.17	<p>Implementation In Flintshire</p> <p>Services have been actively working through the implementation of the Act. The original planned date of implementation was 15th July 2022, however, Welsh Government recognised there were still a number of outstanding changes required within the regulations that would not be resolved for the original implementation date. As such, a decision was made to postpone implementation to 1st December 2022.</p> <p>As part of a regional collaboration Hugh James solicitors have been engaged to support implementation and to provide a collective and aligned approach from a legal perspective. This work has been progressing well and we continue to engage with them on a local and regional level.</p> <p>We have developed a communication and training plan with actions to be implemented at the appropriate time. As it has taken until mid-July to finalise some of the detail around the regulations and to ensure information and training are as close to the implementation date as possible, this work is now starting to move at pace.</p>

2.00	RESOURCE IMPLICATIONS
2.01	<p>As part of a regional collaboration, we procured the services of Hugh James solicitors. The contract provides the following for us and regional partners:</p> <ul style="list-style-type: none"> • Train together: access 5 delegate places at each of the sessions in our unique webinar series developed with Community Housing Cymru. • Draft together: producing your written statements of terms (occupation contracts) in conjunction with counsel.

	<ul style="list-style-type: none"> • Build policy together: our plain-English manual to help guide your teams through the legislation and understand the new approach. Once you have used that to build your policies, we will carry out a final review of the updated policies you have developed. • Added value: shared learning across the sector in the form of weekly summaries of all of our clients' questions and answers and 25 hours of bespoke “surgery” style sessions with our team over the 6 month implementation period <p>This has reduced the cost of the legal advice as we procured this as a region, it has also provided the forum for shared learning and support with the legal experts and colleagues across North Wales</p>
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3.00	IMPACT ASSESSMENT AND RISK MANAGEMENT
3.01	The IIA is currently being drafted.
3.02	There is a live risk register associated with the implementation which is managed by the officer project team.

4.00	CONSULTATIONS REQUIRED/CARRIED OUT
4.01	<p>There is no consultation required, or appropriate, for implementation of the regulations as it is a legislative requirement and the current tenants will transfer over to a secure contract.</p> <p>However, the contracts will be reviewed and consideration given to the need to vary some for specific reasons; i.e. garden condition, parking and pets. The consultation process will be defined and structured at the appropriate time after the implementation date.</p>

5.00	APPENDICES
5.01	None.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>https://gov.wales/search?global-keywords=toolkit+for+renting+homes+wales</p> <p>https://gov.wales/renting-homes-act-and-regulations</p> <p>https://gov.wales/fitness-homes-human-habitation-guidance-landlords-html</p> <p>https://www.legislation.gov.uk/anaw/2016/1/contents/enacted</p>

	https://law.gov.wales/public-services/housing/renting-homes-wales-act-2016
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7.00	CONTACT OFFICER DETAILS
7.01	Contact Officer: Jen Griffiths, Service Manager, Housing, Welfare and Communities Telephone: 01352 702929 E-mail: jen.griffiths@flintshire.gov.uk

8.00	GLOSSARY OF TERMS
8.01	Private Tenant – someone who rents their home from a private individual. Registered Social Landlord - Registered social landlords are independent housing organisations, mostly housing associations. Social Tenant – Someone who rents their home from a housing association or local council.