

Number: WG32396



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Renting Homes (Wales) Act 2016 – Regulations relating to Safeguarding Property in Abandoned Dwellings

Date of issue: 15 January 2018
Action required: Responses by 6 April 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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Overview	This consultation is to gather views on the draft Regulations on Safeguarding Property in Abandoned Dwellings and draft Guidance on the Possession of Abandoned Dwellings and the Safeguarding of Property.
How to respond	<p>Please respond on this consultation by answering the questions at the end of this document. Responses can be submitted in a number of ways.</p> <p>Online: https://consultations.gov.wales/consultations/renting-homes-wales-act-2016-regulations-relating-safeguarding-property-abandoned</p> <p>Email: rentinghomes@gov.wales</p> <p>Post: Renting Homes Team Housing Policy Division Ground Floor, West Core Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>When responding please state whether you are responding as an individual or are representing the views of an organisation.</p>
Further information and related documents	Large print, Braille and alternative language versions of this document are available on request.
Contact details	Renting Homes Team Housing Policy Division Ground Floor, West Core Welsh Government Cathays Park Cardiff CF10 3NQ rentinghomes@gov.wales
Data protection	<p>How the views and information you give us will be used</p> <p>Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other</p>

Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Part 1: Summary

The Renting Homes (Wales) Act 2016 ('the Act') will make it simpler and easier to rent a home, replacing various and complex pieces of existing legislation with one clear legal framework.

One of the areas the Act seeks to make clearer is what happens to property in a dwelling when the contract-holder has abandoned the dwelling. Section 220 of the Act provides the ability for a landlord to repossess a dwelling which has been abandoned by the contract-holder, without recourse to the court. This prevents the unnecessary expense landlords would incur in seeking a court order for an abandoned dwelling. Furthermore, it allows these vacant dwellings to be re-occupied more quickly.

Chapter 13 of Part 9 of the Act specifies the procedure a landlord must follow in order to recover possession of an abandoned dwelling. It also sets out remedies available to contract-holders if they have not abandoned the dwelling. Section 221 of the Act provides the Welsh Ministers with a power to make regulations as to how a landlord must safeguard property, other than the landlord's property, left in the abandoned dwelling.

This consultation seeks your views on the draft Regulations on Safeguarding Property in Abandoned Dwellings ("the Regulations") to be made under section 221. They are set out in Part 2 of this document.

The law regarding how landlords deal with property left at an abandoned dwelling is currently complex and unclear. There exists a mixture of common law and legislation which may apply differently depending upon the particular circumstances, including whether the landlord is a local authority, housing association or private individual. The proposed Regulations will apply to all landlords under the Act, that is both private and community landlords.

The purpose of the Regulations is to ensure a contract-holder's personal property is dealt with appropriately by a landlord, having had regard to its value and the associated costs of any storage and/or removal. The intention is to provide sufficient time for the contract-holder to recover their personal property without placing undue financial burdens on a landlord.

How long must a landlord safeguard a contract-holder's property?

The Regulations place a duty on a landlord to safeguard property for one month from the date the contract ends. The contract ends on the day a notice is served under section 220(5) of the Act, which follows a four-week warning period.

At any time during the month following repossession, a contract-holder is able to reclaim their property from the landlord. There may be a requirement to reimburse the landlord for any expenses incurred in the safeguarding of their property, for example the costs of removal or storage.

What if the property is of no value?

A landlord who considers the property is perishable or the value of the property would not cover the costs of safeguarding, or would incur unreasonable expense or inconvenience, may dispose of it. For example, a landlord would not be expected to store items which have been discarded as household refuse or stored in a fridge.

Why is the safeguarding period only one month?

Prior to ending the occupation contract under section 220(5) of the Act, a landlord must serve a notice on the contract-holder indicating the landlord believes the dwelling has been abandoned (section 220(3) of the Act). This notice period lasts for 28 days, during which time the landlord must carry out enquiries in order to be satisfied the contract-holder has abandoned the dwelling. At any time during this 28 day period the contract-holder may return to the dwelling, confirm they have not abandoned the dwelling or collect any property. This, in conjunction with the safeguarding requirements, will provide the contract-holder up to eight weeks to recover their property in the event they have abandoned the dwelling.

From the perspective of the landlord, at the point of serving the notice under section 220(3), a dwelling may have been abandoned for some time, with no rent being paid to the landlord. It is therefore considered prohibitively expensive for a landlord to incur safeguarding expenses in excess of one month after the contract ends. Doing so would likely deter a landlord from engaging the abandonment procedure for possession of the dwelling. Where a contract-holder has abandoned the dwelling without giving the notice usually required to end the contract, the landlord should not be forced to endure more undue expense.

Part 3 of this Consultation includes draft Guidance on the abandonment procedure under section 220 of the Act and the obligations for a landlord to safeguard property. Your views are sought on the content of this draft Guidance.

Part 2: Regulations on Safeguarding Property in Abandoned Dwellings

W E L S H S T A T U T O R Y I N S T R U M E N T S

20XX No. (W.)

HOUSING, WALES

The Renting Homes (Safeguarding Property in Abandoned Dwellings) (Wales) Regulations 20XX

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the landlord's requirement to safeguard property in a dwelling when an occupation contract ends under section 220 of the Renting Homes (Wales) Act 2016 (possession of abandoned dwellings) ("the Act").

Regulation 3 provides that the landlord must safeguard property for the period of one month from the date of the end of an occupation contract (pursuant to section 220(6)) after which time the landlord may sell any property remaining in his or her custody. Paragraph (2) provides circumstances when the duty does not apply, in which case, the landlord may sell or dispose of property as he or she thinks fit.

Regulation 4 provides that the landlord must, on receipt of payment of the landlord's expenses, surrender any property to which these Regulations apply to any person appearing to be a person entitled to delivery of that property.

Regulation 5 provides that the landlord may deduct the landlord's expenses and the amount of any rent arrears from the proceeds of sale of any property to which these Regulations apply.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

20XX No. (W.)

HOUSING, WALES

**The Renting Homes (Safeguarding Property in Abandoned Dwellings)
(Wales) Regulations 20XX**

Made ***

Laid before the National Assembly for Wales

Coming into force ***

The Welsh Ministers, in exercise of the powers conferred on them by sections 221 and 255(1) of the Renting Homes (Wales) Act 2016(1), make the following Regulations.

Title and commencement

1. The title of these Regulations is the Renting Homes (Safeguarding Property in Abandoned Dwellings) (Wales) Regulations 20XX and they come into force on the appointed date.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Renting Homes (Wales) Act 2016; and

“the appointed date” (“*y dyddiad penodedig*”) means the day on which section 239 of the Act comes into force.

Requirement of landlord to safeguard property

3.—(1) In respect of property that is in a dwelling when an occupation contract of that dwelling ends under section 220 of the Act, the landlord must safeguard that property for one month from the date the contract ends and after expiry of that period, the landlord may sell any property remaining in the landlord’s custody.

(2) Paragraph (1) does not apply to property—

(a) which is of a perishable nature or in circumstances where to safeguard it adequately would involve the landlord in unreasonable expense or inconvenience; or

(b) the value of which would not, in the opinion of the landlord, exceed the amount which the landlord would be entitled to deduct from the proceeds of sale of such property under regulation 4

and the landlord may sell or otherwise dispose of such property at such time and in such manner as the landlord thinks fit.

Charges payable

4. Where at any time prior to the sale or disposal of property under these Regulations the contract-holder, or any person who appears to the landlord to have a right of ownership of or possession in the property, arranges for delivery to the contract-holder or any other person, as the case may be, the landlord must relinquish custody of that property upon receipt of a payment equal to the amount of any costs incurred by the landlord in complying with

(1) 2016 anaw 1.

these Regulations in relation to that property or such lesser amount (including a nil amount) as the landlord thinks fit.

5. Where the landlord sells property under regulation 3, the landlord may deduct from the proceeds of sale the amount of any expenses incurred by the landlord in complying with these Regulations and, if there is any remainder after deduction of such amount, the amount of any arrears of rent due under the occupation-contract.

Public health and safety

6. Nothing in regulations 3 and 4 prevents the exercise by any person or authority of any power under any enactment relating to public health or public safety.

Local Government (Miscellaneous Provisions) Act 1982

7. Section 41 of the Local Government (Miscellaneous Provisions) Act 1982(2) does not apply to property which is in a dwelling owned or managed by a local authority when an occupation contract of that dwelling ends under section 220 of the Act.

Name

Minister for Housing and Regeneration, under the authority of the Cabinet Secretary for Local Government and Public Services, one of the Welsh Ministers

Date

(2) 1982 c.30.

Part 3: Guidance on the Possession of Abandoned Dwellings and the Safeguarding of Property.

This guidance sets out the procedure a landlord must follow when seeking to recover possession of an abandoned dwelling under section 220 of the Act. The guidance also addresses the Safeguarding Property in Abandoned Dwellings Regulations.

Where a landlord has good reason to believe a dwelling has been abandoned by the contract-holder, the landlord may recover possession without recourse to the court. This is subject to the occupation contract for the dwelling including a term requiring occupation of the dwelling by the contract-holder as their only or principal home.

Before a landlord uses the abandonment procedure, there must be a belief that the contract-holder has abandoned the dwelling. While there is no absolute indicator of a dwelling being abandoned, a landlord might take into consideration the non-payment of rent for a period of time and/or the dwelling being left unsecured as possible reasons to believe abandonment may have occurred. As described later, a contract-holder has grounds to challenge the landlord's actions under section 222 of the Act.

Where a landlord wishes to repossess the dwelling under the abandonment procedure they must issue a notice under section 220(3) of the Act to the contract-holder. This notice will inform the contract-holder of the following:

- The landlord believes the dwelling has been abandoned by the contract-holder.
- The landlord is providing a warning period of four weeks, during which time the contract-holder must inform the landlord, in writing, if the dwelling has not been abandoned.
- The landlord's intention to end the occupation contract after the warning period if the landlord is still satisfied the dwelling has been abandoned.

It may not be possible to deliver this notice directly to the contract-holder if, for example, the dwelling has indeed been abandoned. In such circumstances a landlord should take all possible steps to try and ensure the contract-holder has access to the notice, for example:

- Leaving the notice at the dwelling
- Providing to the contract-holder in person
- Serving the notice to alternate contact details if already provided by the contract-holder.

The notice provided to the contract-holder under section 220(3) must be served in a prescribed form. This prescribed form will set out the information contained above and provide the contract-holder additional information relating to any property remaining at the dwelling.

During the warning period, the landlord must carry out enquiries to be '*satisfied*' that the dwelling has been abandoned. A landlord should use details and information previously supplied by the contract-holder as part of these enquiries. Such enquiries may include:

- Using all contact details that a landlord holds for the contract-holder.

- Writing to all addresses known to the landlord – including any contact details of friends and family members provided by the contract-holder. This may include a guarantor.
- Consulting neighbours.
- Contacting a GP or local hospital.
- Contacting the local authority, for example any alcohol or substance misuse service if considered relevant.
- Contacting support workers or agencies assisting the contract-holder.

The landlord must ensure all relevant inquiries are made so as to satisfy him or herself that the contract-holder has in fact abandoned the dwelling. If the landlord remains satisfied the dwelling has been abandoned at the end of the warning period, a notice ending the occupation contract may be issued under section 220(5). The notice provided to the contract-holder under section 220(5) must be provided on a prescribed form. A landlord must provide a copy of any notice served under sections 220(3) and 220(5) to any lodger or sub-holder occupying the dwelling.

Under section 222 of the Act a contract-holder may, for up to six months after the day the contract was ended by the landlord, challenge the repossession of the dwelling by the landlord on the following grounds:

- The landlord failed to serve the proper notice;
- The landlord failed to carry out the proper enquiries;
- The contract-holder had not abandoned the dwelling and there was good reason for the failure to respond to the landlord; or
- The landlord did not have sufficient reason for being satisfied the dwelling was abandoned.

Having ended the contract (by issuing the notice under section 220(5)), a landlord has a duty to safeguard all remaining property left at the dwelling in accordance with the Regulations. A landlord will be required to safeguard the belongings, left at the dwelling, for a period of one month, save for the following exceptions:

- The property is perishable in nature and storage for one month would involve an unreasonable degree of inconvenience or expense to the landlord.
- The value of the property, when eventually sold, would not, in the landlord's opinion, be sufficient to reimburse the landlord for the expenses incurred in safeguarding it.

Landlords are advised to make an inventory, with photographic evidence, of any property they decide not to safeguard.

Property which a landlord considers is of sufficient value to safeguard for one month must be returned to the owner, where a claim has been made, in line with the Regulations. The landlord must be reimbursed for any expenses incurred in safeguarding the property up to that point, if such expenses have been incurred. Where no claim has been made on property after a period of one month, the landlord may sell or otherwise dispose of it.

Landlords under certain circumstances may enter the dwelling if they believe it has been abandoned. Entry by the landlord is permitted in order to secure the dwelling or its contents. For example, where the landlord considers the dwelling has been abandoned and the windows have been left open, entry to secure those windows may be made.

The closing date for replies is 6 April 2018

Returning this form

Please complete the online form or return this completed form by email to: rentinghomes@gov.wales If you are sending your response by email, please mark the subject of your email **Safeguarding Property consultation**

Or by post to:
Renting Homes Team
Housing Policy Division
Ground Floor, West Core
Welsh Government
Cathays Park
Cardiff
CF10 3NQ.

Name:	
Email:	
Telephone:	
Address:	
Postcode:	
Organisation (if applicable)	

Publication of responses

Responses to publications may be made public – on the internet or in a report. Normally the name and address (or part of the address) of its author will be published along with the response, as this helps to show the consultation exercise was carried out properly.

If you would prefer your name and address not be published, please tick here

Q1. Overall approach to Safeguarding Property	Please Tick	
Do you agree with our overall approach to how a landlord must safeguard property left in an abandoned dwelling?	Yes	No
If no please briefly explain why.		

Q2. Period to safeguard property.	Please Tick	
Do you agree with the requirement for a landlord to safeguard property for one month (where required)?	Yes	No
If no please briefly explain why.		

Q3. Content of Guidance on the Possession of Abandoned Dwellings	Please Tick	
Do you agree that the draft guidance adequately explains the abandonment procedure under section 220 of the Act?	Yes	No
If no please briefly explain why.		

Q4. Content of Guidance on the Safeguarding of Property.	Please Tick	
Do you agree that the draft guidance adequately explains the safeguarding procedure under the regulations?	Yes	No
If no please briefly explain why.		

Q7. Do you have any further comments to make on the draft Regulations or draft guidance?

Q8. Welsh Language Impact.
<p>While this consultation paper is being made available in Welsh, please can you suggest how the proposed 'Fitness For Human Habitation Guidance' document could be formulated or changed so as to have:</p> <ul style="list-style-type: none"> i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.