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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Renting Homes (Wales) Act 2016 – Regulations relating to Model Written Statements of Occupation Contracts and Explanatory Information

Date of issue: 24 March 2021
Action required: Responses by 16 June 2021

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

Overview

This consultation is seeking your views on two sets of draft Regulations being made under section 23 of the Renting Homes (Wales) Act 2016. These are:

- The draft Renting Homes (Model Written Statements) (Wales) Regulations; and
- The draft Renting Homes (Explanatory Information for Written Statements) (Wales) Regulations

How to respond

Please respond on this consultation by answering the questions at the end of this document. Responses can be submitted in a number of ways.

Email: rentinghomes@gov.wales

Post: Renting Homes Team
Housing Policy Division
Second Floor, North Core
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

When responding, please state whether you are responding as an individual or are representing the views of an organisation.

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
Second Floor, North Core
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

rentinghomes@gov.wales

UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, 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. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data holds about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:
Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113
Website: <https://ico.org.uk/>

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Chapter 1: Introduction

- 1.1 The Renting Homes (Wales) Act 2016 ('the Act') will make it simpler and easier to rent a home in Wales, replacing various, complex pieces of existing legislation with one clear legal framework. New 'occupation contracts' will replace current residential tenancies and licenses, making the rights and obligations of both landlord and tenant or licensee (referred to in the Act as the 'contract-holder') much clearer. Central to this is the requirement, under section 31 of the Act, for a landlord to provide a 'written statement' of the occupation contract to the contract-holder.
- 1.2 In order to encourage consistency in the way written statements are drafted, and to provide a reliable aid for the creation of written statements that are compliant with the legal requirements, section 29(1) of the Act requires the Welsh Ministers to "*prescribe model written statements of contracts for such kinds or descriptions of occupation contract as they think fit*". Subsection (2) sets out that such model written statements are written statements which incorporate "*without modification all the fundamental and supplementary provisions applicable to that contract*".
- 1.3 To add further to the consistency and clarity of written contracts, section 32(4) states that a written statement "*must contain explanatory information about such matters as may be prescribed.*"
- 1.4 This consultation seeks the views of any interested party on the draft regulations that the Welsh Ministers intend to make under section 29(1) of the Act, and in particular the draft model written statements themselves, as well as the draft regulations setting out the matters about which the Welsh Ministers wish to see explanatory information included in written statements.
- 1.5 In the case of model written statements, their content (i.e. the terms set out in them) are largely predetermined by the provisions of the Act and of regulations made under it. Consequently, this consultation seeks views only on the design, structure and order of the draft model statements rather than the pre-determined terms. For the purpose of this consultation we are using as an example the periodic standard contract and the secure contract

Chapter 2: Background to the drafting

2.1 Both the explanatory information and the model written statement regulations have been drafted to take account and to reflect the types of occupation contract introduced by the Act and the mandatory content it requires.

Types of occupation contract

2.2 There are two principle types of occupation contract:

- Secure contracts – modelled on the current secure tenancy issued by local authorities. These will be the default contract issued by community landlords (housing associations and local authorities).
- Standard contracts - modelled on the current assured shorthold tenancy. These will be the default contract issued by private landlords.

2.3 The two main types of standard contract will be:

- Periodic standard contracts (rolling contracts, for example running from week to week, or month to month depending on the rental periods, and which may automatically follow a fixed term standard contract); and
- Fixed term standard contracts (for a set period such as one or two years).

2.4 The Act also provides for different versions of the periodic standard contract for use by a community landlords or, in certain instances, registered charities, to address particular circumstances. These are the:

- Introductory standard contract (used optionally for the first 12 months of occupation);
- Prohibited conduct standard contract (used to address serious cases of anti-social behaviour); and,
- Supported standard contract (a contract for use within supported accommodation).

Content of written statements

2.5 Section 32 of the Act sets out the required contents of a written statement. These are as follows.

- the names of the parties to the contract (i.e. the landlord/s and contract-holder/s).

- the terms of the contract addressing the 'key matters'. Section 26 sets out that for all occupation contracts the key matters include: the address of the dwelling; the occupation date; the amount of rent or other consideration; and the rental periods. For standard contracts, section 27 sets out that the key matters also include: whether the contract is fixed term or periodic; if it is made for a fixed term, the term for which it is made; if there are periods during which the contract-holder is not entitled to occupy the dwelling as a home, those periods.
- the 'fundamental terms' of the contract. These terms are set out in the Act as fundamental provisions. They deal with the essential rights and obligations of landlords and contract-holders and cover things such as anti-social behaviour, a landlord's obligation for repair and grounds for eviction. Whilst some fundamental terms have to appear in the contract as set out in the Act, such as the term relating to anti-social behaviour, most can be modified, but only if that improves the position of the contract-holder. Schedule 1 to the Act provides an overview of all the fundamental provisions within the Act and how these are incorporated into an occupation contract as fundamental terms
- the 'supplementary terms' of the contract. Section 23 of the Act provides a power for Welsh Ministers to prescribe supplementary provisions, which become incorporated into occupation contracts as supplementary terms. The regulations made under this power will be the Renting Homes (Supplementary Provisions) (Wales) Regulations 2021 and Renting Homes (Supported Standard Contracts) (Supplementary Provisions) (Wales) Regulations 2021. Supplementary terms deal with more practical matters which help to make the contract work, such as a contract-holder's requirement to pay rent or a landlord's right to access to the dwelling. When drawing up the contract, the landlord and contract-holder can agree to modify or omit any of the supplementary terms. Supplementary terms can be modified to benefit either the contract-holder or the landlord.
- any 'additional terms' of the contract. Section 28 of the Act sets out that these are any express terms of the contract other than terms addressing the key matters, the fundamental terms or the supplementary terms. An additional term of an occupation contract which is incompatible with any of those other terms has no effect. Additional terms are agreed between the landlord and contract-holder and would be included in an occupation contract to address issues specific to that contract such as the keeping of a pet.
- explanatory information about such matters as may be prescribed – i.e. that which is set out in the accompanying draft regulations (see chapter 3 below).

2.6 In addition, the written statement must identify:

(a) any fundamental provision applicable to the contract which is not incorporated as a term of the contract because of section 20(1) or 21(2) of the Act¹; and

(b) any supplementary provision applicable to the contract which is not incorporated as a term of the contract because of section 21(2), 24(1) or 25(2) of the Act².

¹ Under section 20(1), a fundamental provision is not incorporated as a term of an occupation contract if –

- a) the landlord and contract-holder agree that it should not be incorporated, and
- b) the effect of it not being incorporated is that the position of the contract-holder is improved.

If as a result it is necessary that another fundamental or supplementary provision is not incorporated, under section 21(2), that other provision is not incorporated.

² Under section 24(1), a supplementary provision is not incorporated as a term of an occupation contract if the landlord and contract-holder agree that it should not be incorporated.

If as a result it is necessary that another supplementary provision is not incorporated, under section 25(2), that other provision is not incorporated.

Chapter 3: The Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations

- 3.1 The purpose of including explanatory information in the written statement is to make the contract as clear and comprehensible as possible. The Welsh Ministers' power under section 32(4) of the Act to prescribe matters about what explanatory information must be included in these statements should be exercised accordingly. Before drafting these regulations, careful consideration has been given to both their potential content and whether there is any need to make such regulations. This consideration has been conducted with a view to ensuring that any required information would not add significantly or disproportionately to the overall length of occupation contracts.
- 3.2 Firstly, consideration has been given to whether the mandatory content of a written statement, prescribed by section 32 of the Act, might require further explanation. Generally, the mandatory content is either of the sort for which no further explanation could be given (e.g. the names of the parties to the contract) or, in the case of the fundamental and supplementary provisions that are to be incorporated as terms of the contract, would be at risk of being misinterpreted if any explanation is provided that is additional to that already present in the provisions themselves. That is, in the case of the fundamental and supplementary terms, the wording of the Act and relevant regulations should be sufficiently self-explanatory on its own (we would also expect the wording of any agreed additional terms to be self-explanatory).
- 3.3 However, in the case of the requirement to identify applicable fundamental and supplementary provisions not incorporated as terms of the contract (subsection 32(3)), in order to make sense of identified provisions it is considered that a contract-holder would need to be provided with information explaining how these provisions are identified.
- 3.4 The second consideration is whether and what information might be required in order that a contract-holder understands the purpose and value of their written statement.
- 3.5 For instance, whilst the terms of the contract based on the provisions of the Act and relevant regulations should be self-explanatory, they do not necessarily explain some of the other vital elements of occupation contracts. This includes what such contracts are, how they are constructed, and their legal status, importance and usefulness. In addition, the terms do not explain some of the key terminology. It is considered that the inclusion

of information about these matters within written statements may be critical in maximising their intelligibility to contract-holders. Furthermore, it is considered important that written statements provide information to contract-holders about what they might do where disagreements arise, or where a landlord fails to do something that they were required to do – especially in relation to the provision of the written statement itself, or where they might go for more information generally. Unless written statements provide some clarity to contract-holders in relation to these issues, their effectiveness as a means of improving the operation of the rented sector could be diminished.

- 3.6 The third and final consideration has been whether the inclusion of a summary of some of the more important rights and responsibilities conferred by an occupation contract would be an appropriate requirement. On balance, it is considered that a brief summary would be important in illustrating and underlining its significance to the contract-holder. It is also thought that the inclusion of such a summary would be a useful way of encouraging the contract-holder's further engagement with the contract.

Chapter 4: The Renting Homes (Model Written Statements of Contracts) (Wales) Regulations 2021

- 4.1 In the light of the description of ‘model written statement’ provided in the Act (as set out at section 29(2)), the draft regulations set out two model written statements – the periodic standard contract, and the secure contract – each incorporating, unmodified, the fundamental provisions and supplementary provisions that are relevant to them. In addition, both draft model written statements contain the other elements of the mandatory contents of a written statement, including explanatory information about the matters that the Welsh Ministers wish to prescribe (but excluding any additional terms, as these would necessarily vary from contract to contract). The model contracts will be longer than some contracts are at present, but this is because they will include all the relevant statutory rights and obligations
- 4.2 As set out in Chapter 2, there are six types of occupation contract specifically identified in the 2016 Act and the Welsh Ministers may publish model written statements in relation to each of these. However, for the purpose of consulting on the design, structure and order of model written statements, the two contracts that are likely to be the most commonly used are provided as the basis for comments. These contracts would, by their very nature contain a significant amount of content with would be replicated in the other four types.
- 4.3 Both of the draft model written statements contain three “parts”. Part 1 is comprised of the explanatory information about the matters that are intended to be prescribed. Part 2 sets out the key matters required under sections 26 and 27 of the Act. Part 3 sets out the fundamental and supplementary terms, along with a short introduction and list of contents. The introduction to part 3 explains the means by which modified or omitted text relating to fundamental or supplementary terms is identified, which is one of the matters about which it is intended to prescribe that explanatory information is provided.
- 4.4 The model written statements incorporate the fundamental and supplementary provisions as they appear in the Act and the supplementary provisions regulations. However, there are two principal exceptions to this rule.
- 4.5 Firstly, most of the references in the provisions to “the contract-holder”, or the “contract-holder’s” have been converted to “you” and “your” respectively (along with some associated, minor grammatical changes). There are

though a few instances where the retention of “the contract-holder” and especially “a contract-holder” has been deemed more appropriate.

- 4.6 The second principal exception is that the final subsection of each fundamental provision (i.e. that part which states that it is a fundamental provision) has not been included in the terms. This is because the nature of each term (i.e., whether they are fundamental and cannot be changed/omitted, fundamental but able to be changed/omitted to improve the position of the contract-holder, or supplementary) is identified by a font-style based code, set out at the beginning of Part 3 and in the footer of every second page thereafter.
- 4.7 There are also a limited number of other instances where, in the context of a contractual term, a slight deviation from the text used in the Act has been necessary. For example, references to ‘a landlord under an occupation contract’ have been omitted on the basis that it is not necessary in the context of a specific contract.
- 4.8 The terms in the contract are ordered and grouped on the basis of their relationship to one another, rather than on how they appear in the legislation or whether they are fundamental or supplementary. This means that they do have the same numbers as the relevant sections in the Act or the regulations relating to supplementary provisions.
- 4.9 Within Part 3 of each model written statement, there are also a number of text boxes containing “guidance notes”. With only a few exceptions, these guidance notes either:
- set out where in the legislation things mentioned in the terms, but not otherwise explained by those terms, are explained, or
 - make relevant links to other terms within the contract where that is not otherwise made clear in the relevant term, or
 - set out the circumstances in which certain terms apply or do not apply (i.e., where their application is dependent upon the inclusion of another term within the occupation contract).
- 4.10 The guidance notes do not generally seek to explain the purpose and effect of the fundamental and supplementary terms, nor are they ‘explanatory information’ prescribed under the power set out in section 32(4).

Annex A: Consultation Response Form

Consultation Response Form

Your name:

Organisation (if applicable):

Are you a landlord?

Are you a tenant?

email / telephone number:

Your address:

The draft Renting Homes (Explanatory Information) (Wales) Regulations

Q1. Are the matters about which explanatory information must be given clear and unambiguous?	Please Tick	
	Yes	No
Please include here any comments you may have to explain your answer:		

Q2. Are all the matters about which explanatory information must be given, appropriate?	Please Tick	
	Yes	No
Please include here any comments you may have to explain your answer:		

Q3. Are there any other matters about which you think explanatory information should be given?	Please Tick	
	Yes	No
Please include here any comments you may have to explain your answer:		

The draft Renting Homes (Model Written Statements) (Wales) Regulations

Q4. Do you think that there should be six types of model written statement - namely, periodic standard, fixed term standard, secure, introductory standard, prohibited conduct standard and supported standard?	Please tick	
	Yes	No
Please include here any comments you may have to explain your answer:		

Q5. Is the layout and format of each model written statement easy to understand?	Please Tick	
	Yes	No
Please include here any comments you may have to explain your answer:		

Q6. Are the terms in each model written statement grouped and ordered in an appropriate way?	Please Tick	
	Yes	No
Please include here any comments you may have to explain your answer:		

Q7. Is the way in which the status of each term is identified (e.g fundamental terms that cannot be left out of the contract or changed are in italics and underlined; Fundamental terms that can be left out or changed are in italics; and supplementary terms are underlined) clear?	Please Tick	
	Yes	No
Please include here any comments you may have to explain your answer:		

Q8. Are the guidance notes included in Part 3 of each model written statement clear and sufficient?	Please Tick	
	Yes	No
Please include here any comments you may have to explain your answer:		

General

We would like to know your views on the impact that the proposed regulations and draft model written statements, as set out in the consultation document, might have on the Welsh language, specifically on:

- i) opportunities for people to use Welsh; and
- ii) treating the Welsh language no less favourably than the English language.

Q9. Welsh Language Impact.

What impact do you think the proposed regulations and draft model written statements would have on the Welsh language?

Q10. Welsh Language Impact.

Please can you provide any comments on how the could be formulated or changed so as to have:

- 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.

Q11. Other General Comments

Are there any other comments you would like to make regarding this consultation or draft regulations?

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: