

Number: WG 44233



Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of responses

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

January 2022

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

Overview

This document summarises the responses to the consultation on the Renting Homes (Wales) Act 2016 – Regulations relating to Model Written Statements of Occupation Contracts and Explanatory Information.

Action Required

This document is for information only.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

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

Email: rentinghomes@gov.wales

Additional copies

This summary of responses and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation: <https://gov.wales/renting-homes-wales-act-2016-draft-regulations>

Introduction

On 24 March 2021 the Minister for Housing and Local Government published, for consultation:

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

The purpose of the consultation was to gather views on the draft regulations, and in particular the draft model written statements.

The Welsh Government received 46 responses to the consultation from the following organisations and individuals: 26 via the online portal and 20 written submissions. Of the online responses 3 of the 26 were partially completed.

Written submissions were received from (some names are withheld as requested):

Adra (Tai) Cyf
Adra Tenant Partnership
Barcud Monitoring Group
Central Association of Agricultural Valuers
Cardiff Council
Community Housing Cymru
Crisis
Monmouthshire Housing Association, Melin Homes,
Pobl and United Welsh
Newport City Homes
National Residential Landlords Association
Pobl Group
Propertymark
RSPCA Cymru
Shelter Cymru
Swansea Council
Tai Pawb
TPAS Cymru
Valley to Coast
Wrexham County Borough Council
Phillips Homes Lettings
UK Finance
Caerphilly County Borough Council
Bangor University (Campus Services Dept.)
Wales & West Housing

The Welsh Government welcomes the responses to the consultation and would like to thank all those who responded. All the responses to the consultation have been considered and will inform the development of the finalised regulations.

This document summarises the responses to the eleven consultation questions – three on the explanatory information regulations, five on the model written statement regulations, and three that were general. It cannot capture every comment. However, it tries to capture recurring themes and issues. Several issues were raised that did not have a direct bearing on the consultation. We have noted these issues but not considered them in any detail as part of this response.

Key Findings

Generally, correspondents welcomed the principle of having model written statements and there being mandatory explanatory information that must be included as part of every written statement.

However, there was a very wide range of contrasting views on the suitability of the draft model written statements provided and the proposed mandatory explanatory information.

Many consultees were concerned by the layout, format, ordering and length of the draft model written statements, and by the formality of the language used in the terms of the contracts. Many thought that the terms would be difficult for some contract-holders to understand and suggested that the model written statements be expressed in plainer language. Some consultees recommended the addition of different terms to the model written statement or the omission of existing terms. A substantial majority of consultees disliked the suggested means by which the different types of term would be identified in the model written statements.

The Welsh Government acknowledges the concerns raised in relation to the length of the model written statements and the accessibility of the language used in the terms. However, the language used and the overall length of the written statements reflect provisions set out elsewhere in legislation – i.e. within the Renting Homes (Wales) Act 2016 (the Act) and separate regulations made under the Act. Under section 29 of the Act, a model written statement of contract for an occupation contract of a particular kind or description is a written statement “which incorporates without modification all the fundamental and supplementary provisions applicable to that contract”. Furthermore, whilst section 33 of the Act provides that the written statement may set out the fundamental and supplementary terms of the occupation contract with ‘editorial changes’, it defines editorial changes as changes to the wording of a fundamental or supplementary term which do not change the substance of that term in any way. Accordingly, the terms set out in the model written statements, including their wording, and the length of the model written statements were not matters upon which the Welsh Government was consulting. Nevertheless, the Welsh Government will look to address some of the concerns raised through the production of separate guidance that provides a simplified explanation, for the benefit of contract-holders and landlords alike, of the terms included in the model written statements.

Consultees were more positive about the draft explanatory information with small majorities responding favourably to two of the three questions asked. There was still a clear division of opinion however. Concerns regarding the draft regulations included that they were difficult to understand, that they were likely to be too onerous with regard to the amount of

information that must be given, or that the information provided would provide contract-holders with insufficient explanation of their contract. These concerns are in part answered by the fact that the requirements of the regulations are translated into 'explanatory information' set out in the model written statements, which thus provide easy to follow templates. In addition, the separate guidance referred to in the preceding paragraph will address some of the concern that the mandatory explanatory information does not explain the meaning of specific terms.

Responses to consultation questions

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

Question 1 – Are the matters about which explanatory information must be given clear and unambiguous?

Of the responses received:

4(8.7%) did not directly answer the question

22(47.8%) answered 'yes'

20(43.5%) answered 'no'

Of those that answered the question, 52.4% answered 'yes' and 47.6% said 'no'.

Of those that expressed a view, the majority agreed that the matters about which explanatory information must be given were given clear and unambiguous.

Of the minority who disagreed, a significant number felt that the draft regulations were insufficiently concise, too complicated, or written in language which drew too heavily on legal terminology and was therefore not accessible to most tenants and landlords. There was some confusion about the purpose of the regulations (described by one respondent as "an incomplete mixture of both summary and explanation") and there were a number of calls for more explanation of the contract terms to be required by the regulations.

Some consultees expressed uncertainty about the different types of contract to which the explanatory information applied or noted that the information was not always relevant to every type of contract (for example, converted contracts or those periodic standard contracts not subject to the minimum six months' landlord's notice). A number expressed the opinion that the difference between Fundamental and Supplementary terms needed to be explained more clearly.

The extent to which the explanatory information could be customised was also raised (for example, can the term 'landlord' be substituted with the actual name of the landlord?).

Concerns raised by consultees in answer to this question were also often raised in answer to Questions 2 and 3.

Welsh Government response to Question 1

The Welsh Government welcomes the small majority of positive responses in relation to this question. We note the concerns raised about the language and layout used in the regulations but are satisfied that the provision (within the model written statements) of 'model' explanatory information that could be used as a template by landlords, suitably addresses many of these concerns. Given that the 'model' explanatory information is only two or three sides in length, the Welsh Government is satisfied that the required information is not disproportionately lengthy. The purpose of the explanatory information is to give the contract-holder an overall understanding of what their occupation contract is and what it means. It is not intended to explain the meaning of individual terms. The Welsh Government intends to provide separate guidance that provides, where appropriate, a simplified explanation of the terms included in occupation contracts.

In the drafting of the finalised Regulations, the Welsh Government will seek to ensure that all types of contracts are appropriately covered (including converted contracts and those periodic standard contracts not subject to the minimum six months' landlord's notice).

With regard to the presentation of the explanatory information, providing it meets the requirements of the regulations, this will be a matter for landlords to decide (which might mean the term 'landlord' is substituted with the name of the landlord, if that is what the landlord chooses to do).

Question 2 – Are all the matters about which explanatory information must be given, appropriate?

Of the responses received:

6(13%) did not directly answer the question

21(45.6%) answered 'yes'

19(41.3%) answered 'no'

Of those that answered the question, 52.5% answered 'yes' and 47.5% said 'no'.

Of those that expressed a view, the majority agreed that the matters about which explanatory information must be given were appropriate.

Of those that disagreed, some landlords in particular felt that the information required was too wide and onerous in scope or concentrated too much on matters such as termination.

Some of those responding from a tenant perspective suggested that more needs to be said about the impact of the implementation of the Renting Homes (Wales) Act on tenants, for example by placing more emphasis on security of tenure.

It was noted that references to the Welsh Government website as the place where more information could be obtained was not necessarily helpful in relation to those who are digitally excluded.

A few consultees suggested that it was unclear why some matters required explanatory information while others do not and that those matters requiring explanation might be seen to carry more weight than others which did not.

Concerns raised by consultees in answer to this question were also often raised in answer to Questions 1 and 3.

Welsh Government response to Question 2

The Welsh Government welcomes the small majority of positive responses in relation to this question but also noted the concerns raised.

Given that that the amount of explanatory information required equates only to around two or three sides of A4 within a written statement we are satisfied that this is not too onerous. Having reviewed the general balance of the information included in the draft regulations, we are content that it reflects the matters that are most relevant to contract-holders and provides an appropriate level of explanation given its purpose (which is to give the contract-holder an overall understanding of what their occupation contract is and what it means).

With regard to the exclusion of those without internet access, the finalised Regulations will contain a reference to organisations that can provide advice to individuals.

Question 3 – Are there any other matters about which you think explanatory information should be given?

Of the responses received:

7 (15%) did not directly answer the question

20 (43.5%) answered 'yes'

19 (41.3%) answered 'no'

Of those that answered the question, 51.3% answered 'yes' and 48.7% said 'no'.

Of those that expressed a view, a small majority considered that there were other matters about which explanatory information should be given.

These matters included, but were not limited to:

- the meaning of terms/phrases such as sub-occupation contract, sub-holder, lodger, permitted occupier, dealing, notices/documents “being given” or “received”
- the difference between the ‘statement’ and the ‘contract’
- advising the contract-holder to read the written statement and to sign it
- how and when eviction notices can be issued
- clarity regarding a situation where landlord and tenant cannot come to a mutual agreement on the terms
- references to where specialist advice could be obtained
- the right of redress through the courts
- seeking independent legal advice
- the availability of plain English and Easy Read documents
- support when the contract-holder cannot adequately understand written English or Welsh
- the mechanism for rent increases

- additional fees/charges – including service charges for a secure contract
- a statement that the explanatory information does not form part of the contract
- key advice agencies
- succession rights
- bills, cleaning, waste, insurance
- how the tenant and landlord should approach reading, interpreting and understanding their documents

Welsh Government response to Question 3

The Welsh Government has noted the suggested additional matters for inclusion in the explanatory information. In relation to some, additional requirements will be added to the regulations (e.g. right of redress through the courts, key advice agencies). Most of the additional matters we consider best dealt with through separate explanatory guidance or through the inclusion of footnotes in the model written statements. If landlords wish to include additional explanatory information within written statements, they would be able to do so.

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

Question 4 – 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?

Of the responses received:

7 (15%) did not directly answer the question

19 (41.3%) answered 'yes'

20 (43.5%) answered 'no'

Of those that answered the question, 48.7% answered 'yes' and 51.3% said 'no'.

Of those answering 'yes' to this question, a number commented that if there are six types of contract set out in the Act, there should be six model written statements.

Of those that disagreed, a small number felt that there should be fewer on the basis that this will reduce complexity. However, most of those answering 'no' to this question did so because they wished to see model written statements for types of contracts not included in the six suggested. These additional types of contract included, student lets, students in higher education accommodation, intermediate tenures, fair rent tenancies and, sub-occupation tenancies.

Welsh Government response to Question 4

The Welsh Government notes the support for the introduction of six model written statements to match the six types of contract named in the Act. We also note the call for additional types of model written statement. However, the final Regulations will include only three types of contract; the periodic standard and secure contracts on which we consulted, and a fixed term standard contract. The other contracts suggested in the consultation (introductory standard contracts, prohibited standard contracts and supported contracts) are

variations on three main types of contract. After further consideration, and given that most of the terms would be duplicated with only a few adjustments, it was not considered proportionate to produce separate model written statements for the other contracts. Instead guidance will separately identify what changes to the main types of contract would be necessary in order to create one of these variations. The additional contract types for which consultees suggested there should be model written statements do not, for the most part, represent contracts that are specified in the Renting Homes (Wales) Act, and there are no specific fundamental or supplementary terms that apply to them that would warrant the creation of a model written statement. Where that is not the case (e.g. students in higher education accommodation) the additional guidance provided will cover these.

Question 5 – Is the layout and format of each model written statement easy to understand?

5 (10.9%) did not directly answer the question

14 (30.4%) answered 'yes'

27 (58.7%) answered 'no'

Of those that answered the question, 34.1% answered 'yes' and 65.9% said 'no'

Although some consultees thought that the layout and format of each model written statement was easy to understand, a majority did not.

Many of the concerns raised focused on the accessibility of the language used in the terms and the length of the model written statements. It was suggested that existing tenancy agreements reflect relevant Acts without directly quoting that legislation or using legal references. Some argued that 'plain English' guidance, which contains all the key points of the contract, should be produced to accompany the written statement, while others called for guidance to be included throughout statements to provide clarity on the terms. Some thought the way in which the existing 'guidance notes' were interspersed with the terms might create confusion.

Specific suggestions for improving the layout and format of the model written statements included:

- changing from paragraph to bullet points
- an interactive table of contents
- a glossary of terms
- real life examples included in the guidance notes
- highlighting the guidance notes
- footnotes or end notes to refer to the exact sections of the legislation rather than the existing guidance notes
- the use of headings and sub headings to clearly demarcate sections of the statement
- using the pronoun 'they' to ensure inclusivity

Welsh Government response to Question 5

The Welsh Government has noted the concerns regarding the language used in the terms and the length of the model written statements. We intend to address these concerns through the production of appropriate plain language guidance and accessible materials.

The previous 'guidance notes' will appear as footnotes in the finalised model written statements in recognition of the fact that they are intended to provide important information not otherwise apparent from the term, rather than guidance or explanation of the term. Other changes that will be made include the provision of a table of contents and some changes to the way that the headings and subheadings are used. Although a glossary has not been included, partly to avoid lengthening the documents further, landlords would be able to include one if they thought that useful.

Question 6 – Are the terms in each model written statement grouped and ordered in an appropriate way?

4 (8.7%) did not directly answer the question

18 (39.1%) answered 'yes'

24 (52.2%) answered 'no'

Of those that answered the question, 42.9% answered 'yes' and 57.1% said 'no'

Although some consultees thought that the terms in each model written statement were grouped and ordered in an appropriate way, a majority did not.

Suggested ways in which the grouping and ordering could be improved included:

- having separate sections describing the contract-holder's responsibilities and those of the landlords
- grouping fundamental and supplementary terms separately to aid identification
- altering the order of the terms so that reflected the process of starting, maintaining and terminating an occupation contract - i.e. beginning with the deposit terms and ending with the termination of a contract
- altering the order in which prohibited conduct terms appeared to avoid implying prioritising the contract-holder's conduct over other terms and landlord's obligations

Consultees also asked where in the written statements additional terms should be included.

Welsh Government response to Question 6

The Welsh Government has carefully considered the suggested alternative ways for grouping the terms.

Notionally, grouping the terms by reference to those that describe contract-holder responsibilities and those that describe landlord responsibilities would make it easier for contract-holders and landlords to understand what is expected of them. However, in some instances the same term confers responsibility on both a contract-holder and a landlord and we do not believe that separating out these responsibilities would be appropriate.

Furthermore, we consider that ensuring a comprehensive understanding of the division of rights and responsibilities in relation to any particular matter would be much easier if all the relevant information relating to it is set out in one place within the written statement rather than in two separate places. In our view, this is a compelling argument against grouping the

terms either by reference to the person upon whom a responsibility falls, or by reference to the nature of the term (fundamental, supplementary).

We have reconsidered the order in which groups of terms appear in the light of consultee comments. Although we have made some adjustments as a result, in general we consider that the order in which they appeared in the draft model written statements was as logical as any of the alternatives suggested. If a landlord preferred to adopt a different order, they would of course be able to do so. Similarly it is for landlords to determine where any additional terms should be included within the written statement.

Question 7 - 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?

3 (6.5%) did not directly answer the question

11 (23.9%) answered 'yes'

32 (69.6%) answered 'no'

Of those that answered the question, 25.6% answered 'yes' and 74.4% said 'no'

A clear majority of consultees disliked the way in which the status of each term was identified in the draft model written statements. They considered it cumbersome, confusing and difficult to read. Specific concerns were raised about the accessibility of such an approach for those with visual and other impairments.

Alternative approaches suggested included the use of letter coding, colour coding or icons. Including a concise summary of terms' statuses was also a suggested alternative. Some consultees questioned whether there was any need to identify terms as fundamental, supplementary or additional.

The suggested use of strikethrough and capitals to identify terms omitted or modified was criticised for similar reasons to those set out set out above. A suggested alternative was that they be removed and then added as an appendix to the contract.

Welsh Government response to Question 7

The Welsh Government has noted the responses on this issue and the strength of feeling generated. The model written statements have consequently been adjusted so that terms are now identified through the use of a simple letter code. Although we recognise that there are alternatives to this approach, we consider that this is the easiest way to ensure that the model written statements are as accessible and easy to use as possible. Although there is no absolute requirement to identify the status of each term, we consider this important to ensuring a proper understanding of the contract, especially in instances where a variation is subsequently sought.

With regard to fundamental or supplementary terms that have been omitted from the occupation contract, the Act requires that these are identified in written statements. In the absence of compelling alternatives, the model written statements continue to suggest that

strikethrough is a method by which this could be achieved (especially where relatively little text has been omitted) but would be able to use different approaches if they consider them better.

Question 8 – Are the guidance notes included in Part 3 of each model written statement clear and sufficient?

4 (8.7%) did not directly answer the question

18 (39.1%) answered 'yes'

24 (52.2) answered 'no'

Of those that answered the question, 42.9% answered 'yes' and 57.1% said 'no'

A majority of consultees disagreed that the guidance notes were clear and sufficient.

The comments made by consultees included the following:

- The guidance notes reference other legislation and documents, which reduces their clarity and usefulness. It would be preferable to include all of the information in a single document to make it more accessible
- Some guidance notes adopt descriptions from legislation or regulation, which may not be helpful in providing clarity for contract-holders
- The notes appear sporadically and need to be used more frequently and consistently throughout the documents
- It is unclear who the guidance notes are for. In one respect it appears they provide further guidance for contract-holders, for example explaining what a repudiatory breach is, but also they reiterate large portions of the legislation which is more suited to landlords and solicitors
- The language of the guidance notes is not accessible and would benefit from being reviewed before implementation by tenants and people with lived experience of housing/homelessness issues
- Including guidance notes on some matters and not others may lead to some terms being given more weight than others
- The guidance notes are very useful and most definitely required, but need to be expanded. Guidance notes should explain the meaning of various terms and phrases such as 'succession', 'other consideration', 'law of frustration', 'common parts' etc

Welsh Government response to Question 8

The Welsh Government has noted the comments made by consultees. The purpose of the guidance notes included in the draft model written statements was not to explain the meaning of terms but to:

- 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).

Whilst we consider this narrow focus to be correct, on reflection referring to these notes as 'guidance notes' has potentially given consultees the impression that the notes could or should do more to explain the terms themselves. We consider that this would be best left to separately developed guidance. As a consequence, in the final model written statements, the former 'guidance notes' will be included as footnotes, albeit they have been modified or expanded in some cases to take account of additional instances where consultees have suggested specific words or phrases used within terms that require explanation.

Question 9 – Welsh Language Impact.

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

The majority of consultees did not answer this question and of those that did, most thought that the regulations would have little impact.

Consultees did, however, note that improved security of tenure for residents renting privately would support Welsh speaking communities, and that providing model written statements in Welsh may have a positive effect on the language, since Welsh tenancy agreements are currently rarely used.

Consultees also noted that where Welsh language contracts are used it would require a high level of fluency in Welsh given the complex legal wording, which is unlikely to be case with all landlords.

Welsh Government response to Question 9

The Welsh Government has noted the comments made in relation to this question.

Question 10 – 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.**

--

The majority of consultees did not answer this question. Of those that did, comments included:

- Model written statements should be provided in the Welsh language to support landlords in providing occupation contracts in Welsh where it is the preference of the contract-holder. There could be some cost implications for some landlords in doing so. Welsh language versions of the contracts should help mitigate this
- The Welsh Government could strongly encourage landlords and letting agents to provide contracts in Welsh on request
- The easy-read version of the contracts should be produced in plain English and Welsh. This will help readers in both languages to understand the contracts themselves
- The layout of the contracts is complicated and extensive, so it is unlikely that an English/Welsh single contract would be a viable option

Welsh Government response to question 10:

The Welsh Government can confirm that the model written statements and any associated guidance that is produced, will be available separately in both Welsh and English and would encourage all landlords to provide the written statement in Welsh where that is the preference of the contract-holder.

<p><u>Question 11 – Other General Comments</u></p> <p>Are there any other comments you would like to make regarding this consultation or draft regulations?</p>

General comments made by consultees included:

- It is not clear what problems you are trying to solve and the evidence base leading you to these regulations when there are equally pressing concerns
- The draft regulations are too extensive and will have a detrimental effect on private sector residential landlords. They need to treat both parties equally but currently do not
- We would be grateful to the Welsh Government for releasing final regulations and guidance as soon as possible

Many consultees recommended the inclusion of new or different terms, or suggested that existing terms be modified or omitted. For example, some local authorities suggested that their existing duty to consult with tenants under section 105 of the Housing Act 1985 should be covered. Others asked for specific guidance or clarity on matters such as service charges and active/outstanding notices and legal actions.

Welsh Government response to questions 11:

The Welsh Government has noted all the general comments made by consultees although many relate to matters that were not part of this consultation. The terms included in the model written statements are those set out in the Act and in separate regulations made under that Act. They have previously been subject to separate consultation and scrutiny and it is not possible for the Regulations on Model Written Statements to add to them or omit them. With regard to the specific issue raised in relation to section 105 of the Housing Act 1988, the provisions of this section will be replaced by those set out in section 234 of the Act, when it is implemented. Section 234 is not required to be incorporated as a fundamental term of a secure contract but it would be for community landlords to decide whether reference to their duty under that section should be referenced in written statements as an additional term.

To reiterate what was said in the consultation document, the Regulations relating to Model Written Statements of Occupation Contracts and Explanatory Information have been produced as a key part of the implementation of the Act. The objective of that Act is to make it simpler and easier to rent a home in Wales, replacing various, complex pieces of existing legislation with one clear legal framework. Occupation contracts will replace current residential tenancies and licenses, making the rights and obligations of both landlord and tenant or licensee much clearer. Written statements will play a key part in delivering those objectives.

We have noted the various requests to provide further guidance in a timely way and will look to ensure that this is in place well in advance of the implementation of the Act.