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Llywodraeth Cymru  
Welsh Government

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Consultation – summary of responses

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

March 2022

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

## **Introduction**

The Renting Homes (Wales) Act (“the Act”) passed into law in January 2016 and will impact most existing Welsh tenancies. The Act will affect around one million people who currently live in rented accommodation in Wales, and the professionals who work in the industry.

The Act makes it easier to rent a home, replacing the various and complex pieces of existing tenancy legislation with one clear legal framework. The Act applies to all rented housing in Wales, with a limited number of exceptions, such as properties let under the Rent Act 1977.

One of the areas the Act seeks to make clearer is what happens to property left in a dwelling after the contract has ended where the contract-holder has abandoned the dwelling. Section 220 of the Act provides a procedure for a landlord to recover possession of a dwelling if a landlord believes the contract-holder has abandoned the dwelling, without recourse to the court. This prevents the unnecessary time and expense landlords would incur in seeking a possession order for an abandoned dwelling. Furthermore, it allows abandoned dwellings to be re-let more quickly.

Chapter 13 of Part 9 to 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 grounds or for a declaration or order under section 222(3). Section 221 of the Act provides the Welsh Ministers with a power to make regulations in connection with safeguarding property (other than the landlord’s property), left in the abandoned dwelling when the contract ends.

## **Consultation**

On 15 January 2018 the Minister for Housing and Regeneration published, for consultation, draft regulations and accompanying guidance relating to safeguarding property in abandoned dwellings to be made under Section 221 of the Act. The response to this consultation has been delayed as a result of the current pandemic.

The purpose of the consultation was to gather views and feedback on:

- The Welsh Government’s overall policy approach in relation to the draft regulations and guidance;
- The requirement for a landlord to safeguard property for one month (when required);
- Whether the draft guidance adequately explains the abandonment procedure under section 220 of the Act;
- Whether the draft guidance adequately explains the safeguarding procedure under section 221 of the Act and the proposed regulations; and
- The impact on the Welsh Language.

A 12-week consultation began on 15 January 2018 and was open for responses until 6 April 2018. Six questions were asked, with options to respond to those questions by email, online or by post. The consultation document was available on the Welsh Government website.

The Welsh Government received 29 responses to the consultation from the following organisations and individuals:

Swansea Council	Grwp Cynefin
Cardiff Council	Meyrick Estate Management
Caerphilly County Borough Council	Residential Landlords Association
Vale of Glamorgan Council	The Law Society of England & Wales
West Wales Housing	TPAS Cymru
Newport City Council	Country Land and Business Association
Newington Homes Ltd	Central Association of Agricultural Valuers
Tai Tarian	One property management company
Trivallis	9 private individuals
Community Housing Cymru	
Bro Myrddin Housing Association	
Charter Housing	

The Welsh Government welcomes the responses to the consultation and would like to thank all those who responded. All responses to the consultation have been considered and have informed the development of the guidance documents.

This document summarises the responses to the six consultation questions. 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 matter on which we have consulted. We have noted these issues but not considered them in any detail as part of this response. Nearly all consultation replies were received from people or organisations based in Wales.

## Responses to consultation questions

### **Question 1 – Do you agree with our overall approach to how a landlord must safeguard property left in an abandoned dwelling?**

Of the responses received:

2 (7%) did not directly answer the question

16 (55%) answered 'yes'

11 (38%) answered 'no'

Of those that answered the question directly, 59% answered 'yes' and 31% said 'no'.

16 (55%) of responses to this question were favourable and stated they welcomed the overall approach regarding how a landlord must safeguard property left in an abandoned dwellings. These responses included all those from local authorities, housing associations, landlord representative groups, and a number of private individuals.

11 (38%) of responses stated they did not agree with the overall approach. This included 3 responses from housing associations, a response from the Law Society for England and Wales and 7 private individuals.

Five respondents did not agree with the proposed approach, arguing that the regulations placed too much burden on the landlord and it is ultimately the tenant that should be responsible for safeguarding their property. It was stated that the additional burden on landlords of safeguarding property is unfair. All these respondents were private individuals.

One respondent did not agree with the proposed approach, arguing there were not enough safeguards for the tenant, landlords are likely to undervalue property, and that property should be safeguarded by an independent body such as the police.

One respondent stated they did not agree with the proposed approach as it did not offer sufficient protection for the landlord or the tenant.

### **Welsh Government response:**

The current law on dealing with property where a dwelling is abandoned is complex and unclear, consisting of 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 majority of stakeholders recognise these Regulations will clarify the law on dealing with property left in an abandoned dwelling. The Regulations aim to balance the interest of the landlord, who may incur costs when safeguarding property, and the interest of the tenant, who may later seek to recover personal property after the dwelling has been abandoned.

It should be noted the Regulations will apply only with respect to property left in abandoned dwellings. They will not apply to property left in dwellings whose previous occupants have been evicted, for example for rent arrears. The Regulations apply only where an occupation contract ends under section 220 of the Act.

**Question 2 – Do you agree with the requirement for a landlord to safeguard property for one month (where required)?**

Of the responses received:

2 (7%) did not directly answer the question

14 (48%) answered 'yes'

13 (45%) answered 'no'

Of those that answered the question directly, 52% answered 'yes' and 48% said 'no'.

Some of the responses received in relation to Question 2 related to the operation of the abandonment procedure and were therefore out of scope of this consultation. Responses which specifically addressed Question 2 included:

- The time-period should be shortened to 7 or 14 days, as safeguarding contract-holders property for longer is too onerous for landlords;
- The duty to safeguard property will prevent the landlord from renting the dwelling quickly.
- Requirements related to timescales should be consistent throughout the legislation, e.g. 28 days, 4 weeks or one month; and
- An exception should be made in respect of pets, as it is unreasonable to expect a landlord to keep a pet for one month.

**Welsh Government response:**

As set out in the original consultation a safeguarding period of one month is considered appropriate to adequately balance the interests of the landlord and the contract-holder. This period acknowledges that there may be some cases where the ex-occupant will wish to retrieve property following the abandonment of the dwelling, which may be of monetary or sentimental value. However, in practice, in the majority of cases there will be no obligation for the landlord to safeguard, as no property of value will be left in the dwelling, or it is considered perishable. It also provides the contract-holder around two months, when the warning period under section 220 of the Act is taken into account, to contact the landlord with regard to any possessions.

The obligation to safeguard property does not prohibit the landlord recovering possession of the dwelling as soon as the contract ends. However the landlord will decide where to store any property during the safeguarding period, enabling the dwelling to be re-let as soon as possible.

The Regulations place a duty on a landlord to safeguard property left in the abandoned dwelling for one month from the date the contract ends. However, it is acknowledged there is the potential for confusion if different timescales are used for the warning period (during which the landlord must satisfy themselves the dwelling has been abandoned) and the period for safeguarding property remaining after the contract has ended due to abandonment. Therefore, for the purposes of consistency, the Welsh Government has decided to change the safeguarding period from one month to four weeks.

The Regulations outline the landlord's obligations to safeguard 'property'. In practice, if the landlord believes a pet is still in an abandoned property, an alternative solution would

need to be found immediately. It may for instance involve contacting next of kin or the RSPCA to find out whether or not they would be able to take care of the animal(s).

**Question 3 – Do you agree with the content of guidance on the possession of abandoned dwellings?**

Of the responses received:

4 (14%) did not directly answer the question

15 (52%) answered 'yes'

10 (35%) answered 'no'

Of those that answered the question directly, 60% answered 'yes' and 40% said 'no'.

Most responses to this question were favourable and agreed with the content of the guidance. However, there were some suggestions on how the guidance may be improved or clarified. These included:

- Clarifying whether the existence of rent arrears is by itself sufficient evidence of abandonment;
- Adding to the list of possible indicators 'failure to comply with gas inspections, electrical safety testing and asbestos testing' and 'uncollected post';
- Adding additional persons to contact including the local authority Tenant Relations Officer/Rent Officers and prison officers;
- Providing further clarity on whether the guidance is compliant with the General Data Protection Regulations (GDPR);
- Removing the requirement to contact GPs and hospitals as it is impractical and may contravene data protection rules;
- Adding tools to aid landlords complete the process, for example a model checklist or flowchart; and
- Adding a link to the prescribed notice template as referred to in Section 220 (3) of Renting Homes (Wales) Act.

**Welsh Government response:**

When considering whether to start abandonment proceedings under section 220 of the Act, it is essential the landlord believes that the dwelling has in fact been abandoned. The four-week warning period is the landlord's opportunity to make inquiries that are necessary to satisfy the landlord the contract-holder has abandoned the dwelling. The existence of rent arrears alone does not constitute sufficient evidence of abandonment. A landlord must satisfy themselves of abandonment during the warning period. If that is not possible the landlord should seek possession for breach of contract or section under 173 of the Act.

The Welsh Government welcomes suggestions regarding improvements to the Guidance. The Guidance has been considered in light of these suggestions and where appropriate, suggestions incorporated.

However, it should be noted that the Guidance, particularly regarding the investigations a landlord may wish to make, is advisory. It is a matter for any individual or organisation contacted by a landlord to provide the information being requested.

The aim of the Guidance is to provide the landlord with broad guidelines so they are able to judge what action may be reasonable in the given circumstances. The Guidance provides a list of possible indications a dwelling may be abandoned and a list of possible persons the landlord may wish to contact to undertake further checks. The landlord is not required to 'tick every box' and the appropriate action to take would vary on a case by case basis.

It would, for example, be considered reasonable for the landlord to contact the local authority Tenant Relations Officer to find out if they knew whether an ex-occupant was intending to or had already agreed to take up another tenancy. Similarly, a landlord may contact family members to ascertain the whereabouts of the contract-holder.

**Question 4 – Do you agree that the draft guidance adequately explains the safeguarding procedure under the regulations?**

Of the responses received:

2 (7%) did not directly answer the question

15 (52%) answered 'yes'

12 (41%) answered 'no'

Of those that answered the question directly, 56% answered 'yes' and 44% said 'no'.

Most respondents thought the draft Guidance adequately explained the safeguarding procedure under the Regulations. However, there were a number of suggestions regarding further additions/removal to the text of the guidance. These included that

- All personal possessions in the property should be photographed, and not only those which are being disposed of;
- Further clarity is required on how items containing personal data (for example laptops) should be dealt with;
- Further guidance is required as to how possessions should be stored and how much should be charged to the ex-occupant;
- Further guidance is required on how to value and sell the goods, for example are landlords permitted to sell possessions as a 'job lot';
- Further clarity is required on how any possessions which may have sentimental value (e.g. photographs, family heirlooms) should be treated;
- Further clarity is required on what reasonable arrangements should be made for 'delivery' of property; and
- Further clarity is required on how any surplus funds (after the costs of complying with the regulations have been covered) should be dealt with.

**Welsh Government response:**

The Welsh Government welcomes all the suggestions made and considered these before issuing Guidance. However, given that the aim of the Guidance is to provide the landlord with broad guidelines to enable them to judge what action may be reasonable in the given circumstances, it would not be right for guidance to be onerous or inflexible for landlords when dealing with abandoned dwellings. It will be difficult to address in detail through this guidance the treatment of items of sentimental value or those containing sensitive data, as such matters will not necessarily be apparent.

**Question 5 – Do you have any further comments to make on the draft Regulations or draft guidance?**

11 (38%) responses provided further comments

Some of the responses have not been included here as they were not relevant to this specific consultation. Relevant comments received included:

- If the contract-holder is successful in challenging the abandonment process in court (which could be up to six months later) there is a risk the landlord would be liable for any possessions which were disposed of/sold on;
- Additional safeguards should be provided which offer both the landlord and tenant protection from any potential disputes and provide avenues of redress; and
- It is noted that the proposed regulations will apply to dwellings which were the 'only or principal home'. It should be made absolutely clear to landlords that they must include it as an additional term within the occupation contracts in order to use the abandonment procedure.

**Welsh Government response:**

Under Section 222 of the Act a contract-holder may apply to the court on a ground in section 222(2) of the Act for a declaration or order under section 222(3) or make any other order it thinks fit. The court has wide discretion where it considers the contract-holder has valid grounds to challenge the landlord's decision to recover possession of the dwelling. A landlord should consider the remedies available to the contract-holder when seeking to end an occupation contract.

The Welsh Government considers the Regulations currently strike the correct balance between the safeguards provided to the contract-holder and the ability of a landlord to re-let a dwelling as quickly as possible, and considered all suggestions made by respondents before issuing the final version of the Guidance.

**Question 6 –** While this consultation paper is being made available in Welsh, please can you suggest how the proposed 'Possession of Abandoned Dwellings and the Safeguarding of Property' guidance document 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.

Of the responses received: 3 (10%) provided further comments

Two comments noted they welcomed the regulations and the guidance being made available bilingually.

One response suggested that a workshop be undertaken with stakeholders to discuss the design and accessibility of the document.

**Welsh Government response to questions 6:**

The Regulations and the Guidance will be available online in both English and Welsh.

**Conclusion**

The Welsh Government is grateful for the responses to the consultation and will consider them when making Regulations and issuing Guidance. The final versions will be published alongside other documentation relating to the Act.