

## **Submission to Commission on Justice in Wales**

**Last year following meeting with the judiciary the Commission did enquire if a submission could be made on HOUSING LAW IN WALES. I have delayed such a summary on the basis that it was expected an implementation date would be set for the Renting Homes (Wales) Act 2016. It would appear as matters stand implementation may be delayed until 2020, more than 4 years after the Act received Royal Assent. In addition to the necessary consultations and drafting of secondary legislation implementation may well be dependent upon the necessary changes to HMCTS' digital platform PCOL to allow online commencement of possession proceedings. The Judicial College has ensured all judges who deal with housing cases within the courts in Wales have received face to face training on the 2014 Act. Plans are in place for more intensive training on the 2016 Act when an implementation date is known.**

Housing law in Wales is now a matter upon which Westminster cannot legislate for in Wales. Primary legislation for Housing Law in Wales is created by the Senedd. Welsh Government has commenced implementation of laws which are separate from England. It is also worth noting that Westminster has also started implementing laws which are only applicable in England.

### **1. Housing (Wales) Act 2014**

All provisions of this Act are now in force in Wales.

#### **Key elements**

The key elements of the Act are:

- introduction of a compulsory registration and licensing scheme for private rented sector landlords and letting and management agents. This provision came into force on the 23<sup>rd</sup> of November 2016. Rent Smart Wales operates the registration and licensing regime with appeals to the Residential Property Tribunal for Wales. The Tribunal deals with any Rent Stopping Orders.
- reform of homelessness law, including placing a stronger duty on local authorities to prevent homelessness and allowing them to use suitable accommodation in the private sector
- placing a duty on local authorities to provide sites for Gypsies and Travellers where a need has been identified
- introduction of standards for local authorities on rents, service charges and quality of accommodation

- reform of the Housing Revenue Account Subsidy system
- giving local authorities the power to charge more than the standard rate of council tax on long-term empty properties and certain types of second homes
- assisting the provision of housing by Co-operative Housing Associations, and amendment of the Leasehold Reform, Housing and Urban Development Act 1993.

### **Provisions in force in England which do not apply to Wales**

#### **The Form of the Section 21 Notice**

If the property the subject of the AST is located in England and was created after 1<sup>st</sup> October 2015 a special form of notice entitled “**Form 6a: Notice seeking possession of a property let on an assured shorthold tenancy**” must now be served to be a valid notice under section 21 in relation to an AST relating to a property in England.

If the tenancy was created before 1<sup>st</sup> October 2015 **and/or** the property concerned is located **in Wales then there is no requirement for a notice to be served in accordance with the 2015 Regulations as the 2015 Regulations do not apply in Wales** and relate only, at present, to tenancies created on or after 1<sup>st</sup> October 2015 in England.

To be a valid notice in relation to an AST created prior to 1<sup>st</sup> October 2015 in England or relating to an AST created at any time in Wales the notice must simply be in writing and provide the tenant with the requisite two months’ notice and comply with section 21(1) and (4). There are now different Claim Forms and Defence Forms to be used in respect of commencing or Defending Possession Claims under the Accelerated Procedure. If a property is wholly in Wales an Accelerated Possession Claim must be commenced by using an N5b Wales claim form.

#### **The Deregulation Act 2015 (sections 33 – 40)**

The Act has introduced the three restrictions additional to requirement to secure any deposit, affecting the right of a landlord to serve a valid section 21 notice. The restrictions only apply to AST’s granted (as opposed to continued) after 1<sup>st</sup> October 2015 although the restrictions in relation to retaliatory eviction and prescribed requirements will apply to all AST’s after 1<sup>st</sup> October 2018. Sections 33 to 40 of the Act only apply to AST’s granted in relation to property in England. They do not apply in Wales. Restrictions upon serving Section 21 Notice due to Anti-retaliation Provisions (S.33 – 40) do not apply in Wales.

#### **Provision of documentary material regarding energy performance and gas safety**

The requirement to provide documentary material were introduced by **The Assured Tenancy Notices and prescribed requirements (England) Regulations 2015**. Those regulations do not apply to Wales.

They provide that the “prescribed requirements” for the purposes of new section 21A of the HA 1988 are the obligations of landlords to provide to the tenant:

- (a) an energy performance certificate, and
- (b) a gas safety certificate.

The regulations further provide that the information to be provided by the landlord for the purposes of new section 21B of the 1988 Act requires provision to the tenant of a document published by the Department for Communities and Local Government entitled “***How to Rent: the checklist for renting in England***” (not Wales).

Housing Law in England is seeing significant further changes proposed which will create a greater divergence in the law applicable to Wales notwithstanding the non-implementation of the 2016 Act to date.

## **2. Renting Homes (Wales) Act 2016**

Even more radical changes are contained in the Renting Homes (Wales) Act 2016 which sets out a new legal basis for renting properties in Wales. The Act received the Royal Assent in January 2016 but is not yet in force. The commencement date is awaited but is unlikely to be before the middle of 2020. Six months’ notice is required before implementation.

### **Key elements**

The key elements of the Act are:

- Wherever possible, consistent terms will be used irrespective of whether the landlord is a local authority, housing association or private individual
- With a limited number of exceptions, the Act replaces all current tenancies and licences with two types of occupation contracts
  - a) secure contracts (which replace secure tenancies and assured tenancies)
  - b) standard contracts (which replace assured shorthold tenancies, other private tenancies and licences, introductory tenancies and demoted tenancies)

Tenant or licensee will be referred to as contract – holder

- The Act requires all agreements dealing with the renting of a house to be supported by a written statement setting out in clear understandable terms all of the essential information relevant to both parties, and the landlord must supply the contract holder with such statement no later than two weeks from the date of occupation
- The Act replaces the current long list of grounds for obtaining a possession order with the six grounds for possession set out in the contract itself. As now, these grounds will either be discretionary or absolute (ie mandatory) but most will be discretionary
- The existing Ground 8 (when subject to certain conditions being satisfied the Court must make an order for possession) will no longer be available to any secure contract (ie contracts issued by local authorities and housing associations)

- The existing requirement that an assured shorthold tenancy must be for a minimum period of six months will not apply to the new standard contract
- Restrictions are introduced limiting the ability of the landlord to rely upon a section 21 Housing Act 1988 type of notice to quit
- Where there are two or more contract holders, the Act's approach is whenever possible to treat each contract holder as an individual. Each will therefore be treated separately eg by being excluded or removed by the Court in any proceedings
- The Act makes a "prohibited conduct term" a mandatory requirement in all occupation contracts. This will deal with anti social behaviour and will set out the behaviour expected of contract holders
- If the contract holder abandons the property, the Act enables a landlord to repossess without requiring a possession order from the Court ( subject to the landlord complying with the requirements set out in the Act which includes the provision of notice to the contract holder )
- The Act provides a single framework of succession rights which will apply to all occupation contracts
- The Act allows persons aged 16 or 17 to rent in their own right and they will have the same right to an occupation contract as those aged 18 or over
- The Act establishes a legal framework recognising the specific needs of supported housing
- Terms in any existing tenancy or licence which do not conflict with the relevant fundamental terms (defined as the primary rights and responsibilities under the contract set out as fundamental provisions in the Act) will continue to have effect under a converted occupation contract. In such cases the written statement of contract must be issued within six months of the conversion date

District Judge Hywel James

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