

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:

Hybrid – Committee room 4 Ty Hywel
and video conference via Zoom

Meeting date: 9 May 2022

Meeting time: 13.30

For further information contact:

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Committee Clerk

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Hybrid – Supplementary pack

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

5.3 SL(6)177 – The Renting Homes (Review of Decisions) (Wales) Regulations 2022

(Pages 1 – 6)

Attached Documents:

LJC(6)-13-22 – Paper 29 – Report

LJC(6)-13-22 – Paper 30 – Welsh Government response

6.5 Correspondence from the Minister for Climate Change: Interministerial Group on Net Zero, Energy and Climate Change

(Page 7)

Attached Documents:

LJC(6)-13-22 – Paper 31 – Letter from the Minister for Climate Change, 6
May 2022

7.3 Correspondence from the Deputy Minister for Arts and Sport, and Chief Whip: Cultural Objects (Protection from Seizure) Bill

(Pages 8 – 9)

Attached Documents:

LJC(6)-13-22 – Paper 20a – Letter to the Deputy Minister for Arts and Sport,
and Chief Whip, 25 March 2022



12 Forward work programme

(16.00 – 16.20)

(Pages 10 – 24)

Attached Documents:

LJC(6)-13-22 – Paper 28 – Briefing

SL(6)177 – The Renting Homes (Review of Decisions) (Wales) Regulations 2022

Background and Purpose

These [Regulations](#) relate to two types of occupation contract under the Renting Homes (Wales) Act 2016 (the 2016 Act):

- (1) introductory standard contracts, and
- (2) prohibited conduct standard contracts.

An **introductory standard contract** is a specific type of contract that can be used by community landlords, or charities providing a landlord function, as an alternative to a secure contract when letting a dwelling to a contract-holder. This type of contract runs for an initial 12 months and then automatically converts into a secure contract, although the landlord can seek a court order to extend the introductory period to a total of 18 months. Introductory standard contracts allow community landlords and charities to ascertain during the introductory period whether a contract-holder can sustain a secure contract. In instances where the contract-holder has demonstrated they will not be able to sustain a secure contract, for example due to antisocial behaviour, the landlord can seek to terminate by giving notice under section 173 of the 2016 Act. This means an introductory standard contract can be terminated more easily than is possible under a secure contract.

A **prohibited conduct standard contract** is a specific type of contract that can be used as an alternative to terminating a secure contract where the contract-holder has breached the term of their secure contract regarding antisocial behaviour or other prohibited conduct. The landlord can apply to the court for a secure contract to be replaced with a prohibited conduct standard contract, which, if made, provides for a 12-month probationary period during which the landlord can seek to end the contract more easily by issuing a notice under section 173 of the 2016 Act. During the probationary period however, the landlord is required to provide social support to the contract-holder with the aim of preventing any further antisocial behaviour or prohibited conduct. The probationary period can be extended for a further six months if the landlord requests this and the court agrees.

These Regulations prescribe the procedure to be followed by landlords in connection with reviews requested by contract-holders in respect of:

- landlord decisions to terminate introductory standard contracts or prohibited conduct standard contracts;
- landlord decisions to extend introductory periods (of introductory standard contracts); and
- landlord decisions to extend probationary periods (of prohibited conduct standard contracts).



The procedure set out in the Regulations provides, for example, that

- any review must be undertaken by someone other than the person who took the original decision, and if the review is to be undertaken by someone within the same organisation, that person must be senior to the person who made the original decision;
- an oral hearing must take place if requested by the contract-holder to allow the contract-holder to make representations in person, or to be represented by another person;
- an oral hearing may be conducted virtually with the written consent of the contract-holder;
- whether there is an oral hearing or not, the contract-holder may make written representations to the landlord, which the landlord must consider;
- the landlord must give written notice to the contract-holder of a reasonably convenient time, date and location for the hearing.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

The 2016 Act says that reviews of certain landlord decisions must be carried out by the landlord. For example, where a contract-holder requests a review of a landlord decision under section 203 of the 2016 Act, the landlord must carry out the review.

Regulation 3(1) of the Regulations says that a review “must be carried out by a person who was not involved in the decision under review”.

Should the Regulations, whether on their face or in a footnote, remind readers that regulation 3(1) must be read subject to the 2016 Act including, for example, section 203, which says that the person carrying out the review must still be the landlord?

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 3(1) says that a review must be carried out by a person who was not “involved” in the decision under review.



We would welcome clarification as to whether it possible that there may be no person available who was not involved in the decision under review. If so, how should a landlord comply with regulation 3(1)?

In many ways, this is also a question as to the meaning of being “involved” in the decision under review.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

3. Standing Order 21.3(ii) – that that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Where the contract-holder or the contract-holder’s representative fails to attend an oral hearing, regulation 9 gives the person carrying out the review two options:

- (a) to proceed with the hearing, or
- (b) to make directions about the review as that person considers appropriate, taking into account relevant circumstances, including any explanation for the absence.

Option (b) requires the person carrying out the review to consider the circumstances, including any explanation provided by the contract-holder or the contract-holder’s representative for the absence.

However, option (a) allows the person carrying out the review to proceed with the hearing in the absence of the contract-holder or the contract-holder’s representative, regardless of the circumstances. Should option (a) be subject to the requirement to take account of the circumstances and any explanation provided for the absence?

Similarly, where a contract-holder requests a postponement of an oral hearing, regulation 10 allows the landlord (not the person carrying out the review) to grant or refuse the request “as the landlord sees fit”. Should the landlord be required to take account of any relevant circumstances when deciding whether to grant or refuse the request for a postponement?

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 28 March 2022 and reports to the Senedd in line with the reporting points above.



Government Response: The Renting Homes (Review of Decisions) (Wales) Regulations 2022

Technical Scrutiny point 1:

The Welsh Government's view is that the Act and the Regulations are clear that all such reviews will always be undertaken by the landlord (or an officer of the landlord), as is the case under current law, and as such we do not feel that an amendment is required in this regard.

Technical Scrutiny point 2:

These Regulations replicate current review arrangements, and the Welsh Government is not aware of any instances where such a problem has ever arisen in practice. As such we do not propose making any amendments to the Regulations. However, the operation of these provisions in practice will be kept under review by the Welsh Government.

Merit Scrutiny point:

Regulation 9(a) allows for the hearing to go ahead in the absence of the contract-holder, but it is not correct to interpret this as allowing the hearing to go ahead regardless of the circumstances. Rather, regulation 9(b) enables the reviewer to exercise discretion as to whether the hearing should go ahead, or for the review to be conducted by other means (for instance a desk-based exercise rather than a hearing), or potentially to be rearranged if the person undertaking the review is aware of any circumstances which might account for the absence of the contract-holder or their representative.

Similarly, Regulation 10 allows for a contract-holder to request a postponement of a hearing, but again provides the landlord with discretion as to whether a postponement is justified.

Given the nature of the occupation contracts that fall within these Regulations, most landlords will be Community landlords (or private individuals who are exercising functions of a public nature). Any such landlord considering a request pursuant to these Regulations would, consequently, have a duty under public law to do so fairly, and to account for their decision if challenged.

In both cases, the Regulations seek to strike a fair balance between the landlord's right to seek to terminate or extend a particular type of occupation contract, and the contract-holder's right for such decisions to be subject to review. Regulations 9 and 10 allow the landlord to exercise discretion so as to enable the contract-holder to attend a hearing or seek postponement, but also to prevent abuse of the system (for example if a contract-holder has repeatedly failed to attend previously-arranged hearings, or sought postponement without good reason, in order to prevent a decision being taken).

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

Agenda Item 6.5

Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee

Llyr Gruffydd MS
Chair
Climate Change, Environment and Infrastructure Committee

6 May 2022

Dear Chairs,

I am writing in accordance with the inter-institutional relations agreement to let you know that a virtual meeting of the Interministerial Group on Net Zero, Energy and Climate Change will take place on 11 May. I apologise for the short notice.

I will be representing the Welsh Government. The meeting will focus on the just transition, the UK Government's Energy Security Strategy and Energy Bill.

The Group will publish a joint communique after the meeting. I will also publish a Written Statement.

Yours sincerely,



Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

**Legislation, Justice and
Constitution Committee**

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Dawn Bowden MS
Deputy Minister for Arts and Sport, and Chief Whip

25 March 2022

Dear Dawn,

Cultural Objects (Protection from Seizure) Bill

Thank you for your response, dated 17 March, to my Committee's report on the Legislative Consent Memorandum on the Cultural Objects (Protection from Seizure) Bill, and for providing a copy of your letter of 16 March to the Llywydd in relation to the Bill. We considered both letters at our meeting of 21 March.

We are disappointed that it has not proved possible to reach an agreement on an amendment to the Bill to provide a carve-out from the application of paragraph 11(1)(a) of Schedule 7B to the *Government of Wales Act 2006*, which has led to the tabling of amendments to remove provisions for Wales from the Bill.

We are concerned that this apparent sequence of events represents a failure of intergovernmental relations between the UK and Welsh governments so soon after new intergovernmental processes have been put in place. This is a concern which we have also raised with the First Minister.

As the current state of intergovernmental relations and the legislative consent process are of particular interest to us, we would like to gain a detailed understanding of how these matters came to the fore during the development and passage of this Bill. You refer to a ministerial letter of 25 January in your letter; we would be grateful to receive a copy, and of any other relevant correspondence or minutes of relevant meetings you are able to share.

I am copying this letter to the Llywydd, the Chair of the Culture, Communications, Welsh Language, Sport, and International Relations Committee; and the Counsel General and Minister for the Constitution.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair

Agenda Item 12

By virtue of paragraph(s) vi, ix of Standing Order 17.42

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