



SPECIAL HOUSING AND REGENERATION SCRUTINY COMMITTEE – 9TH JUNE 2022

SUBJECT: THE RENTING HOMES (WALES) ACT 2016

REPORT BY: CORPORATE DIRECTOR OF SOCIAL SERVICES AND HOUSING

--

1. PURPOSE OF REPORT

- 1.1 To inform Members of The Renting Homes (Wales) Act 2016, which is new legislation the provisions of which affect all rented homes in Wales from 15th July 2022.
- 1.2 To advise Members of the statutory changes that Caerphilly Homes is required to make to comply with The Renting Homes (Wales) Act 2016 and the implications of those changes on the service.
- 1.3 To obtain the observations of Members prior to presentation to Cabinet on 13 July 2022.

2. SUMMARY

- 2.1 The Renting Homes (Wales) Act 2016 (The Act) is the biggest change to housing law in Wales for decades. From 15 July 2022, The Act will change the way by which all landlords in Wales rent their properties and it is intended to improve the way in which rented homes in Wales are managed and lived in.
- 2.2 The Act aims to make it simpler and easier to rent a home, intending to replace the various and complex pieces of existing legislation with one clear legal framework.
- 2.3 The Act gives greater clarity on the rights and responsibilities of both tenants and landlords through written contracts. These are currently known as a Tenancy Agreement and the Act aims to standardise these for all renters.
- 2.4 The Act requires Caerphilly Homes to comply with statutory obligations, including making changes to terminology, converting the existing Tenancy Agreement to a new Converted Occupation Contract for current tenants, the introduction of a new Occupation Contract for new tenants and revision of all relevant policies.
- 2.5 The Act will also have an impact on how the Local Authority via its Statutory Homelessness functions provides Emergency temporary accommodation and access to supported accommodation to those households who are threatened with/or who are Homeless and without suitable accommodation to occupy.
- 2.6 The changes will impact to varying degrees on the roles of all teams within Caerphilly

Homes but will provide significant additional obligations in respect of tenancy management and property maintenance, creating considerable additional workloads, in both the development and ongoing implementation phases. There will be associated financial costs associated with these ongoing workload obligations, and the risk of financial penalties and reputational damage in the case of non-compliance with these new obligations.

3. RECOMMENDATIONS

- 3.1 That the contents of this report are noted and discussed by the Housing and Regeneration Scrutiny Committee and that any amendments or clarifications are raised in advance of the Cabinet meeting on the 13th July 2022.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 To raise awareness of the implications and obligations on Caerphilly Homes and others associated with the Renting Homes (Wales) Act 2016

5. THE REPORT

- 5.1 The Law Commission's 2006 report 'Renting Homes', called for a reform of the law in relation to all rented housing. At the core of the Law Commission's recommendations was the creation of a straightforward and simplified statutory framework, replacing the large number of tenancy types with two main contracts. It also recommended providing model contracts, which set out the basis by which rented homes are occupied in clear terms.
- 5.2 In May 2012, Welsh Government published a White Paper – Homes for Wales, where they acknowledged the need for tenancy reform and agreed to use the Law Commission's proposals as a basis for progressing that reform.
- 5.3 The Renting Homes (Wales) Act 2016 takes forward the recommendations of the Law Commission's Report. The Act received Royal Assent on 18 January 2016, however it has taken longer than anticipated to be enacted due, in part, to a subsequent amendment of the Act to increase security of tenure for some tenants, and the preparatory work that was required by Welsh Government to develop statutory instruments.
- 5.4 Julie James, Minister for Climate Change, announced on 12th January 2022 that the Renting Homes (Wales) Act 2016 will be implemented on 15th July 2022, providing landlords six months' notice to prepare for the changes. Previously an undertaking had been given that all statutory instruments and key information would be available six months prior to implementation. However, this has not been the case and some statutory instruments, supplementary provisions and further guidance, including some transitional arrangements, remain outstanding and will need to be considered leading up to implementation date.
- 5.5 The Act represents the biggest change to housing law in Wales for decades, it aims to simplify housing law and make it easier to rent a home in Wales. The Act replaces various, complex pieces of existing legislation with one clear legal framework.

- 5.6 The Act makes landlord and tenant responsibilities and obligations clearer, and introduces a number of important changes, some of which increase landlord obligations, enhance contract holder rights and impose financial penalties for a landlord's non-compliance. These changes include:

Changes to Terminology

- 5.6.1 There will be two types of landlords:

- (i) Community Landlords - Local Authorities and Registered Social Landlords.
- (ii) Private Landlords - all other Landlords.

- 5.6.2 Tenancy Agreements will be known as 'Occupation Contracts' and there will be two main types:

- (i) Secure Occupation Contract for use by Community Landlords
- (ii) Standard Occupation Contract which will be the default contract for the private rented sector, but able to be used by Community Landlords in certain circumstances.

- 5.6.3 Tenants will now be known as 'Contract-Holders, for legal purposes, however it is acknowledged that use of the term 'tenant' will likely remain commonplace in informal settings.

Terms of Occupation Contracts

- 5.6.4 Welsh Government have provided some model contracts in the ten most frequently used languages in Wales and, whilst landlords are not obligated to use them without alteration, any contract used will need to ensure the obligations of The Act are complied with. The model contracts provide a comprehensive, consistent, and clear structure. There are four elements that will feature in Occupation Contracts:

- (i) **Key Matters:** The names of the contract holders, landlord, address of the property, contract start date and rent.
- (ii) **Fundamental Terms:** Cover the most important aspects of the contract, including the possession procedures and the landlord's obligations regarding repair.
- (iii) **Supplementary Terms:** Deal with the more practical, day to day matters applying to the Occupation Contract, for example, the requirement for a contract holder to notify the landlord if the property is going to be empty for four weeks or more.
- (iv) **Additional Terms:** Any other specifically agreed matters, for example a term which relates to the keeping of pets. These terms must be fair, as required by the Consumer Rights Act 2015.

- 5.6.5 Landlords will be required to issue a 'written statement' of the relevant Occupation Contract to all Contract Holders (this will replace the current Tenancy or Licence Agreement). The written statement must contain all the terms of the

contract, clearly setting out the rights and responsibilities of the landlord and the contract holder and some additional information for both parties.

- 5.6.6 For new rentals after the 15th of July 2022, the written statement must be issued within 14 days of occupation.
- 5.6.7 Existing Tenancy Agreements will 'convert' to the relevant Occupation Contract on the 15th of July 2022, and all landlords have a maximum of six months to issue their contract holders a written statement of the converted Occupation Contract.
- 5.6.8 Any landlord who fails to provide a written statement in the required time, or provides an incomplete or incorrect statement, will be in breach of The Act and can face financial penalties.

Ending Occupation Contracts

- 5.6.9 Where the contract holder has breached the Occupation Contract the minimum notice period that must be given is one month. This notice period can be shorter where it relates to a breach under the prohibited conduct or serious rent arrears terms.
- 5.6.10 There is greater security for people who live in the private rented sector.
 - (i) Where a 'no fault' notice is issued, the minimum notice period that must be given is six months.
 - (ii) A Landlord will not be able to give such a notice until six months after the contract starts.
 - (iii) A Landlord will not be able to give such a notice unless they have complied with certain obligations, including registration and licensing with Rent Smart Wales and deposit protection rules.
 - (iv) Landlord break clauses will only be permissible where a fixed term contract is two years or greater and Landlords will not be able to exercise a break clause within the first eighteen months of occupation.

Repairs and Conditions

- 5.6.11 The Act will ensure that homes are in repair and are fit for human habitation (FFHH) for the duration of the contract. FFHH is defined within the Act and, in addition to property condition, includes requirements for an increased frequency of periodic electrical safety testing, working carbon monoxide detectors and hard-wired smoke alarms. In addition, rent will not be payable for any period during which the dwelling is agreed or found by Court to not be fit for human habitation.
- 5.6.12 Landlords will have a continuing obligation to keep the structure and exterior of the property in repair and keep installations for the supply of water, gas or electricity, for sanitation, for space heating, and hot water in repair and proper working order. Landlords will also be required to make good any damage caused by works and repairs that the landlord is obliged to carry out.

5.6.13 If a private sector Landlord issues a 'no fault' possession notice in response to a request for repair (commonly known as retaliatory eviction), the court can refuse to make a possession order and it will not be possible for the Landlord to issue a further 'no fault' notice until 6 months later.

Joint Contracts

5.6.14 Contract Holders will be able to request landlord's consent to add another person(s) to the Occupation Contract. A joint contract holder may remove themselves from an Occupation Contract without the landlord's consent and without the need to end one contract and start another.

Enhanced Succession Rights

5.6.15 Improved succession rights will enable both a 'priority' and 'reserve' successor to succeed to the Occupation Contract. This allows for up to two successions to the contract to take place, for example a spouse followed by another family member. In addition, a new 'reserve' succession right for carers is created.

Abandonment

5.6.16 Landlords will be able to repossess an abandoned property without needing a court order, after serving a four-week warning notice and carrying out investigations to be sure the property is abandoned. This will make it simpler and quicker for landlords to recover possession of properties when the contract holder has left.

Anti-Social Behaviour

5.6.17 Contract holders will no longer be automatically liable for the behaviour of anyone he/she has living with them, and criminal behaviour in the locality and immorality are no longer able to be included within the contract.

Rent Increases

5.6.18 The minimum notice period required to be provided to contract holders to increase rent has been amended from one month to two months, and rents can only be increased once within a calendar year. Community Landlords will still only increase rent in line with the Social Rent Policy, as set by Welsh Government.

Consultation

5.6.19 Landlords will be permitted to change non-fundamental terms within an Occupation Contract following appropriate consultation:

- (i) Community Landlords will be obligated to carry out a consultation process with contract holders, giving due regard to any comments that come back from that consultation. This is the same as currently happens within Local Authorities for secure tenancies.
- (ii) For Private Landlords, any amendment must be discussed and agreed between both parties.

Supported Accommodation

5.6.20 Supported accommodation is provided by a community landlord or a charity, where there is a connection between the provision of accommodation and the support services provided there.

5.6.21 The relevant support services include:

- (i) Support in controlling or overcoming addiction
- (ii) Support in finding employment or alternative accommodation
- (iii) Supporting someone who finds it difficult to live independently because of age, illness, disability or any other reason

5.6.22 A landlord of supported accommodation can choose initially to provide a tenancy or licence agreement that is not an occupation contract, however, if a person occupies supported accommodation for a period of six months or more, they will normally become entitled to a 'Supported Standard Occupation Contract' (unless the landlord chooses to offer them a Secure Occupation Contract). This will operate in a similar way to the Standard Occupation Contract however, the Landlord may include terms relating to:

- (i) The ability to change where the Contract Holder is living within the building.
- (ii) The ability for the Landlord to temporarily exclude the Contract Holder from the dwelling for up to 48 hours, a maximum of three times in six months, to ensure the safety of residents and staff or to prevent an eviction. For example, if the contract holder uses violence against another person at the property

Caerphilly Homes' Statutory Changes

- 5.7 The Act introduces significant additional obligations in respect of our management and maintenance responsibilities which have necessitated a comprehensive review of our contracts, policies, and procedures, and WG have only provided six months' notice to prepare for implementation. These changes will permanently impact on the operations of the various teams, creating significant additional workload responsibilities in housing management, property maintenance and homeless prevention services in particular, which will have associated financial consequences.
- 5.8 Caerphilly Homes must comply with the requirements of The Act from 15th July 2022 and has established a Project Board which has overall responsibility for project delivery. There are various working groups that are undertaking a comprehensive review of services and relevant documents to ensure statutory changes are incorporated. We are also collaborating with other Local Authorities in relation to consistency of our communications to tenants and to share good practice. In addition, we are being supported by colleagues from Legal Services and specialist housing law solicitors to ensure compliance with the requirements of the Act.
- 5.9 Caerphilly Homes secure tenants will, from the 15th of July 2022, now be referred to as contract holders and Tenancy Agreements will be known as Occupation Contracts.

- 5.10 There will be two types of Secure Occupation Contract after 15th July 2022. All new contract holders will sign up to the new Occupation Contract and all current tenants will become contract holders and will be issued with a converted Occupation Contract.
- 5.11 Unlike new Occupation Contracts issued after the Act comes into force, which will wholly reflect the model contract provided by Welsh Government, a converted Occupation Contract will be required to comprise of some terms which exist within the current Tenancy Agreement along with any new terms from the model contract that provide improved rights for the contract holder.
- 5.12 Unlike new contract holders, Caerphilly Homes will be required to provide all existing contract holders with a copy of the converted Occupation Contract no later than six months from 15th July 2022, however, it is proposed that they will be issued as soon as achievable. These contract holders will not be required to sign the converted contract and will enjoy the benefits of increased rights from 15th July 2022, even though they may not yet have received a copy of the converted Occupation Contract.
- 5.13 There is an obligation that any Policies are consistent and compatible with The Act and the following Policies are being reviewed and amended in so far as is necessary to reflect the requirements of The Act:
- (i) Response Repairs Policy
 - (ii) Rechargeable Repairs Policy
 - (iii) Anti-Social Behaviour Policy
 - (iv) Common Allocations Policy

These amended Policies will be available on the intranet and CCBC website from 15th July 2022.

- 5.14 Working practices and documentation will be amended to incorporate the additional responsibilities and obligations associated with being a landlord following implementation of The Act. This will necessitate increased capital and revenue resources within some teams.
- 5.15 A communication strategy has been developed to complement the promotional material being issued by Welsh Government, in an effort to ensure all tenants (contract holders), housing applicants, landlords, residents, Caerphilly Homes' staff and councillors are aware of the Act. All private landlords are already required to be registered with Rent Smart Wales who have their own publicity campaign to promote the changes associated with The Act.
- 5.16 A training strategy has been developed to ensure Caerphilly Homes' staff are aware of and gain an understanding of The Act relevant to their role and to ensure they are able to provide appropriate advice and assistance to their customers and partner organisations.
- 5.17 The Caerphilly County Borough Council website has a dedicated Renting Homes (Wales) Act 2016 page and the Caerphilly Homes pages have been reviewed and amendments prepared in accordance with The Act.

Homelessness Functions and the Provision of Emergency Temporary Accommodation

- 5.18 The Act will impact on the type of licences/contracts held by households who are offered or placed in emergency temporary accommodation by the Local Authority.
- 5.19 Under The Act, occupiers of Homeless Accommodation used by the Local Authority to discharge its Homelessness functions can be given a licence instead of an Occupation Contract, until a duty is owed to secure accommodation for them because they are determined to be unintentionally homeless and in priority need (Section 75 duty) or, if such accommodation is being provided by another landlord on behalf of the Local Authority, until a period of 12 months expires.
- 5.20 Where Homeless Accommodation is provided by the Local Authority:
- (i) A tenancy or licence made by the Local Authority because of its Homelessness functions will not become an Occupation Contract until the Local Authority is satisfied it owes a Section 75 duty.
 - (ii) Once a Section 75 Duty is triggered the accommodation can be provided using a Standard Occupation Contract rather than a Secure Occupation Contract.
 - (iii) Where a Local Authority arranges for a landlord (Community / Private Sector / RSL) to provide temporary accommodation related to its Homeless functions a tenancy or licence will not become an Occupation Contract until 12 months after the applicant was notified that the Local Authority has a duty to carry out an assessment of their circumstances, unless the landlord decides to give an Occupation Contract.
- 5.21 For households in emergency temporary accommodation provided as part of the Local Authority's Homelessness Duties on the 15th of July 2022 transitional arrangements will apply
- (i) A Tenancy or Licence made by the Local Authority because of its homelessness functions will remain unless the authority is satisfied that it owes a section 75 duty.
 - (ii) After a Section 75 duty is accepted households in Local Authority accommodation will have a Secure Occupation Contract unless a notice is served on them to provide a Standard Occupation Contract, for which there is a 14 day right to review.
 - (iii) Where this accommodation is provided by another landlord an Occupation Contract will not be held until the 12 months notification period has ended.
- 5.22 The Housing Solutions Team are currently working with all its emergency and supported accommodation providers to review current licences and contracts to ensure that we are able to meet the requirements of The Act.
- 5.23 Local Authorities are currently in discussion with Welsh Government to highlight the impact that The Act will have on the provision of temporary accommodation in meeting its Homelessness duties to consider if possible further exceptions can be considered given the unprecedented numbers that are in temporary accommodation at this time as a result of the pandemic and the Welsh Government directive of "everyone in".

Conclusion

- 5.24 All landlords, including Caerphilly Homes, have a legal obligation to implement the changes brought about by the Renting Homes (Wales) Act 2016, from the implementation date of 15th July 2022.
- 5.25 The Act brings about the biggest reform to housing legislation in decades and Caerphilly Homes is undertaking a comprehensive review of contract documentation, policies and procedures for implementation both before and following the implementation date to ensure compliance.
- 5.26 Caerphilly Homes' tenants (contract holders) will benefit from the positive changes brought about by The Act, their legal rights to live in their home will not be any less secure and no-one will have to move home. Caerphilly Homes will continue to provide the same services, and all existing legal rights will remain, with the addition of some new rights.
- 5.27 Any changes to existing Caerphilly Homes' policies and procedures will only be to the extent that is necessary to reflect the requirements of The Act.
- 5.28 There will be greater security of tenure for tenants (contract holders) who live in the private rented sector.
- 5.29 The Act will have a significant impact on the provision of temporary accommodation by the Local Authority in meeting its Homelessness duties. Conversations remain ongoing with Welsh Government in this regard.
- 5.30 There will be capital and revenue resource implications associated with implementation of The Act to ensure that we comply with our obligations and responsibilities.

6. ASSUMPTIONS

- 6.1 There may be a resource issue in the availability and turnover of emergency and temporary accommodation irrespective of landlord, due to lack of suitable move on accommodation options within the county borough and as a result of the notices to end the arrangements that would need to be served on the occupiers if Occupation Contracts have been issued.
- 6.2 Some Private Landlords could make the decision to exit the market due to The Act and the additional obligations it places on them when providing homeless accommodation.

7. SUMMARY OF INTEGRATED IMPACT ASSESSMENT

- 7.1 An Integrated Impact Assessment has not been carried out as this report relates to statutory changes and is for information only.
- 7.2 A communication strategy has been developed to complement the promotional material and methods prepared by Welsh Government, to ensure all tenants (contract holders), housing applicants, landlords, residents, Caerphilly Homes' staff and councillors will have access to information regarding the Act.

8. FINANCIAL IMPLICATIONS

- 8.1 There are costs associated with producing and issuing bilingual copies of the converted Occupation Contract to all existing Contract Holders and arranging translation of the document in a number of languages to meet the needs of our customers. It is anticipated that the written statement of the Occupation Contract required to be provided to all existing tenants will extend to approximately 50 pages. Translation, print, and postage costs are estimated at £47,000 excluding VAT.
- 8.2 The services of a specialist housing law solicitor are being engaged to support officers within Caerphilly Homes and Legal Services in preparing for the implementation phase of The Act.
- 8.3 Additional temporary accommodation costs are likely to be incurred as per 6.1 above.
- 8.4 The additional responsibilities and obligations in respect of housing management and maintenance will require additional staff resources which are yet to be determined. This will include costs associated with the increase in frequency of periodic electrical testing, with an additional 3,000 having to be completed over the next 5 years.
- 8.5 There are a number of financial risks for the Housing Revenue Account associated with The Act. These include:
- The introduction of a two-month notice period for rent increases and an inability to increase rents more than once in a calendar year. If decisions on rent increases are delayed, then rental income will be lost for a defined period. A delay in implementing a rent increase of 3.1% by one month would currently result in lost rental income of £131,515.
 - There is the potential for contract holders to withhold rent and seek damages if Caerphilly does not fully comply with its obligations under the Act, such as where properties are found not to be FFHH due to, for example maintenance delays, or a failure to meet defined time limits for responses to requests and notifications from contract holders. Our current average weekly rent is £91.97.

9. PERSONNEL IMPLICATIONS

- 9.1 There are no personnel implications associated with this report.

10. CONSULTATIONS

- 10.1 The report has been sent to the Consultees listed below and all comments received are reflected in the report.

11. STATUTORY POWER

- 11.1 Not applicable

Author: Fiona Wilkins, Housing Services Manager, wilkife@caerphilly.gov.uk
Julie Reynolds, Landlord Services Manager, reynoj1@caerphilly.gov.uk
Kerry Denman, Housing Solutions Manager, denmank@caerphilly.gov.uk

Consultees:

- Cllr Andrew Whitcombe, Chair Housing & Regeneration Scrutiny Committee
- Cllr Pat Cook, Vice Chair Housing & Regeneration Scrutiny Committee
- Cllr Shayne Cook, Cabinet Member for Housing
- Dave Street, Corporate Director of Social Services and Housing
- Nick Taylor-Williams, Head of Housing
- Robert Tranter, Head of Legal Services and Monitoring Officer
- Steve Harris, Head of Financial Services & Section 151 Officer
- Todd Rawson, Housing Solicitor
- Lesley Allen, Principal Group Accountant
- Sandra Isaacs, Rents Manager
- Claire Davies, Private Sector Housing Manager
- Jane Roberts-Waite, Strategic Co-ordination Manager
- Mark Jennings, Principal Housing Strategy Officer
- Jason Fellows, Housing Repair Operations Manager
- Alan Edmunds, WHQS Implementation Project Manager
- Rachel Hawker, Service Development Officer