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Tenants	Agents	Landlords

Insured / Custodial

How the Renting Homes Wales Act 2016 will affect Landlords and Agents

The Renting Homes Wales Act 2016 (RHWA) is finally coming into force on 1 December 2022 after a very long wait. It will considerably alter the private and social rented sector in Wales. This note sets out key changes.

Who does it apply to?

The RHWA applies to almost all rented properties in the private and social sectors. It will affect any property rented on Assured Shorthold Tenancies ("ASTs") and will also affect properties let on residential licences. It also picks up all other tenancy types under the Housing Act 1988 such as Assured Tenancies and Assured Agricultural Occupancies.

The RHWA does not have high or low rent exceptions so will pick up tenancies that currently fall outside the Housing Act 1988.

It will not affect very old rentals, which are subject to the Rent Act 1977 or lettings to companies.

The legislation affects tenancies immediately. So all ASTs and other tenancies or licences that are within its scope will automatically convert on 1 December 2022 to become contracts under RHWA. These are called converted contracts within the RHWA. However, the law applying to converted contracts will change considerably on 1 December 2022. There are transitional provisions in place to allow for changes to be made over time, but many of these only apply for a limited period and once that period is ended, landlords will be in breach of the RHWA.

New tenancies and residential licences granted after 1 December 2022 will fall within the scope of the RHWA and will need to comply with it from the outset.

Contracts

Under the RHWA all tenancies and licences are called contracts and occupiers are referred to as contract-holders. Landlords provide those contracts. Contracts are split into two types:

- 1 standard contracts- provided mainly by private sector landlords offering limited security for a fixed period; and
- 2 secure contracts- provided mainly by social landlords offering substantial security on a relatively indefinite basis.

Contracts are also further split into periodic and fixed-term contracts. The private sector is primarily dealing with fixed-term standard contracts and periodic standard contracts, although there is scope for private sector landlords to elect to offer secure contracts in specific cases.

A lot of the nuance in terms of different tenancy and licence types is removed under the RHWA and most residential occupancies will fall within the legislation as standard contracts. While the legal estate of tenancy and licence will continue to exist in Wales, they are concatenated under the RHWA and so for most practical purposes the difference will be lost.

Written Agreements

All contract holders in Wales are entitled under the RHWA to a written statement of their contract along with further explanatory information. This information is detailed and long-winded. This is largely due to the legislative aim of providing contract holders and landlords with a single document that sets out all their rights and obligations rather than relying on legislation to fill these in. Contracts that arise by conversion must also get these new written statements within 12 months of the 1 December 2022 conversion date. Failure to provide the contract and the information in the proper format allows the contract holder to avoid paying rent, recover rent already paid, and also makes it hard to obtain possession of the property.

Compensation due to a failure to give a proper written statement can be offset against arrears of rent. In addition, the court can impose an agreement on the parties in a set format.

The Welsh Government has published model agreements which comply with the RHWA but these are unnecessarily wordy, have errors in them and also impose a range of obligations on landlords which are optional under the legislation, so they may be unsuitable for many landlords.

Deposits

In a sense, there is no substantive change to the deposit system in Wales under the RHWA. The existing system of deposit schemes has been retained under that legislation. However, the scope of deposit protection is considerably widened as all occupation contracts, both standard and secure must have their deposits protected. Therefore almost all residential occupiers in Wales will ultimately be entitled to rely on deposit protection and all landlords will need to ensure that RHWA contracts created after 1 December 2022 have their deposits protected.

As with the existing provisions, the key date is the taking of the deposit and within 30 days of that date the deposit must be protected with a scheme, its rules must be complied with, and the relevant information (which is largely the same as existing prescribed information) given to the contract holder.

As with the existing regime if this is not done then the contract holder can seek a financial penalty. In addition, it is much harder to obtain possession if the deposit is not properly protected. It is important to note that a financial penalty can be sought not just for a failure to protect but also if the deposit is not with a scheme that the contract holder has been told it is with. So if the deposit is moved or the paperwork is incorrectly completed such that the contract holder is misinformed as to which scheme applies then a landlord will have a liability under the RHWA.

Where converted contracts are created from ASTs, then deposits which were already correctly protected under the existing regime will remain properly protected. If converted contracts are created from other tenancies or licences that do not currently require deposit protection then they will not require any protection to be entered into on conversion. Therefore the full weight of the new deposit provisions will mainly be felt in wholly new contracts.

Term and Possession

Fixed-term contracts are permitted in Wales under the RHWA. However, they must be at least six months and it is not possible to give a “no fault” notice seeking possession that is effective for the end of that term. A contract must become periodic before a “no fault” notice can be given and that notice must be for at least six months. In practice, therefore most Welsh contract holders in the private sector can expect to live in their property for at least 12 months.

Where a converted contract is created from an AST, then the existing right to give two month’s notice to expire at the end of a fixed term tenancy has been preserved. However, the Welsh government has now said that it will seek to limit this right such that it can only be used for six months from the 1 December 2022 changeover date. Converted contracts created from Assured tenancies or Assured Agricultural Occupancies will not be able to have “no fault” possession notices given for them in order not to reduce the right occupiers under these tenancies already have.

Where contract holders are in breach of other parts of their agreement, then there are rights to possession through the courts. These start by giving notice using a set form of 14 days for serious rent arrears or one month for most other breaches of the agreement.

Standards

Standards in Wales under Renting Homes have been updated. Properties must be fit for human habitation, there must be an electrical safety certificate, and there must be smoke and carbon monoxide alarms. There are differences in detail. So, for example, smoke alarms in Wales must be mains wired, and CO alarms must be placed in the kitchen if there is a gas hob. There are also no provisions for enforcement by way of local authority civil penalties. Instead a property that does not have functional smoke and CO alarms will not be fit for human habitation. Where a property is not fit for habitation then contract holders can make a claim to recover their rent for that period.

Changes of Contract Holders

In a fixed term standard contract there is no absolute right for further contract holders to be added or individual contract holders to be substituted or removed if the contract prohibits them. All of these things require the consent of the landlord. The Renting Homes (Fees etc.) Wales Act 2019 continues in force in tandem with the RHWA and so payments for agreeing to variations and the like are not permitted due to that legislation.

However, if a transfer of contract holders is carried out without the landlord's consent and, knowing of its existence, the landlord takes rent from the person who has been transferred in then this is taken as consent to that transfer. This creates a potential trap as it has been held that on change of sharer a fresh receipt of a deposit occurs which requires a re-registration of that deposit and fresh prescribed information to be served in a periodic contract.

More information

The Welsh Government has provided extensive information on its webpages relating to the [RHWA](#). This includes access to the model occupation contracts and all the forms that are required by the legislation as well as other useful guidance.



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