

BY SUBMITTING THIS REPORT TO THE CABINET OFFICE, I, JANE THOMAS, DIRECTOR ADULTS, HOUSING & COMMUNITIES AM CONFIRMING THAT THE RELEVANT CABINET MEMBER IS BRIEFED ON THIS REPORT

CARDIFF COUNCIL CYNGOR CAERDYDD

CABINET MEETING: 20th October 2022

IMPLEMENTATION OF THE RENTING HOMES (WALES) ACT 2016

**HOUSING & COMMUNITIES - (COUNCILLOR LYNDA THORNE)
AGENDA ITEM:5**

Reason for this Report

1. To brief cabinet on the implications of the Renting Homes (Wales) Act 2016 ('the Act') which is due to be implemented on 1st December 2022.
2. To set out the proposed approach to implementing the changes, including the introduction of new "occupation contracts" for all council tenants and changes to procedures to comply with the new legislation.

Background

3. In January 2022, the Welsh Government announced the introduction of Renting Homes (Wales) Act 2016, this will come into force on 1st December 2022. This new legislation will apply to council, housing association, supported housing and privately rented properties in Wales. The Act has implications for how all these types of housing are let and managed.
4. The Renting Homes (Wales) Act 2016 will introduce new terminology. Local Authorities and Registered Social Landlords will be known as 'Community Landlords,' and subsequently tenants will become 'contract-holders'.
5. The Act intends to provide greater security of tenure for those who rent a home in Wales and to ensure that both landlords and tenants understand their new individual rights and responsibilities.

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6. Overall, this new legislation is welcomed as it provides tenants with enhanced rights and greater security of tenure. However, there is concern that private landlords may leave the rented market due to the additional restrictions and duties imposed on them by the legislation, putting additional pressure on the housing situation in Cardiff.
7. The Act and its published regulations require the Council, as a landlord, to implement changes in the way that council housing is let and managed. This report sets out the main changes in legislation and the proposed approach to these changes.
8. The Act also impacts on private landlords and their tenants, this report sets out the potential implications for private rented accommodation and the work that is being done to support landlords with the changes.

Issues

Key Changes for Council Tenants

The Renting Homes Act has significant implications for the letting and management of council homes as set out below:

Occupation Contracts

9. Tenants will become 'contract-holders' under the Act. Contract-holders will have an occupation contract which replaces their existing tenancy agreement. The Welsh Government have introduced different types of occupation contracts: an introductory and secure contract which will be used in permanent social housing, and standard contracts that can be used for private rented housing, supported housing and temporary accommodation. It is proposed that the Council should use four new occupation contracts: an introductory contract and a secure contract in permanent housing, and two standard contracts one for supported and one for temporary accommodation.

The Welsh Government has stated that all landlords in Wales will need to use the new occupation contracts for new contract-holders from the implementation date of the Act (1st December 2022). Landlords must also issue new contracts to all existing tenants within 6 months of that date (31st May 2023).

The Welsh Government have prescribed most of the content of the new occupation contracts, including fundamental and supplementary terms, however the landlord can insert additional terms in certain limited circumstances. Additional terms must be reasonable and agreed by both the landlord and the individual contract-holder. Careful consideration needs to be given to including additional terms as it is important that they do not conflict with the fundamental or supplementary terms set out in the legislation.

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10. A set of proposed contracts have been drafted using Welsh Government guidance. All the proposed contracts have the required terms set out in legislation, however subject to legal advice, it is intended that additional terms will be added. For tenants in permanent housing the additional terms are as follows:

- Restrictions on keeping pets, contract holders are responsible for the pets they are allowed to keep
- The contract holder must keep gardens in a good condition
- The landlord's ability to recharge a tenant to make good damage from 'lack of care.'
- The contract holder must not statutorily overcrowd the home
- The contract holder must provide vacant possession at the end of the contract.
- The contract holder's responsibilities in the community and to engage with council officers to resolve issues.
- The contract holder's responsibility for maintaining the condition of the dwelling
- The contract holder must co-operate with the Council to ensure that fire risk is kept to a minimum in the property or any communal area
- Contract holders must not do major car repairs or park an illegal or unroadworthy vehicle on the land around the home or on the road

It has been possible to include these additional terms without individual agreement with existing tenants as these terms were already included in all existing tenancy agreements.

11. The proposed contracts to be used for temporary and supported accommodation also have the terms set out in the legislation, again depending on legal advice, additional terms will be added. These are as follows:

- The landlord's ability to recharge to make good damage from lack of care.'
- The contract holder must occupy the dwelling as the only or principal home during the term of the contract
- Contract holders are not permitted to keep any pet in the dwelling without the consent of the Council
- Contract holders must notify the Council if they are going to be away from the dwelling for more than three consecutive days at one time
- Contract holders with a support plan must engage with support workers
- The contract-holder must not allow overnight visitors to stay in the dwelling without the consent of the Council
- The contract-holder must comply with any car parking scheme which applies in the area

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- The contract-holder has a duty to co-operate with Council regarding fire safety

Other clauses have been added to all the proposed contracts for clarification but will not change the contract holder's rights. Some of the terms are only applicable to specialist accommodation.

12. Both internal and external legal advice has been taken to ensure that the contracts are in line with the legislation. It is proposed that finalisation of the contracts is delegated to officers as set out in the recommendations below. Once complete, a new contract will be issued to all existing tenants on a phased basis. In addition, contracts will be provided to new contract holders from 1st December 2022.

Rent Increases

13. All contract-holders will be entitled to 2 months' notice of any rent increase. The Council's current notice period is 1 month. This will mean that the rent increase will have to be decided upon ahead of the normal budget process and it is anticipated that this will need to be agreed by Cabinet separately each year. Additionally, Welsh Government have provided prescribed forms which will need to be used by the Council to inform contract-holders of the rent change. A new process and timeline will be prepared for the next rent increase cycle in 2023.

Changes to Joint Contracts

14. There are changes to the rights of joint tenants (now to be called joint contract holders). A joint contract-holder will be able to leave a property without ending the contract entirely. New joint contract-holders can be added to the contract without having to end the current contract and start a new one. These changes are intended to help where there is a breakdown in a relationship and one partner leaves the property.

Enhanced Succession Rights

15. The Act gives contract holders enhanced succession rights. Currently only one succession can take place, under the new legislation, up to two successions will be allowed. However, this will be assessed on a case-by-case basis, in line with the criteria set out in the Act. It is also possible for a non-paid carer to succeed, however, again, this is subject to strict legislative criteria. While the enhanced succession rights will be good for some residents, this may reduce the number of family properties becoming available to let.
16. The Act allows the Council to request a successor or contract holder who is left in occupation after a joint contract holder moves out, to downsize to a suitably sized property if they are under occupying. The Council is permitted in the legislation to take action if necessary to enforce this.

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Where this is the case, every effort will be made to provide a suitable alternative property.

Abandoned Council Properties

17. The Act enables the Council to repossess an abandoned property without needing a court order, however it will still be necessary to carry out proper investigations to be sure that the property is abandoned. Once abandonment had been ascertained, the Council is required to serve a four-week warning notice and provide up to a further 28 days to collect any belongings that are deemed to be valuable, storage costs may be charged for this period. Currently, the Council allows 7 days to collect belongings after a property is found to be abandoned. While the ability to repossess the property without a court order will reduce the time taken to address abandoned properties, the increase to 28 days to collect possessions could potentially increase the time that the property is void once possession has taken place.
18. Procedures for agreeing succession rights, abandoned properties, and joint contracts are currently being developed to embed the changes in daily working practices. These new procedures will ensure the Council meets its new legislative responsibilities.

New Repair Standard

19. The Act introduces a repair standard and sets out 29 matters that must be considered when deciding if a landlord's property is fit for human habitation. To meet this new regulation, all landlords including the Council must ensure properties are fit for human habitation.
20. The Act sets out three specific requirements that all rented property must have: a working carbon monoxide detector, smoke alarms that are connected to the electrical supply and a five yearly electrical installation inspection certificate. While the Council already has procedures in place to ensure that it complies with these requirements, further monitoring systems are being put in place to ensure that records of compliance are readily available. Comprehensive inspections will be put in place to ensure council properties meet the 29 matters set out in the repair's standard before they are let, and records of this will be kept to demonstrate compliance.
21. All contract-holders in both private and social housing will have the right to withhold rent if they believe their property is not fit for human habitation. A streamlined procedure to assess and respond to complaints received about the condition of a council property will be put in place to address this. This should ensure that tenants receive the right advice, that rent arrears levels do not increase due to tenants withholding their rent and also that concerns about living conditions are addressed as quickly as possible.

Supported Accommodation

22. The Act changes the rights of individuals in supported accommodation. The Council operates a number of supported accommodation schemes which include the new hostel Ty Ephraim (formerly the YHA), Adams Court supported accommodation for single people and a number of family homelessness centres.
23. Residents of supported accommodation will have a licence to occupy for the first 6 months, as at present. After 6 months they will then be entitled to a supported accommodation standard contract which will give them more security of tenure. This includes an extended two-month notice period. It is possible to extend the period on a licence beyond 6 months in cases of poor behaviour or conduct of the contract-holder or any person who lives in the dwelling.
24. The Council will also take on a new role as specified in the legislation, to review whether other landlords of supported accommodation in Cardiff can extend the initial 6 months licence period. Arrangements are being put in place for this to be co-ordinated through the Council's Accommodation and Support Gateway.
25. The Act strengthens the ability of the landlords of supported accommodation to exclude any person (for up to 48 hours) who is causing significant anti-social behaviour. The Housing Service works collaboratively with a range of supported accommodation providers to ensure that individuals with complex needs are not evicted or excluded and will continue to do so under the new legislation.

Temporary Accommodation

26. Residents of temporary accommodation will normally sign a licence agreement rather than a contract. However, once they are awarded a full homelessness duty under section 75 of the Housing (Wales) Act, which obliges local authorities in Wales to secure accommodation for those in priority need, the Act will require a temporary accommodation standard contract to be put in place instead of a licence agreement.
27. The temporary accommodation standard contract gives residents more security of tenure. This includes an extended two-month notice period. However, the Welsh Government are currently reviewing this regulation as it may have unintended consequences on the availability of temporary accommodation in the future. However, in the meantime preparations are being made to comply with the Act in its current form.

Private Rented Sector

28. For the private rented sector, the Act lengthens the notice period that private landlords are required to give from 2 months to 6 months, in addition a landlord cannot serve a notice within the first 6 months of the occupation contract, unless the contract holder has breached their contract conditions. This effectively means that a contract-holder who does not breach their contract (e.g., through prohibited conduct or serious rent arrears) can live securely in a property for a minimum of 12 months. The repair standard and fitness for human habitation requirements outlined above also apply to privately rented properties.
29. While this change is very positive for private sector tenants, it does place additional obligations and restrictions on private sector landlords and there are concerns that this may result in landlords choosing to leave the rental market.
30. To acknowledge the impact on the private rented sector a number of measures have already been taken to provide support to landlords and contract-holders in readiness of these changes.

Further Support for Landlords – Leasing Schemes

31. As stated above there are concerns that landlords may want to leave the private rental market and sell their properties due to the introduction of the Act. Landlords may feel some of the flexibility that existed previously has been lost due to the changes and there are more obligations upon them.
32. There is currently high demand and a lack of supply of privately rented accommodation across the city, any further loss of such accommodation could impact on homelessness services. One way that the Council is seeking to support landlords is by offering to lease their properties and take over the often complex management issues related to renting a property.
33. The Council is operating the Welsh Government leasing scheme which allows the Council to lease up to 404 properties, while also allowing the landlord to benefit from a £5000 renovation grant to improve their property. All management is then undertaken by the Council in exchange for a lease of at least 5 years. The Housing Service will continue to develop initiatives to encourage private landlords to stay in the private rented market and offer their properties for use by homeless clients or others in housing need.

Response of Rent Smart Wales to the Act

34. Rent Smart Wales assists those who let or manage private rental properties in Wales to comply with their Housing (Wales) Act 2014 obligations and provides advice on renting out safe and adequate homes. The service also processes landlord registrations, grant licences and delivers informative and relevant training for those involved in the rental market, both online and in classroom venues across Wales.

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35. Rent Smart Wales is actively working with Welsh Government in the delivery of the marketing campaign to ensure the private rented sector is well prepared for the introduction of the Renting Homes Act. This is supported by information on the Rent Smart Wales website.
36. Rent Smart Wales launched a standalone online Continuing Professional Development (CPD) training course in July 2022 to provide Private Landlords and agents with detailed information about the changes and how they will impact upon them. The course is free of charge, in addition classroom and virtual courses are being advertised and delivered. Rent Smart Wales Licensees are required to undertake training to obtain and renew their licences. Other courses are currently being reviewed and updated to reflect the significant changes this new law introduces. Work is ongoing to achieve this.
37. The work required to prepare Rent Smart Wales for the change is significant. This challenge is made more difficult as some of the changes will have an impact on what is in scope for Rent Smart Wales specific activities. As an example, owner occupier landlords in a property converted into flats will now fall within scope for registration and licensing. These types of cases were previously exempt. This will lead to additional workstreams and associated marketing and other work.

Response of Shared Regulatory Services to the Act

38. The Shared Regulatory Service for Cardiff, Bridgend, and Vale of Glamorgan is responsible for Housing Enforcement in the Private Rented Sector in Cardiff.
39. As noted above rent will not be payable for any period during which the property is not fit for human habitation. The Welsh Government have stated that there is no impact on local authorities, as tenants are empowered to take their own civil action through the courts where properties are not fit for human habitation. Further clarification is required from The Welsh Government before the impact of the changes to legislation regarding fitness for human habitation can be fully understood, and these will require close monitoring to determine any impact on Shared Regulatory Services.
40. It is pleasing to note that under the Act a private landlord will not be able to evict a contract holder solely on the basis that they have complained about the condition of the property (commonly known as a 'retaliatory eviction'). If a landlord applies to court for a possession order but it is refused on the grounds that it was a retaliatory eviction, the landlord cannot give a further 'no fault' notice until 6 months later.
41. The new provisions relating to retaliatory eviction and non-payment of rent are important safeguards for tenants which will sit well with local authority enforcement powers. Shared Regulatory Services will now be able to respond to complaints and use the full array of enforcement notices in the knowledge that contract holders are properly protected from any retaliation, and when contract holders withhold rent, this is done on

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comprehensive legal evidence which does not complicate the enforcement process.

42. A draft plan has been developed to raise awareness of the new legislation and provide guidance to the residents of Cardiff. This ties in with the Welsh Government's national publicity campaign which involves social media activity, press releases, online advertising and working with landlords alongside Rent Smart Wales.

Equality Impact Assessment

43. The Welsh Government carried out an integrated impact assessment when the Act was introduced. It was identified that although the implementation of the Act will apply to all landlords, the greatest impact will be in the private rented sector, due to the increased minimum notice periods from two months to six months.
44. The findings of the equality impact assessment carried out by Welsh Government show that the implementation of the Act may either have a proportionately greater positive impact on people with certain protected characteristics or is neutral and not considered to have any differential impact.
45. An equality impact assessment has been carried out by the Council and the key findings highlight that there are no anticipated negative impacts on people with protected characteristics which will require further action. However, careful monitoring of services will take place to ensure this is the case. There is no impact anticipated from the addition of the additional terms to council contracts given that they are already included in current tenancy agreements.
46. All Welsh language policies will be followed, and contracts will be fully bilingual. All communication in relation to the changes will be fully accessible and available to tenants and other members of the public through the local hubs.

Consultation

47. There is no requirement to formally consult with contract-holders on the changes included in the Act.

Reason for Recommendations

48. To note the changes introduced in the Renting Homes (Wales) Act 2016 and the steps being taken to ensure that the Council is fully compliant with the change in law and that private landlords are supported.
49. To put arrangements in place for the change from tenancy agreements to occupation contracts for council tenants and to delegate responsibility for the finalisation and issuing of these contracts.

Financial Implications

50. This report sets out the requirements and implications of the Renting Homes (Wales) Act 2016 which will be effective from December 2022. This will bring in a number of changes principally around the introduction of tenancy contracts, increased notice periods for annual rent uplifts and other amendments including revised succession arrangements and additional measures for repairs responsibilities.
51. Whilst the report does not identify any additional financial implications, there are changes within the new legislation which could impact on costs and income streams including the potential for delays to reletting and a decrease in properties becoming available for let. These and other changes could also further impact pressures within homelessness. This will need to be closely monitored and reviewed as to any in-year impact and any additional requirements in terms of future budget setting.
52. The report identifies the potential for increased responsibilities and workstreams for the Rent Smart Wales function as a result of the changes. Any implications on future resource and funding requirements will also need to be considered in detail.
53. Additionally, it is considered that the new legislation could impact on the private rented sector due to increased obligations on landlords and implications in this regard will also need to be reviewed and clarified in the coming months.
54. Consideration is being given to the requirement to provide 2 months' notice to tenants of the annual rent uplift (previously 1 month). It is currently unclear how this will be achieved in terms of timescales and impact on existing governance arrangements. This would also be dependent on a timely decision from the Welsh Government (WG) on the rent uplift and the WG have recently informally consulted in this regard.

Legal Implications

55. The Renting Homes (Wales) Act 2016 makes provision about tenancies and licences, which confer the right to occupy a dwelling as a home, including provision establishing secure and standard contracts for the purpose of renting homes, and for connected purposes. The landlord must under a secure contract or standard contract ensure that the dwelling is fit for human habitation.
56. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

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In considering this report, regard should be had to:

(a) Public sector duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties, when making decisions, Councils must have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are a. Age; b. Gender reassignment; c. Sex; d. Race – including ethnic or national origin, colour or nationality; e. Disability; f. Pregnancy and maternity; g. Marriage and civil partnership; h. Sexual orientation; i. Religion or belief – including lack of belief; and

(b) the Well Being of Future Generations (Wales) Act 2015. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') is about improving the social, economic, environmental and cultural well-being of Wales. The Act places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language and is globally responsible. In discharging their respective duties under the Act, each public body listed in the Act must set and published wellbeing objectives. These objectives will show how each public body will work to achieve the vision for Wales set out in the national wellbeing goals. When exercising its functions, Cabinet should consider how the proposed decision will contribute towards meeting the wellbeing objectives set by the Council and in so doing achieve the national wellbeing goals. The wellbeing duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Cabinet must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, Cabinet must:

- Look to the long term
- Focus on prevention by understanding the root causes of problems
- Deliver an integrated approach to achieving the 7 national well-being goals
- Work in collaboration with others to find shared sustainable solutions
- Involve people from all sections of the community in the decisions which affect them

HR Implications

57. There are no HR implications for this report.

Property Implications

58. This report makes no specific property recommendations.

RECOMMENDATIONS

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Cabinet is recommended to

1. Approve the proposed approach being taken to respond to the requirements of the Renting Homes (Wales) Act 2016 including the changes in the Council's rental agreements and procedures.
2. Delegate authority to the Director Adults, Housing and Communities, in consultation with the Cabinet Member for Housing & Communities and Director of Governance and Legal Services, to finalise the new contracts for council tenants and procedures to fully implement the changes introduced in the Renting Homes (Wales) Act 2016.

SENIOR RESPONSIBLE OFFICER	Jane Thomas, Director Adults Housing and Communities
	23/09/2022

The following Background Papers have been taken into account

- Welsh Government Guidance for Landlords
[Landlords: housing law is changing \(Renting Homes\) | GOV.WALES](#)
- Welsh Government Guidance for Tenants
[Tenants: housing law is changing \(Renting Homes\) | GOV.WALES](#)
- Welsh Government Model Contract
[Renting homes: model written statements | GOV.WALES](#)