



## Report of the Cabinet Member for Service Transformation

Council – 3 November 2022

### Implementation of the Renting Homes (Wales) Act 2016

<b>Purpose:</b>	<ul style="list-style-type: none"><li>• To raise awareness of the Act and its implications</li><li>• To consider the recommendation to end the use of Introductory tenancies</li></ul>
<b>Policy Framework:</b>	Renting Homes (Wales) Act 2016
<b>Consultation:</b>	Access to Services, Finance, Legal.
<b>Recommendation(s):</b>	It is recommended that:  <ol style="list-style-type: none"><li>1) Council notes the implications of the Renting Homes (Wales) Act 2016.</li><li>2) Council agrees to end the use of Introductory Tenancies and allows all existing Introductory Tenants to be issued with Secure Occupation contracts on implementation of the Renting Homes Act.</li><li>3) All new Swansea Council tenants to be issued with Secure Occupation Contracts from 1st December 2022.</li></ol>
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#### 1. Introduction

- 1.1 The Renting Homes (Wales) Act 2016 (the Act) is the biggest change to housing law in Wales for decades. From 1<sup>st</sup> December 2022, the Act will transform the way all landlords (social and private) in Wales rent their properties and it is intended to improve how rented homes in Wales are managed and lived in. The Act replaces the various and complex pieces of existing housing legislation with one legal framework.

- 1.2 The Act sets out the rights and responsibilities of both tenants and landlords and ensures greater clarity through the requirement to provide written Occupation Contracts. These are currently known as Tenancy Agreements and the Act aims to standardise these for all renters. This improvement is of particular importance for tenants in the private rented sector, where there is a much wider variety of agreements issued, as opposed to the social rented sector where tenants already receive clear and fair written agreements.
- 1.3 The Act requires the Council 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 and procedures.

## **2. Main changes brought about by the Act**

- 2.1 The main changes brought about by the Act are set out in the following paragraphs.

### **2.2 Changes to Terminology**

There will be two types of landlords:

- Community Landlords - Local Authorities and Registered Social Landlords.
- Private Landlords - all other Landlords.

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

- **Secure Occupation Contract:** for use by Community Landlords, which replace the current Secure Tenancy Agreements currently used by Councils and Assured tenancies used by RSLs and maintain the same level of security of tenure.
- **Standard Occupation Contract:** which will be the default contract for the private rented sector, replacing Assured Shorthold Tenancies, but can be used by Community Landlords in certain circumstances, for example in supported accommodation or temporary homelessness accommodation.

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

### **2.5 Occupation contracts**

Welsh Government have provided model contracts for community and private landlords to use. The model contracts help to ensure that landlords comply with the requirements of the Act. 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, setting out the rights and responsibilities of the landlord and the contract-holder, as contained within the Act. For new rentals after the 1<sup>st</sup> December 2022, the written statement must be issued within 14 days of occupation.

2.6 Existing Tenancy Agreements will 'convert' to the relevant Occupation Contract on the 1<sup>st</sup> December 2022, and all landlords have a maximum of six months to issue their contract-holders a written statement of the converted Occupation Contract. The new terms will apply from 1<sup>st</sup> December regardless of whether the new Occupation Contract has been issued. All updated contracts must be issued to current tenants by 1<sup>st</sup> June 2023, however the Council will aim to issue them as soon as possible following 1<sup>st</sup> December.

2.7 **Ending Occupation Contracts – secure contracts**

Within the social housing sector, as is the case with secure tenancies now, Secure Contracts can only be ended where there is a breach of contract or under Estate Management Grounds. 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 of the prohibited conduct (anti-social behaviour) term of the contract.

2.8 **Ending occupation contracts – standard contracts**

The Act provides greater security for people who live in the private rented sector.

- Where a 'no fault' notice is issued, the minimum notice period that must be given is six months and a landlord will not be able to give such a notice until six months after the contract starts. In effect providing contract-holders in the private rented sector with the security of a minimum of 12 months occupation.
- It is important to note that the longer notice period currently only applies to occupation contracts issued post 1<sup>st</sup> December; for converted contracts in the private rented sector issued prior to this date, the notice period remains at two months. However Welsh Government launched a formal consultation on 20/9/22 with a proposal to extend the notice period for converted contracts to 6 months. The consultation will run until 24/10/22 and therefore a change to this is expected.
- A Landlord will not be able to serve notice unless they have complied with certain obligations, including registration and licensing with Rent Smart Wales, meeting the Fitness for Human Habitation requirements and deposit protection rules.

2.9 **Repairs and Fitness for Human Habitation**

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 associated regulations, which sets out 29 matters and circumstances to which regard must be had when determining whether a property is fit for

habitation. These are based on the current Housing Health and Safety Rating System. This also includes requirements for an increased frequency of periodic electrical safety testing (from every 10 years to 5 years), 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 a Court to not be fit for human habitation.

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 heating, and hot water in repair and proper working order.

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.

#### **2.10 Joint Contracts**

Contract-holders will be able to request landlord's consent to add another person(s) to the Occupation Contract without the need to end one contract and start another. A joint contract-holder may remove themselves from an Occupation Contract without the landlord's consent by giving a notice. The contract will not end on expiry of the notice but will continue in the remaining contract-holders name.

#### **2.11 Enhanced Succession Rights**

Improved succession rights will, in certain circumstances, 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.

#### **2.12 Rent increases**

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.

#### **2.13 Homelessness Services**

The Act will have an impact on how the Council via its Statutory Homelessness functions provides emergency temporary accommodation to those households who are threatened with/or who are Homeless and without suitable accommodation to occupy, by requiring Council's to provide a more secure form of tenure via a standard occupation contract once a full homelessness duty has been accepted.

An increase in demand for housing advice and support is also anticipated from tenants and landlords in the private rented sector as they adapt to the new requirements of the Act.

## **2.14 Supported Accommodation**

The Act creates a new tenure type of supported housing which can be used in accommodation that meets the definition of supported housing set out in the Act. 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. The relevant support services include:

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

A landlord of supported accommodation can choose initially to provide a licence agreement that is not an occupation contract and therefore sits outside the requirements of the Act. 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', although a landlord can apply to the Council to consider a request to extend a licence under certain circumstances. The terms of a supported standard contract also allow a landlord to temporarily exclude the contract-holder from the dwelling for up to 48 hours, to ensure the safety of residents and staff or to prevent an eviction.

## **3. Communication with tenants**

3.1 Information has been provided to tenants to advise them of the changes and to reassure them that their legal rights are protected and enhanced and that their right to remain in their home remains unaffected. This includes:

- Information on the Council's Housing and Public Health webpages
- Articles in the tenant and leaseholder newsletter Open House – Issue 1 2021 (July/August 2021) and Issue 1 2022 (March 2022)
- Special edition of Open House newsletter due to be issued November 2022
- Welsh Government's advertising campaign is currently underway advising tenants and landlords of the changes, including radio adverts, social media, external advertising, for example bus shelters.
- A plain English guide to the occupation contract is currently being developed.

3.2 Queries from tenants have so far been limited, however an increase is expected following the delivery of the newsletter in November and when existing tenants receive their new occupation contracts within six months of the implementation of the Act. Resources are in place to answer any individual questions via Landlord Services staff.

- 3.3 A letter will also be issued to the Council's 640 leaseholders to advise them of the Act and implications for them. These are:
- Leaseholders who reside in their property as their only or principle home – the Act does not apply and there is no impact.
  - Leaseholders who rent out their properties will be obligated to comply with the requirements of the Act and issue their tenants with standard occupation contracts. They have been advised that they can receive information and advice from Rent Smart Wales. Due to the complexity of the changes, it is also advisable for private landlords to seek independent legal advice to ensure they comply with the requirements of the Act.
- 3.4 Members have been informed via emails sent on 10<sup>th</sup> March 2022 and 29<sup>th</sup> June 2022 and will be sent copies of the newsletters issued to tenants and leaseholder letters.

#### **4. Staff training**

- 4.1 An extensive training programme is currently underway to ensure that staff across the Housing and Public Health Service are prepared for the implementation of the Act. There are a significant number of changes to current housing management procedures. There are also important changes for Homelessness staff and Public Health staff to ensure that they can continue to effectively prevent homelessness and illegal evictions post 1<sup>st</sup> December. In house training has been developed and supplemented by training from external organisations included Shelter, Community Housing Cymru and the external legal experts.

#### **5. Impact on other departments**

In addition to the impact of the Act on the Housing Service, there are also impacts on other Council departments including:

##### *5.1 Social Services*

- A new role for the Council is the requirement to respond to supported housing providers' requests to extend licences in supported housing settings (as referred to in 2.12). This is a new requirement created by the Act. Procedures are being developed and resources identified to ensure the Council fulfils this requirement
- The Council will also be required to participate, where possible, in temporary exclusion reviews, which is a new requirement for supported housing providers to undertake each time they exercise the temporary exclusion power. Procedures are being developed and resources identified to ensure the Council fulfils this requirement
- Welsh Government have also stated that the Council should collect and report monitoring information to them on licence extensions and temporary exclusions the supported housing sector.

- Llanfair House. The Council runs a mental health supported housing project and will be required under the Act to provide its residents with new occupation contracts (supported standard).

## 5.2 *Public Health*

- Anticipated service demand from private sector landlords requesting inspections of their properties either before a new occupation contract or before a new written statement is issued to existing contract-holders to confirm fitness for human habitation
- Increased number of complaints from contract-holders about disrepair where they consider their property is not fit for human habitation
- Increased demands for advice from both contract-holders and landlords for general advice regarding changes in contracts, terminology, possession procedures, rights and responsibilities, particularly regarding new requirements about property condition and disputes where some repair items will more clearly fall to contract-holders in future
- A likely increase in complaints about illegal evictions and harassment due to changes in notice periods and access procedures

## 5.3 *Other departments*

Where other local authority services provide accommodation tied to employment for example education, cemeteries, or otherwise rent out properties as accommodation they will be required to issue new occupation contracts. These are very small in number but will be impacted by the Act in the same way as any other landlord. The Legal Department is working with the affected departments to ensure they issue the correct occupation contracts, forms and documentation.

## **6. Introductory tenancies**

- 6.1 The Act requires new tenancy agreements, known as ‘occupation contracts’ to be issued to all new and existing tenants. It is therefore an opportune time to make the transition away from Introductory tenancies and issue all new and existing tenants with Secure Occupation Contracts. A summary of the reasons is included below for Council’s consideration.
- 6.2 Under the Housing Act 1996, Local Authorities were given the option of being able to operate an Introductory Tenancy policy. The decision to make use of Introductory Tenancies was made by Council in March 2012 and the policy came into effect for all new Council tenants from November 2012.
- 6.3 Introductory tenancies provide tenants with fewer tenancy rights than a Secure tenancy and less security of tenure as it is considered to be ‘easier’ for a landlord to evict an introductory tenant since it is mandatory for a court to grant possession if due process has been followed. Introductory tenancies are granted to all new Swansea Council tenants (except where

the tenant was a secure tenant or an assured tenant of a registered social landlord immediately before).

- 6.4 The Introductory tenancy is adopted for a period of 12 months and automatically becomes a Secure tenancy on the anniversary of the date the tenancy started. However, if there are breaches of the tenancy conditions during the introductory period, the Council can decide to end the tenancy by pursuing possession or extend the introductory period by up to 6 months
- 6.5 The primary objective of the Renting Homes (Wales) Act 2016 is to provide greater security for tenants. Therefore, whilst the Act makes provision for Introductory Tenancies (known as Introductory Standard Contracts under the Act), it makes the process of gaining possession under the Introductory Standard Contracts longer. To provide protection for tenants in respect of mandatory possession, the Act prohibits the service of a notice to end an introductory tenancy in the first six months of the tenancy and extends the notice period to six months. As a result, no mandatory possession action can be taken in the first 12 months, aside from serious rent arrears
- 6.6 For the minority of Council tenants who do not meet their obligations in respect of their tenancy conditions the Act still provides possession routes for Secure Occupation Contracts, which can be pursued at any time. In addition, the Act makes provision for a possession case in respect of anti-social behaviour (referred as Prohibited Conduct under the Act) to be pursued the same day a Notice is served or for a Prohibited Conduct Standard Contract to be put in place, which replaces current demoted tenancies and gives a lower level of security of tenure to the contract-holder and provides mandatory grounds for possession.
- 6.7 Introductory Tenancies have been less effective and used far less by the Council than was initially envisaged when they were introduced in 2012. For example, in the case of anti-social behaviour, the mandatory possession route for Introductory Tenancies has only been used twice over the last decade with the last time being in 2018.
- 6.8 Whilst more frequently used for rent arrears, the mandatory possession element of Introductory Tenancies is a blunt instrument which is far from ideal in that it removes opportunities for tenants to comply with suspended possession orders which can contain agreements to pay rent and arrears in compliance with the court order. Since early 2020 no rent arrears possession proceedings have been pursued in respect of Introductory tenants. The provision to extend an Introductory tenancy has never been used.
- 6.9 In addition, over the last decade there have been many socio-economic and legislative changes and challenges nationally. These include the impact of Welfare Reform, a rise in homelessness, an increase in people with complex needs, the impact of the Covid pandemic and more recently the effect of the cost-of-living crisis. All these changes have meant that



Introductory Tenancies can no longer be considered an appropriate and effective policy tool given the prevailing socio-economic conditions and the change of approach needed by Local Authorities given these changes. Over the last few years, new ways of working with tenants who cause anti-social behaviour or who have rent arrears have been introduced by the Authority which are at odds with the blunter tool of Introductory Tenancies. These include:

- Developing ways the Authority can work with prospective tenants to prepare and equip them to manage and sustain a tenancy.
- Ensuring tenants receive advice and support about welfare benefits, financial inclusion and income maximisation at an early stage of their tenancy.
- Working in a more sustainable way; including increasing resources in the Anti-social Behaviour support Team.
- Focusing on proactive early interventions to increase engagement at a much earlier stage.
- Exploring trauma and psychologically informed approaches to Housing Management.
- Working towards eliminating cycles of repeat homelessness; including the rapid rehousing approach.
- Ensuring that eviction is an action of last resort where all other methods have failed.

6.10 Therefore it is recommended that Council agree to end use of Introductory Tenancies as part of the implementation of the Act.

## **7. Integrated Assessment Implications**

7.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.
- Deliver better outcomes for those people who experience socio-economic disadvantage
- Consider opportunities for people to use the Welsh language
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

7.2 The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic,

social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

- 7.3 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.
- 7.4 An IIA screening form has been completed for the implementation of the Renting Homes (Wales) Act 2016 and a separate IIA has been completed for the recommendation to end use of Introductory Tenancies.
- 7.5 The findings from the Renting Homes (Wales) Act Implementation IIA screening form was that a full IIA was not required. This is because no negative impacts have been identified in relation to any group of individuals with protected characteristics. The legislation is designed to improve the position and security of tenure of tenants across Wales including all those with protected characteristics.
- 7.6 A wide range of consultation and engagement has been undertaken by Welsh Government in the preparation of this legislation. The Council has ensured that information about the changes is communicated to tenants, and this will continue as the Welsh Government commences its national communications campaign. The Council will support tenants with their queries through the implementation process.
- 7.7 The legislation is consistent with Wellbeing of Future Generations objectives as outlined in the Welsh Government's Integrated Impact Assessment. Welsh Government intend to monitor the impact of the new legislation following its implementation and the Council will ensure that it participates in this.
- 7.8 A separate screening has been completed for the decision to end the use of Introductory Tenancies. The findings from the Renting Homes (Wales) Act 2016 Implementation IIA screening form (see appendix 2) was that a full IIA was not required. This is because no negative impacts been identified in relation to any group of individuals with protected characteristics. The removal of Introductory tenancies is designed to improve the position and security of tenure of tenants in Swansea, in line with the ethos of the Act.

## **8. Financial Implications**

- 8.1 A budget has been established to cover the costs of implementation the Act, including (estimated):
  - Staff training costs - £3.5k to date although the final figure will be higher
  - Legal fees - £10k
  - Production and delivery of 13.5k new occupation contracts - £27k

- 8.2 The new requirements to ensure homes are Fit for Human Habitation will have an impact on the HRA budget in the following ways:
- Battery operated Carbon Monoxide detectors - £73,000
  - Electrical testing to bring the Council towards a 5-year cycle – £1.65m
  - Extra annual budget of around £500k per year to maintain a 5 yearly electrical safety testing cycle
- 8.3 In addition, the Fitness for Human Habitation Requirements increase the scope of repairs and places additional administrative duties on the Council to deliver repairs and improvements in future. Whilst the Council's housing repair service captures the majority of these requirements already, FFHH will place greater financial pressure to resource and deliver repairs under the Act. There is also a risk that the new requirements could also increase the number and complexity of disrepair claims. The Act also allows for contract-holders to withhold rent if a home is considered either by agreement with the landlord or a court to be unfit for human habitation. Financial expenditure will be monitored closely over the months following implementation of the Act to assess the impact on the HRA business plan.
- 8.4 The Act changes the requirements for annual rent increases. Tenants must now receive a two month notice of any rent increase (changing from one month) and the increase can only take place once a year. Therefore, any proposed increase in rents for 2023/24 will need to be taken through the approvals process as a separate report from the main HRA Revenue Budget report with the final approval required before the end of January 2023. Early consideration will be given to what level of rent increase for 2023/24 would be acceptable. Any proposals would still be subject to the decision of the Minister on the overall maximum increase in line with the Welsh Government Rent Setting Policy. Dialogue is continuing with Welsh Government to stress the urgency of an announcement of policy, given the implications of the Renting Homes Act on the rent setting cycle.
- 8.5 The Act sets out a number of financial penalties for landlords who fail to comply with the requirements of the Act and who provide incorrect occupation contracts. This is a significant risk which has been mitigated by the use of external legal experts to prepare the required occupation contracts.

## **9. Legal Implications**

- 9.1 The requirement to introduce the Renting Homes Act and convert all council tenants to a secure occupation contract is a statutory duty. The Act sets out the specific terms that must be contained within the contract and Welsh Government has produced model contracts for landlords to use. The Act requires that any terms from the Council's current tenancy agreement that are not incompatible with the Act are transferred over to the new occupation contract. Any landlord who fails to provide a written statement of the occupation contract in the required time, or provides an incomplete or incorrect statement, will be in breach of the Act and can face

financial penalties. This is a complex and specialised piece of legal work, therefore the Council has engaged external legal experts (Hugh James Solicitors) to ensure that the Council is fully compliant with the Act and that the converted occupation contracts are complete and correct.

- 9.2 There are no legal implications associated with the decision to end use of Introductory Tenancies. The Council retains the right to reinstate them in the future, as Introductory Standard Contracts under the new Act

**Background Papers:** None

**Appendices:**

Appendix A – IIA screening form – Renting Homes Act Implementation

Appendix B – IIA Screening form – Rationale to end use of Introductory Tenancies.