

WELSH STATUTORY INSTRUMENTS

2022 No. 143 (W. 46)

HOUSING, WALES

**The Renting Homes (Wales) Act 2016
(Amendment of Schedule 9A) Regulations 2022**

Made - - - - 16 February 2022

Coming into force in accordance with regulation 1

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by paragraph 8 of Schedule 9A to, and section 256(1) of, the Renting Homes (Wales) Act 2016⁽¹⁾. In accordance with section 256(3) and (4)(ma)⁽²⁾ of that Act, a draft of these Regulations has been laid before, and approved by a resolution of, Senedd Cymru⁽³⁾.

Title and commencement

1. The title of these Regulations is the Renting Homes (Wales) Act 2016 (Amendment of Schedule 9A) Regulations 2022 and they come into force on ^{[F1}1 December 2022 (the day on which section 239 of the Act comes into force)]⁽⁴⁾.

Textual Amendments

F1 Words in [reg. 1](#) substituted (13.8.2022) by [The Renting Homes \(Wales\) Act 2016 \(Commencement No. 2 and Consequential Amendments\) Order 2022 \(S.I. 2022/906\)](#), arts. 1(2), **8**

Commencement Information

II [Reg. 1](#) in force at 1.12.2022 see [reg. 1](#) (as amended by [The Renting Homes \(Wales\) Act 2016 \(Commencement No. 2 and Consequential Amendments\) Order 2022 \(S.I. 2022/906\)](#), **art. 8**)

- (1) [2016 anaw 1](#). Schedule 9A was inserted by section 6(6) of, and Schedule 2 to, the Renting Homes (Amendment) (Wales) Act 2021 (asc 3).
- (2) Section 256(4)(ma) was inserted by section 18 of, and paragraph 21(c) of Schedule 6 to, the Renting Homes (Amendment) (Wales) Act 2021.
- (3) The reference in section 256(3) of the Renting Homes (Wales) Act 2016 to the National Assembly for Wales now has effect as a reference to Senedd Cymru by virtue of section 150A(2) of the Government of Wales Act 2006 (c. 32).
- (4) Section 239 of the Renting Homes (Wales) Act 2016 comes into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

Interpretation

2. In these Regulations, “the Act” means the Renting Homes (Wales) Act 2016.

Commencement Information

- I2** Reg. 2 in force at 1.12.2022 see reg. 1 (as amended by [The Renting Homes \(Wales\) Act 2016 \(Commencement No. 2 and Consequential Amendments\) Order 2022 \(S.I. 2022/906\)](#), **art. 8**)

Prohibition on giving notice seeking possession if energy performance certificate has not been provided

3. In Schedule 9A to the Act (standard occupation contracts: restrictions on giving certain notices seeking possession), after paragraph 3 insert—

“Failure to provide valid energy performance certificate

- 3A.**—(1) This paragraph is incorporated as a term of all standard contracts which—

- (a) are mentioned in paragraph 7(1), and
- (b) relate to a dwelling in relation to which regulation 6(5) of the EPB Regulations (requirement to give tenant a valid energy performance certificate) applies.

- (2) A landlord may not give notice at a time when the landlord has not complied with regulation 6(5) of the EPB Regulations.

- (3) For the purposes of this paragraph, it does not matter when the valid energy performance certificate was given (and nothing in this paragraph requires that a new energy performance certificate be given to a contract-holder when a certificate given to that contract-holder in compliance with that regulation ceases to be valid under the EPB Regulations).

- (4) In this paragraph—

“the EPB Regulations” (“*y Rheoliadau PYA*”) means the Energy Performance of Buildings (England and Wales) Regulations 2012 ([S.I. 2012/3118](#));

“valid energy performance certificate” (“*tystysgrif perfformiad ynni ddilys*”) is to be interpreted in accordance with the EPB Regulations.”

Commencement Information

- I3** Reg. 3 in force at 1.12.2022 see reg. 1 (as amended by [The Renting Homes \(Wales\) Act 2016 \(Commencement No. 2 and Consequential Amendments\) Order 2022 \(S.I. 2022/906\)](#), **art. 8**)

Prohibitions on giving notice seeking possession relating to health and safety

4. In Schedule 9A to the Act, after paragraph 5 insert—

“Failure to ensure that working smoke alarms and carbon monoxide alarms are installed

- 5A.**—(1) This paragraph is incorporated as a term of all standard contracts—

- (a) which are mentioned in paragraph 7(1), and

- (b) in relation to which regulation 5 of the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 (S.I. 2022/6 (W. 4)) (“the Fitness for Human Habitation Regulations”) applies.
- (2) A landlord may not give notice at a time when—
- (a) the dwelling is treated as unfit for human habitation by virtue of regulation 5(3) of the Fitness for Human Habitation Regulations (failure to ensure that working smoke alarms and, in certain circumstances, carbon monoxide alarms are installed in a dwelling), and
 - (b) as a result, the landlord is required under Part 4 of this Act to take steps to stop the dwelling from being treated as unfit for human habitation by virtue of that regulation.

Failure to supply electrical condition report etc.

- 5B.**—(1) This paragraph is incorporated as a term of all standard contracts—
- (a) which are mentioned in paragraph 7(1), and
 - (b) in relation to which regulation 6 of the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 (S.I. 2022/6 (W. 4)) (“the Fitness for Human Habitation Regulations”) applies.
- (2) A landlord may not give notice at a time when—
- (a) the dwelling is treated as unfit for human habitation by virtue of regulation 6(6) of the Fitness for Human Habitation Regulations (failure to obtain an electrical condition report, or to give the contract holder such a report or written confirmation of certain other electrical work), and
 - (b) as a result, the landlord is required under Part 4 of this Act to take steps to stop the dwelling from being treated as unfit for human habitation by virtue of that regulation.

Failure to provide gas safety report to contract-holder

- 5C.**—(1) This paragraph is incorporated as a term of all standard contracts—
- (a) which are mentioned in paragraph 7(1), and
 - (b) in relation to which regulation 36 of the Gas Safety Regulations applies.
- (2) A landlord may not give notice at a time when the landlord has not complied with regulation 36(6) or (as the case may be) (7) of the Gas Safety Regulations (requirement to provide or display report on safety etc. of gas installations).
- (3) For the purposes of sub-paragraph (2), a landlord who has not complied with regulation 36(6) or (7) of the Gas Safety Regulations is to be treated as in compliance with the provision in question at any time when—
- (a) the landlord has ensured that the contract-holder has been given, or (as the case may be) there is displayed in a prominent position in the dwelling, a copy of a gas safety record, and
 - (b) that record is valid.
- (4) For the purposes of sub-paragraph (3), a gas safety record is valid until the end of the period within which the appliance or flue to which the record relates is required, under the Gas Safety Regulations, to again be subjected to a check for safety.
- (5) In this paragraph—
- “check for safety” (“*gwiriad diogelwch*”) means a check for safety carried out in accordance with regulation 36(3) of the Gas Safety Regulations;

“gas safety record” (“*cofnod diogelwch nwy*”) means a record made pursuant to the requirements of regulation 36(3)(c) of the Gas Safety Regulations;

“Gas Safety Regulations” (“*Rheoliadau Diogelwch Nwy*”) means the Gas Safety (Installation and Use) Regulations 1998 (S.I. 1998/2451).”

Commencement Information

I4 Reg. 4 in force at 1.12.2022 see reg. 1 (as amended by [The Renting Homes \(Wales\) Act 2016 \(Commencement No. 2 and Consequential Amendments\) Order 2022 \(S.I. 2022/906\)](#), **art. 8**)

Related amendments of Schedule 9A to the Act

5.—(1) Schedule 9A to the Act is amended as follows.

(2) In paragraph 1—

- (a) the existing text becomes sub-paragraph (2);
- (b) before that sub-paragraph insert—

“(1) This paragraph is incorporated as a term of all standard contracts which—

- (a) are mentioned in paragraph 7(1), and
- (b) incorporate section 31.”

(3) In paragraph 2—

- (a) the existing text becomes sub-paragraph (2);
- (b) before that sub-paragraph insert—

“(1) This paragraph is incorporated as a term of all standard contracts which—

- (a) are mentioned in paragraph 7(1), and
- (b) incorporate section 31.”

(4) In paragraph 3—

- (a) the existing text becomes sub-paragraph (2);
- (b) before that sub-paragraph insert—

“(1) This paragraph is incorporated as a term of all standard contracts which—

- (a) are mentioned in paragraph 7(1), and
- (b) incorporate section 39.”

(5) In paragraph 4, after sub-paragraph (5) insert—

“(6) Sub-paragraph (1) is only incorporated as a term of a contract mentioned in paragraph 7(1) which incorporates section 43.”

(6) In paragraph 7(1), after “fundamental provision which is” insert “, subject to any provision to the contrary in Part 1,”.

Commencement Information

I5 Reg. 5 in force at 1.12.2022 see reg. 1 (as amended by [The Renting Homes \(Wales\) Act 2016 \(Commencement No. 2 and Consequential Amendments\) Order 2022 \(S.I. 2022/906\)](#), **art. 8**)

Changes to legislation: *There are currently no known outstanding effects for the The Renting Homes (Wales) Act 2016 (Amendment of Schedule 9A) Regulations 2022. (See end of Document for details)*

Julie James
Minister for Climate Change, one of the Welsh
Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Schedule 9A (standard contracts: restrictions on giving notice under section 173, under section 186, and under a landlord’s break clause) to the Renting Homes (Wales) Act 2016 (anaw 1) (“the Act”).

Schedule 9A to the Act contains certain restrictions on giving notice under section 173 (landlord’s notice under a periodic standard contract), under section 186 (landlord’s notice in connection with end of fixed term contract within Schedule 9B) and under a landlord’s break clause in a fixed term standard contract (“relevant notices”). These restrictions relate to breaches of certain statutory obligations.

Part 1 of Schedule 9A to the Act is a fundamental provision which must be incorporated, without modification, as a term of all—

- (a) periodic standard contracts which incorporate section 173 of the Act as a term of the contract,
- (b) fixed term standard contracts which incorporate section 186 of the Act as a term of the contract, and
- (c) fixed term standard contracts which have a landlord’s break clause (“relevant contracts”), subject to any provisions to the contrary set out in Part 1 of Schedule 9A to the Act.

Regulations 3 and 4 of these Regulations insert new paragraphs 3A, 5A, 5B and 5C into Schedule 9A to the Act, which introduce new restrictions on the giving of relevant notices.

The new paragraph 3A of Schedule 9A to the Act is incorporated as a term of all relevant contracts where regulation 6(5) (requirement to give tenant a valid energy performance certificate) of the Energy Performance of Buildings (England and Wales) Regulations 2012 ([S.I. 2012/3118](#)) (“EPB Regulations”) applies. Where a landlord has not complied with regulation 6(5) of the EPB Regulations, a landlord may not give a relevant notice. Sub-paragraph (3) clarifies that for the purposes of paragraph 3A it does not matter when the valid energy performance certificate was given by the landlord.

The new paragraph 5A of Schedule 9A to the Act is incorporated as a term of all relevant contracts in relation to which regulation 5 (smoke alarms and carbon monoxide alarms) of the Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 ([S.I. 2022/6 \(W.4\)](#)) (“the Fitness for Human Habitation Regulations”) applies. Where a dwelling is treated as unfit for human habitation by virtue of regulation 5(3) of the Fitness for Human Habitation Regulations, and where the landlord is required under Part 4 of the Act to take steps to stop the dwelling from being treated as unfit for human habitation by virtue of that regulation, a landlord may not give a relevant notice.

The new paragraph 5B of Schedule 9A to the Act is incorporated as a term of all relevant contracts in relation to which regulation 6 (electrical safety) of the Fitness for Human Habitation Regulations applies. Where a dwelling is treated as unfit for human habitation by virtue of regulation 6(6) of the Fitness for Human Habitation Regulations, and where the landlord is required under Part 4 of the Act to take steps to stop the dwelling from being treated as unfit for human habitation by virtue of that regulation, a landlord may not give a relevant notice.

The new paragraph 5C of Schedule 9A to the Act is incorporated as a term of all relevant contracts in relation to which regulation 36 (duties of landlords) of the Gas Safety (Installation and Use) Regulations 1998 ([S.I. 1998/2451](#)) (“Gas Safety Regulations”) applies. Where a landlord has not

complied with regulation 36(6) or (7) of the Gas Safety Regulations, a landlord may not give a relevant notice. Sub-paragraphs (3) and (4) set out the circumstances where a landlord, who has not complied with regulation 36(6) or (7) of the Gas Safety Regulations, is to be treated as in compliance with the relevant provision.

Regulation 5 of these Regulations makes further related amendments to Schedule 9A to the Act.

The purpose of the amendments in regulation 5(2), (3), (4) and (5) are to clarify the types of occupation contracts which the restrictions in paragraphs 1 to 4 of Schedule 9A to the Act are a fundamental provision of.

The amendment in regulation 5(6) clarifies that the provisions of paragraph 7 of Schedule 9A to the Act (which sets out, in general terms, which occupation contracts Part 1 of Schedule 9A is a fundamental provision of), are subject to any provision to the contrary in Part 1 of Schedule 9A to the Act.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Housing, Welsh Government, Rhydycar Business Park, Merthyr Tydfil, CF48 1UZ.

Changes to legislation:

There are currently no known outstanding effects for the The Renting Homes (Wales) Act 2016 (Amendment of Schedule 9A) Regulations 2022.