

Explanatory Memorandum to The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2025

This Explanatory Memorandum has been prepared by Social Housing Regulator and Strategic Business Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2025.

Jayne Bryant MS
Cabinet Secretary for Housing and Local Government
13 May 2025

PART 1

Description

1. These Regulations make amendments to the following legislation:
 - The Landlord and Tenant Act 1987 (“the 1987 Act”)
 - The Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2022 (‘the 2022 Regulations’) made under the Renting Homes (Wales) Act 2016 (‘the 2016 Act’).
2. These Regulations amend section 3 (qualifying tenants) of the 1987 Act to provide that tenants under occupation contracts are not qualifying tenants for the purposes of Part 1 of the 1987 Act. Part 1 of the 1987 Act sets out the specific circumstances when a landlord must give their qualifying tenants the right of first refusal (“RFR”) before disposing of their interest in premises which contains two or more flats. The amendments being made by these Regulations will ensure that the effect of section 3 of the 1987 Act aligns with the broader changes which were made to the residential tenancy regime in Wales by the 2016 Act.

Matters of special interest to the Legislation, Justice and Constitution Committee

3. None.

Legislative background

4. Sections 255(1)(a) and (2) of the Renting Homes (Wales) Act 2016 enable the Welsh Ministers to make the provisions included in the draft Renting Homes (Wales) Act 2016 (Consequential Amendments) Regulations 2025.
5. The draft Regulations are subject to the affirmative procedure and as such, a draft of the Regulations has been laid before, and require approval by a resolution of Senedd Cymru.

Purpose and intended effect of the legislation

6. Part 1 of the 1987 Act provides specific circumstances when a landlord who is intending to dispose of their premises is required to give their tenant the RFR to purchase that part of the premises which they occupy as their home. The RFR only exists in relation to the following:

- premises which consist of the whole or part of a building;
 - premises which contain at least two flats; and
 - no more than 50% of the premises is in non-residential use; and
 - more than 50% of the flats in the premises must be held by ‘qualifying tenants’.
7. The RFR only applies when the immediate landlord of the tenant decides to sell. The immediate landlord is the one to whom the rent or ground rent is paid and who will be entitled to vacant possession of the flat when the lease expires. Where a landlord has a lease for less than seven years (or longer, but which is terminable within the first seven years) his landlord is also subject to the RFR in relation to those premises.
 8. The RFR is restricted to a qualifying tenant. These include leaseholders and most fixed or periodic tenancies, but specifically excludes shorthold or assured tenancies, business and agricultural tenancies, tenancies which are dependent upon employment (and any sub-tenants of any of these). Someone who is a tenant of three or more flats in the building (as leaseholder or tenant) will not be a qualifying tenant of any of the flats.
 9. The RFR does not apply to an exempt landlord or a resident landlord. Exempt landlords include most housing authorities; registered social landlords and fully mutual housing associations which are not registered; and charitable housing trusts. Resident landlords are those landlords who live in the building, which is not a purpose-built block of flats, as their only or principal residence and have done so for more than 12 months.
 10. In order to implement the 2016 Act, consequential amendments were made to existing legislation including section 3(1) of the 1987 Act, broadly with the aim of maintaining the pre 2016 Act effect of legislation. Because the 2016 Act introduced a residential tenancy regime in Wales which bears little resemblance to that which had existed previously, it is not possible for consequential amendments to make exact “like for like” substitutions.
 11. The consequential amendments made to section 3(1) of the 1987 Act have had the unintended effect of extending qualification for the RFR beyond that which was previously provided. As consequentially amended, section 3(1) now makes it possible (provided that all other criteria are met) for a tenant under a standard occupation contract to qualify for the RFR. The standard occupation contract broadly equates to an assured shorthold tenancy (which existed in Wales pre implementation of the 2016 Act) which did not qualify for the RFR.
 12. These Regulations will further amend section 3 of the 1987 Act to ensure that it has the intended effect of aligning with the changes made to the residential tenancy regime in Wales by the 2016 Act. The effect of the Regulations will be that those tenants who may benefit from the RFR in

future are broadly equivalent to those who may have benefited from it pre implementation of the 2016 Act.

13. Therefore:

- Regulation 2 amends section 3 of the 1987 Act to provide that tenants under occupation contracts (see section 7 of the 2016 Act) are not qualifying tenants for the purposes of Part 1 of the 1987 Act.
- Regulation 3 omits paragraph (2) of regulation 15 of the 2022 Regulations as it is superseded by the provision made in regulation 2.

Consultation

14. As the Regulations provide for consequential amendments which are limited in their effect to ensuring that section 3 of the 1987 Act reflects and aligns with the changes made to the residential tenancy regime in Wales by the 2016 Act and do not reflect a change in the Welsh Government's policy, a formal public consultation has not been undertaken. There was, of course, extensive consultation undertaken in relation to the development of the 2016 Act.

Regulatory Impact Assessment (RIA)

15. Given that these Regulations make technical amendments which change the wording of the 1987 Act to the effect that, as far as possible, the balance of the rights and duties of tenants and landlords which existed pre implementation of the 2016 Act is maintained and the 1987 Act operates in accordance with previously stated policy, no Regulatory Impact Assessment has been undertaken.

Post implementation review

16. Given the technical nature of this SI, which restores the previous legislative position, no post implementation review is planned.