

Cytûn – Churches together in Wales

REVISED Briefing paper on implementation of Renting Homes (Wales) Act 2016

While every effort has been made to ensure the accuracy of this information, it does not constitute legal advice and nothing in it should be construed as such. Member churches are strongly advised to seek their own legal advice on the matters referenced here.

This Briefing Paper supersedes the version issued on 11 January 2022, which should be deleted.

Background

The [Renting Homes \(Wales\) Act 2016](#) was passed by the (then) National Assembly for Wales, based on recommendations from the Law Commission. It makes major changes to the tenure of residential property in Wales.

Commencement has been delayed by a number of legal and practical issues, but Welsh Government now intends that it should be commenced on **15th July 2022**. The original legislation has been amended by two further pieces of primary legislation – the [Renting Homes \(Fees etc.\) \(Wales\) Act 2019](#) (which has been commenced) and the [Renting Homes \(Amendment\) \(Wales\) Act 2021](#), and by a considerable amount of secondary legislation. It should be noted that not all these changes have been incorporated into the text of the Act on legislation.gov.uk (linked above), and so care needs to be taken when reading the Act.

Welsh Government has laid before the Senedd the final round of secondary legislation, which can be found here: <https://gov.wales/renting-homes-regulations>. The regulations are subject to the Senedd's 'negative procedure', meaning that they must be laid before the Senedd for 40 days and will then become law unless the Senedd votes against their implementation. Welsh Government has also published [guidance for landlords](#) and [model written statements](#) for use as a basis for new occupation contracts under the new legislation. There is also [guidance for tenants](#).

This constitutes a considerable volume of information and a complex set of legal changes for all landlords, including church landlords, to navigate and implement by 15th July 2022.

Implications for churches

All churches which let residential property for occupation in Wales or who house clergy or church workers in church-owned property will be affected by the Act. There are three principal categories of property in this context:

1. Residential property let to a paying tenant

Churches who use solicitors or letting agents based outside Wales should ensure that their solicitor or agent is fully conversant with the new law, including the recently published legislation and guidance referred to above. If a landlord fails to issue a written statement of contract which covers all the areas specified by the Act, there are penalties for non-compliance; and the landlord will not be able to regain possession of the property until six months after issuing a correct written statement.

The Act introduces new procedures also for increasing the rent, including a new notice period, and for varying the terms of a contract. There are also strengthened obligations on landlords regarding repair and maintenance of the property.

[Schedule 12 of the Act](#) (as amended) provides that pre-existing tenancies should be converted to new 'occupation contracts' under the Act within six months of commencement. The terms of the existing tenancy must (with certain exceptions) be carried over into the new contract. If landlords have existing tenants on a variety of agreements with slightly different terms, then they will need to go through each individual tenancy to ensure that any new Contract reflects the same terms and rights. The obligation to provide a full written statement of contract, and the penalties for failure to do so, will apply.

Cytûn worked with members of the Senedd to table amendments to seek to temper the effects on churches who let property normally occupied by clergy (see section 3 below) to paying tenants during periods of ministerial vacancy. These amendments were defeated in the Senedd, so it should be noted that the new provisions will apply to *all* residential property occupied by paying tenants, even if the property is held in trust as property for the housing of clergy. This means, amongst other provisions, that a minimum of six months' notice to the contract holder will be required to repossess the property for it to be occupied by a cleric.

Churches which are residential landlords in Wales are strongly urged to seek legal advice on the implications of the Act for their current tenancies and for their letting practice, and to review their existing tenancies and practices in the light of this advice.

Churches should also seek legal advice as to whether it is wise to continue to let commercially under the new Act residential property held under charitable trusts for the purpose of clergy accommodation, or whether alternative solutions could be found regarding such property during periods between clerical occupancy.

2. Residential property let to a church worker employed under a contract of employment

The Act brings a 'licence to occupy' for a church worker who is employed under contract within the scope of the legislation and requires that a new occupation contract under the Act be issued to the employee.

Due to the interaction between this Act and employment law (which is reserved to Westminster), churches who provide housing for their employees in Wales are strongly urged to seek legal advice before proceeding to issue new contracts of employment or occupation contracts.

3. Residential property occupied by a minister of religion, priest or cleric (office holder)

Following a series of representations made to Welsh Government since 2019, Cytûn received from Welsh Government in December 2021 a letter (attached) which confirms that the policy intention of Welsh Government is that the Act should also apply to residential property owned by the church and occupied by clergy as part of their working arrangements (parsonages, manses, presbyteries, clergy houses).

I can confirm that it is the Welsh Government's policy intention that the 2016 Act should apply to all tenancies and licences meeting the criteria for an occupation contract, except those specifically excluded by Parts 2 and 3 of Schedule 2 of the 2016 Act. If the Church in Wales, or any other denomination or faith group, or their ministers or faith leaders, require advice as to the application of the law to their particular arrangements they will need to seek that independently, and should there be a dispute as to the application of the law, it will be a matter for the courts to make a determination.

A number of member churches of Cytûn have sought legal advice on this matter, and the advice they have received raises considerable doubts as to whether Welsh Government's interpretation of the law is correct in this regard. This legal advice has also raised the possibility that the issuing of an occupation contract by the church might change the employment status of the occupant from that of 'office holder' to that of an employee. Welsh Government's letter, however, states:

Having considered the evidence provided to date, it is Welsh Government's view at this time that there would be no significant risk that a written statement would be deemed by an employment tribunal to amount to an employment contract, nor increase the risk of it being found that an employment relationship existed. However, as with the other issues you have raised, this would again ultimately be a matter for the courts to determine and you may wish to take your own legal advice on this.

This statement by Welsh Government is contrary to legal advice received by some of our member churches. Taken together with the provisions of Schedule 12 (see Section 1 above), this means that churches who provide property to serving clergy in this way will need to decide prior to commencement of the Act whether to issue occupation contracts to clergy (and risk the contract being deemed to imply a contract of employment) or not to do so (and risk action being taken under the Act, and being unable to repossess the property should the need arise).

It is possible that the balance of risks in this situation will vary between denominations due to the precise terms of their underpinning Acts of Parliament, their different structures and the arrangements which they make to engage clerics.

Due to the legal uncertainty of this situation, it is imperative that all member churches who house their clergy in church-owned property in Wales seek legal advice from lawyer(s) with appropriate expertise in housing and employment law.

Conclusion

Cytûn is not empowered or resourced to provide legal advice to our member churches. However, we would be grateful if member churches could keep us informed of any legal advice that they may receive, and especially of any further representations they may make to Welsh Government. Member churches should be aware that, should any litigation follow, the actions of one member church may be adduced in court as creating a precedent relevant to another member church, and we hope therefore that our member churches will wish to work together as far as is possible in this matter.

Gethin Rhys 14.01.2022

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