



Wales and PRS developments September/Mis Medi 2025

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Welsh housing legal update

- Coastal litigation - [“It must have consequences”](#) -Impact on rent arrears cases
- Human habitation - Impact on no-ground (s173) cases
- Ending ‘no ground’ eviction in Wales - [the case for change](#)

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Welsh housing legal update

- Coastal litigation - Impact on rent arrears cases

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Renting Homes (Wales) Act 2016- Human Habitation – s91(1)

Landlord's obligation: fitness for human habitation

(1)The landlord under a secure contract, a periodic standard contract or a fixed term standard contract made for a term of less than seven years must ensure that the dwelling is fit for human habitation—

- (a)on the occupation date of the contract, and
- (b)for the duration of the contract

Periodic standard occupation contract, term 17 (F+)

Secure contract term 20 (F+)

Fixed contract term 15 (F+)

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Contract term

S term:

Rent not lawfully due

11. The contract-holder is not required to pay rent in respect of any day or part day during which the dwelling is unfit for human habitation

[The Renting Homes \(Supplementary Provisions\) \(Wales\) Regulations 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

Periodic standard occupation contract term 2 (S)

Secure contract term 2 (S)

Fixed contract term 2 (S)

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Renting Homes (Wales) Act 2016- Human Habitation

The landlord must ensure:

- Valid Electrical Condition Report (ECR) obtained in respect of the dwelling during each period of occupation (reg 6(1))
- **The landlord must ensure that the contract-holder is, before the end of the period of 14 days starting with the occupation date, given—**
 - (a) a copy of the most recent ECR, and
 - (b) where investigatory or remedial work has been carried out on or in relation to an electrical service installation in the dwelling after the electrical safety inspection to which that report relates (and before the occupation date), written confirmation of work (reg 6(3))
- **A dwelling is to be treated as unfit for human habitation at a time when the landlord is not in compliance with a requirement imposed by this regulation (reg 6(5))**

[The Renting Homes \(Fitness for Human Habitation\) \(Wales\) Regulations 2022](https://legislation.gov.uk)

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[Coastal Housing Group Ltd v Mitchell & Anor \(2024\) EWHC 2831 \(Ch\)](#)

- Claimant Housing Associations, sought declaratory relief in the High Court. 4 combined cases, Welsh gov and 2 other RSLs intervened
- Claimants were in breach of rules around Electrical Condition reports (obtained but not supplied).
- Issues around (1) whether accommodation was fit for human habitation and (2) whether rent was due (full list of issues - next slide)
- Somewhat manufactured litigation - Defendant occupiers all hold roles in the Claimant Housing Associations

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Coastal - part I - outcome

- 5 issues before the High Court; 3 [decided](#) in favour of the Defendants, 2 not decided- 11 Nov 24
- Counterclaims adjourned, heard summer 25, decision due Oct 2025 (part II)
- Court of Appeal on part 1, being heard 10 or 11 [February 2026](#) (as [Beacon Cymru Group Limited and Another v Mitchell and Another CA-2024-002673](#))

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Coastal – part I – points decided

- Providing the ECR report, is a requirement as much as obtaining it (1A)
- Status of the rent ‘not being required’ survives the fact of payment (1B)
- Late compliance (of provision of ECR) doesn’t mean retrospective satisfaction (2)
- ‘Occupation date’ is 1.12.22 for converted contracts, or when ‘new’ contract starts. The timescale for compliance didn’t extend during the moratorium period, where investigative or remedial work undertaken (4)

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Coastal – part I – points not decided

- Whether electrical condition reports have to cover appliances in common areas (3)
- If issues 1 and 2 decided against the Claimants, decision has to be made on whether this renders the legislation incompatible with article 1, protocol 1 ECHR (5)

Note -The Court considered itself unable to determine this until the Counterclaims are resolved*

- Court of Appeal – 11.2.26

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Coastal – part I – points for consideration

- Be aware of potential for human habitation defences/counterclaims
- Check contract – on the periodic standard contract, [terms 2](#) and term 17*
- N5 Wales and N119 Wales (court forms) don't require landlords to give any info re Human Habitation obligations (so ask the occupier)
- Also be curious about smoke alarms, carbon monoxide alarms and other fitness issues – same principles (see following slides)

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Renting Homes (Wales) Act 2016- Human Habitation

The landlord must ensure:

- Smoke alarm on each storey of the dwelling, which is (a) in proper working order, (b) connected to the electrical supply and (c) linked to every other smoke alarm in the dwelling (reg 5(1))
- Carbon monoxide alarm in repair and proper working order in each room which has gas appliance, oil-fired combustion appliance or solid fuel burning combustion appliance (reg 5(2))
- **A dwelling is to be treated as unfit for human habitation at a time when the landlord is not in compliance with a requirement imposed by this regulation (reg 5(3))**

[The Renting Homes \(Fitness for Human Habitation\) \(Wales\) Regulations 2022](#)

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Renting Homes (Wales) Act 2016- Actual fitness issues

- Unlike above deeming provisions, the Court are to apply a matter of fact and degree - 'regard must be had to the presence or occurrence, or the likely presence or occurrence, of the matters and circumstances listed in the Schedule'
- [The Renting Homes \(Fitness for Human Habitation\) \(Wales\) Regulations 2022](#) – schedule 1 - 29 'matters and circumstances'
- Very similar to those in [The Housing Health and Safety Rating System \(England\) Regulations 2005](#) schedule 1
- Regs not specific e.g. about saying what category of hazard it is, etc. Perhaps a bit less predictable about outcome, more likely to need further evidence etc.
- Need to demonstrate 'actual' unfitness here, taking into account regs and regard

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Back to Coastal – points for consideration

- If rent has been paid during a period where 'not required', should this be returned to the occupier? (see part II)
- Can any rent arrears accrued be "set-off" against 'not required' rent from a different period
- Nb – some set-offs are contractual e.g. compensation for "statement of contract" breach (see [s88](#)).
- Set-off of 'not required' rent against arrears isn't contractual; therefore in my view, has to be equitable set-off and cannot be removed from contract

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Coastal – part II - counterclaims

- Remember, in part I, none of the Defendants had actually withheld rent.
- Defs have counterclaimed for return of the rent paid, on the basis that payment was made by mistake of law or restitution.
- Counterclaims were heard in June 2025, decision due October 2025.
- In part I, the Court stated that it didn't want to deal with point 5 (human rights) until after the Counterclaims had been decided.

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Coastal – part II - counterclaims

- Coastal estimate total amount of lost rent would come to £8 to £9.5 million
 - Tai Calon, just over £5 million
 - Valleys 2 Coast, just under £13.4 million
 - Bron Afon, just under £20 million
- Plus interest, legal fees and costs.
- Until the counterclaims are decided, we don't really know how landlords will action the rulings – i.e. if they'll start refunding/setting a pot aside, offsetting rent 'not required' during any periods of HH issue, waiting for claims etc.
 - A1P1 finding is crucial i.e. do the landlords have a human right to 'rent'

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Welsh housing legal update

- Human habitation- Impact on no-ground (s173) cases?

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Renting Homes – s217 – turning mandatory to discretionary

- (1) This section applies if—
 - (a) a landlord under a standard contract makes a possession claim on the ground in section 178 or section 199 (landlord's notice), and
 - (b) the court considers that the claim is a retaliatory claim.
- (2) The court may refuse to make an order for possession.
- (3) A possession claim is a retaliatory claim if—
 - (a) the contract-holder has enforced or relied on the landlord's obligations under s 91 or 92, and
 - (b) the court is satisfied that the landlord has made the possession claim to avoid complying with those obligations.

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Renting Homes (Wales) Act 2016 – absolute defence

s176 Restrictions on giving notice under section 173: breaches of statutory obligations

- Schedule 9A imposes restrictions on the giving of notice under section 173, related to breaches of certain statutory obligations.

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Renting Homes (Wales) Act 2016 – sch 9A

- 5A
 - (1) incorporated where reg 5 Human Habitation regs apply
 - (2) Landlord *may not give notice* at a time when the dwelling is treated as unfit for human habitation due to reg 5(3) – i.e. carbon monoxide/ smoke alarms
- Remember – requirement solely relates to the CO/smoke alarms being in the dwelling

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Renting Homes (Wales) Act 2016 – sch 9A

- 5B
 - (1) incorporated where reg 6 Human Habitation regs apply
 - (2) Landlord *may not give notice* at a time when the dwelling is treated as unfit for human habitation due to reg 6(6) – i.e. failure to obtain the ECR, or give the contract holder such a report...
- This regulation specifies ‘or give the contract-holder such a report’ (so this doesn’t actually need Coastal judgment to be used in this context).

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Renting Homes (Wales) Act 2016 – Court form

- N5B Wales (accelerated proceedings) – Claim Form

‘13B. I (or my authorized representative(s)) confirm I have complied with all of the requirements and obligations under the Renting Homes (Wales) Act 2016 to allow me to serve and rely upon the Notice. The requirements and obligations are set out in [‘N5BA – Notes for claimant on completing a claim form for possession of a property located in Wales \(accelerated procedure\)’](#) which I confirm I have read and understood. A copy of which is annexed to this claim form.

- N11B Wales (accelerated proceedings) – Defence Form
6. Do you agree with what is said in question 13 (notices served)?

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Welsh housing legal update

- Ending 'no ground' eviction in Wales – [the case for change](#)

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What best promotes security of tenure?

- Requirement for grounds (vs notice-only eviction) – i.e. landlord has to prove a reason
- Do the grounds have to be 'fault based' (vs no-fault grounds)
- Grounds being mandatory (only barrier then is evidencing grounds) rather than discretionary (available defence of reasonableness, court can consider circumstances of the occupier)
- Moratorium during which notice can't be served (usually at start of occupancy)
- Length of notice (occupier having as much notice as possible)
- Number of pitfalls/defences in the eviction procedure

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The Case for Change – ending s173

- Renting Homes (Amendment)(Wales) Bill - [explanatory memorandum](#), Feb 2020 – WG considered the following options re s173 (part 7):

1. To do nothing – leave s173 at two months
2. Remove s173 and introduce additional grounds –the ‘Scottish’ model
3. To extend the 2 month period to 6 months, and limit it’s usage

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The Case for Change – ‘the Scottish model’

- 7.6

“(grounds –based eviction) does still allow possession proceedings to be commenced against a contract-holder who has done nothing wrong. This is because there are six mandatory grounds available to landlords in Scotland where possession can be sought solely because the landlord requires the property for other purposes, for example the landlord wishes to sell the property or refurbish it”

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The Case for Change – Scottish legislative update

- 18 grounds for eviction – [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#), sch 3
- In October 2022, s43 [Coronavirus \(Recovery and Reform\) \(Scotland\) Act 2022](#) came into force – changing all remaining mandatory grounds into discretionary ones

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The Case for Change – ‘the Scottish model’

- 7.7 “... In addition the short notice periods, either 28 or 84 days, give insufficient time for a contract-holder, who has not breached their contract, to prepare fully for an eviction. This is compounded by the fact that possession can be sought by a landlord in Scotland at any time, even during the first six months.”

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The Case for Change – ‘the Scottish model’

- 7.10

“...we believe that by extending the section 173 notice period to six months, contract-holders will have greater security of tenure and, furthermore, landlords will be unable to seek to abuse any additional grounds which would have had to be created if the section 173 ground was abolished (there is some evidence to suggest that unscrupulous landlords might seek to abuse new grounds).”

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The Case for Change – ‘the Scottish model’

- 7.11

“(option 3) contrasts with the arrangements in place in Scotland and those previously proposed in England, under which contract-holders not at fault can still be faced with a two month notice to leave – or even less in some circumstances. It also ensures that we deliver the benefits of the 2016 Act at the earliest opportunity and minimise the number of significant changes for the sector to implement.”

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The Case for Change

- In it's homelessness law, Wales has proposed very significant changes to it's priority need and intentionality tests (i.e. getting rid of them), noting how different things are since COVID.
- Why not the same for private rented sector accommodation?

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