

HOUSING (WALES) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 Allowing Fully Mutual Housing Associations to Grant Assured Tenancies

Section 137 – Amendment of Schedule 1 to the Housing Act 1988

241. The Housing Act 1988 (“the 1988 Act”) is amended to make provision for fully mutual housing associations (which include co-operative housing associations) to be able to grant assured tenancies.
242. Part 1 of the 1988 Act provides for the system of assured (including assured shorthold) residential tenancies. Schedule 1 to the 1988 Act sets out types of tenancy which cannot be assured tenancies; this includes, at paragraph 12(1)(h) of Schedule 1, tenancies offered by a fully mutual housing association (see below).
243. The effect of section 137 is to provide for an exception to the general restriction in paragraph 12(1)(h) of Schedule 1 of the 1988 Act where the conditions mentioned in section 137(3) are met in respect of a tenancy. Fully mutual housing associations will be able to opt-in to the assured tenancy regime by granting that tenancy as an assured tenancy. This will enable fully mutual housing associations to grant assured and assured shorthold tenancies so that their members may benefit from the statutory protection these tenancies provide, as set out in the 1988 Act.

Section 138 – Amendment of Schedule 2 to the Housing Act 1988

244. Schedule 2 to the 1988 Act is also amended to add a ground for possession of an assured tenancy granted by a fully mutual housing association. This is as a consequence of associations being able to opt-in to the assured tenancy regime.
245. If a tenancy is assured, the landlord may normally seek a court order to end a tenancy and recover possession of a home only on one or more of the grounds set out in Schedule 2. Part 1 of Schedule 2 sets out the grounds when a court has no discretion and must order possession if the ground is proved. This Section inserts an additional ground into Part 1 of Schedule 2 which provides for a possession order to be made on the ground that the fully mutual housing association has defaulted on a mortgage. This ground may not be used unless the association gives its tenant member a notice that this ground might apply before the tenancy is granted.
246. A “fully mutual housing association” is defined in section 45 of the 1988 Act by reference to the meaning given to the expression by Part 1 of the Housing Associations Act 1985. Section 1 of the 1985 Act contains the definition. In summary, it defines a housing association as a not-for-profit body whose purposes include providing housing. A “fully mutual” housing association means that membership is restricted to those who are tenants or prospective tenants. In addition, tenancies may only be granted to members. A “co-operative housing association” means a fully mutual housing association which is registered under the Industrial and Provident Societies Act 1965.