

Gorchymyn drafft a osodir gerbron Cynulliad Cenedlaethol Cymru o dan adran 320(8) o Ddeddf Tai ac Adfywio 2008, i'w gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

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2009 Rhif (Cy.)

TAI, CYMRU

**Gorchymyn Tai (Rhoi
Tenantiaethau yn lle Tenantiaethau
a Derfynwyd) (Olynydd-
landlordiaid) (Cymru) 2009**

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Gorchymyn)

Mae Atodlen 11 i Ddeddf Tai ac Adfywio 2008, a gyflwynir gan adran 299 o'r Ddeddf honno, yn gwneud darpariaeth mewn perthynas â thenant y daeth ei denantiaeth tŷ annedd ("y denantiaeth wreiddiol") i ben o ganlyniad i orchymyn meddiant ond sy'n dal i fyw yn y tŷ annedd. Mae Rhan 2 o Atodlen 11 i'r Ddeddf honno ("Rhan 2") yn darparu bod tenantiaeth newydd, yn yr amgylchiadau a bennir yn y Rhan honno, yn cael ei thrin fel pe bai'n digwydd rhwng y cyn-landlord a'r cyn-denant ar y dyddiad cychwyn. Diffinnir "y dyddiad cychwyn" ("the commencement date") ym mharagraff 26 o Atodlen 11 fel y dyddiad pryd y daw adran 299 i rym at ddibenion ac eithrio gwneud gorchymynion o dan Ran 2. Mae'r darpariaethau yn Rhan 2 yn gymwys pan fo hawl gan y cyn-landlord, ar y dyddiad hwnnw, i osod y tŷ annedd.

Mae'r Gorchymyn hwn, sy'n gymwys o ran tai annedd yng Nghymru, yn darparu i Ran 2 fod yn gymwys, yn ddarostyngedig i addasiadau penodedig, i achosion olynydd-landlordiaid. Achos o drosglwyddo buddiant y cyn-landlord yn y tŷ annedd i berson arall ar ôl i'r denantiaeth wreiddiol ddod i ben ond cyn "y dyddiad cychwyn", a bod y buddiant, ar y dyddiad hwnnw, yn perthyn i'r trosglwyddai cychwynol neu i drosglwyddai dilynol (yr "olynydd-landlord") yw achos olynydd-landlord. Yn yr amgylchiadau a bennir yn Rhan 2, fel y'i haddaswyd, caiff tenantiaeth newydd ei thrin, ar y dyddiad y daw'r Gorchymyn hwn i rym,

fel pe bai'n digwydd rhwng yr olynedd-landlord a'r cyn-denant.

Mae Asesiad Effaith Rheoleiddiol llawn wedi ei baratoi mewn cysylltiad â'r Gorchymyn hwn. Gellir cael copi gan y Gyfarwyddiaeth Dai, Llywodraeth Cynulliad Cymru, Rhyd-y-car, Merthyr Tudful CF48 1UZ (ffôn 01685 729611).

Gorchymyn drafft a osodir gerbron Cynulliad Cenedlaethol Cymru o dan adran 320(8) o Ddeddf Tai ac Adfywio 2008, i'w gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

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**Gorchymyn Tai (Rhoi
Tenantiaethau yn lle Tenantiaethau
a Derfynwyd) (Olynydd-
landlordiaid) (Cymru) 2009**

Gwnaed 2009

Yn dod i rym 2009

Yn unol ag adran 320(8) o Ddeddf Tai ac Adfywio 2008(1), cafodd drafft o'r offeryn hwn ei osod gerbron Cynulliad Cenedlaethol Cymru, a'i gymeradwyo drwy benderfyniad gan Gynulliad Cenedlaethol Cymru.

Mae Gweinidogion Cymru yn gwneud y Gorchymyn a ganlyn drwy arfer y pwerau a roddwyd gan baragraff 24 o Atodlen 11 i'r Ddeddf honno;

Enwi, cychwyn a chymhwyso

1.—(1) Enw'r Gorchymyn hwn yw Gorchymyn Tai (Rhoi Tenantiaethau yn lle Tenantiaethau a Derfynwyd) (Olynydd-landlordiaid) (Cymru) 2009 a daw i rym drannoeth y diwrnod y'i gwneir.

(2) Mae'r Gorchymyn hwn yn gymwys o ran tai annedd yng Nghymru.

Rhoi tenantiaethau yn lle tenantiaethau a derfynwyd: achosion olynydd-landlordiaid

2. Mae Rhan 2 o Atodlen 11 i Ddeddf Tai ac Adfywio 2008 (rhoi tenantiaethau yn lle tenantiaethau penodol a derfynwyd) yn gymwys, yn ddarostyngedig

(1) 2008 p.17.

i'r addasiadau a bennir yn erthyglau 3 i 7, i achosion olynnydd-landlordiaid(1).

Amgylchiadau sy'n golygu rhoi tenantiaethau yn lle tenantiaethau a derfynwyd

3. Mae paragraff 16 (amgylchiadau sy'n golygu rhoi tenantiaethau yn lle tenantiaethau a derfynwyd) yn gymwys fel pe bai, yn is-baragraff (1)—

(a) yn lle “ex-landlord”, y tro cyntaf a'r eildro y mae'r gair hwnnw'n ymddangos, y geiriau “successor landlord” wedi eu rhoi; a

(b) yn lle paragraff (b), y canlynol wedi ei roi —

“(b) the ex-tenant has not entered into another tenancy with—

(i) the successor landlord, or

(ii) any initial transferee or subsequent transferee who is not the successor landlord,

after the date on which the original tenancy ended but before the commencement date.”.

Natur tenantiaethau a roddir yn lle tenantiaethau a derfynwyd

4. Mae paragraff 17 yn gymwys fel pe bai'r canlynol wedi ei roi yn ei le—

“17. The new tenancy is to be—

(a) a secure tenancy if—

(i) the original tenancy was—

(aa) a secure tenancy, or

(bb) an assured tenancy (whether or not an assured shorthold tenancy),

(cc) an introductory tenancy, or

(dd) a demoted tenancy,

(ii) the new tenancy satisfies the conditions for a secure tenancy in accordance with Part IV of the Housing Act 1985(2),

(iii) the new tenancy is one which, by virtue of subsection (2) of section

(1) Gweler paragraff 24(2) o Atodlen 11.

(2) 1985 p.68; gweler yn benodol adrannau 79(1) a (2), 80 ac 81. Diwygiwyd adran 80 gan adran 24(2) o Ddeddf Tai a Chynllunio 1986 (p.63), a pharagraff 26 o Ran II o Atodlen 5 iddi, adrannau 83(2) a 140 o Ddeddf Tai 1988 (p.50) ac Atodlen 18 iddi (o ran arbedion, gweler adran 35 o Ddeddf Tai 1988), ac adrannau 140 a 152 o Ddeddf Llywodraeth Cymru 1998 (p.38) a pharagraff 5 o Atodlen 16 iddi a Rhan IV o Atodlen 8 iddi ac O.S. 1996/2325.

- 1 of the Housing Act 1988⁽¹⁾, cannot be an assured tenancy,
- (iv) where the original tenancy was an assured shorthold tenancy or an introductory tenancy, no election by the successor landlord under section 124 of the Housing Act 1996⁽²⁾ is in force on the day on which the new tenancy arises, and
 - (v) where the original tenancy was a demoted tenancy, the successor landlord is not a person entitled to apply for an order of the court under section 82A of the Housing Act 1985 (a demotion order)⁽³⁾,
- (b) an assured shorthold tenancy if—
- (i) the original tenancy was—
 - (aa) an assured shorthold tenancy,
 - (bb) an introductory tenancy, or
 - (cc) a demoted tenancy⁽⁴⁾,
 - (ii) the new tenancy is not one which, by virtue of subsection (2) of section 1 of the Housing Act 1988, cannot be an assured tenancy,
 - (iii) the new tenancy is not one which falls within any paragraph of Schedule 2A to the Housing Act 1988⁽⁵⁾,
 - (iv) the new tenancy does not satisfy the conditions for a secure tenancy in accordance with Part IV of the Housing Act 1985, and
 - (v) where the original tenancy was a demoted tenancy the successor landlord is not a registered social landlord,
- (c) an assured tenancy which is not an assured shorthold tenancy if—
- (i) the original tenancy was—
 - (aa) an assured tenancy which was not an assured shorthold tenancy, or

(1) 1988 p.50.

(2) 1996 p.52.

(3) Mewnosodwyd adran 82A gan adran 14(2) o Ddeddf Ymddygiad Gwrthgymdeithasol 2003 (p.38) ac fe'i diwygiwyd gan baragraff 12 o Atodlen 14 i Ddeddf yr Heddlu a Chyfiawnder 2006 (p.48).

(4) *Gweler* y diffiniad o 'demoted tenancy' ym mharagraff 26(1) o Atodlen 11 i Ddeddf Tai ac Adfywio 2008.

(5) Mewnosodwyd Atodlen 2A gan adran 96(2) o Ddeddf Tai 1996 ac Atodlen 7 iddi.

- (bb) a secure tenancy,
- (ii) the new tenancy is not one which, by virtue of subsection (2) of section 1 of the Housing Act 1988, cannot be an assured tenancy, and
- (iii) the new tenancy does not satisfy the conditions for a secure tenancy in accordance with Part IV of the Housing Act 1985,
- (d) an introductory tenancy if—
 - (i) the original tenancy was—
 - (aa) an introductory tenancy, or
 - (bb) an assured shorthold tenancy,
 - (ii) the new tenancy is one which, by virtue of subsection (2) of section 1 of the Housing Act 1988, cannot be an assured tenancy,
 - (iii) an election by the successor landlord under section 124 of the Housing Act 1996 is in force on the day on which the new tenancy arises, and
 - (iv) but for that election, the new tenancy would be a secure tenancy because it satisfies the conditions for a secure tenancy in accordance with Part IV of the Housing Act 1985,
- (e) a demoted tenancy to which section 20B of the Housing Act 1988⁽¹⁾ applies if—
 - (i) the original tenancy was a demoted tenancy, and
 - (ii) the successor landlord is a registered social landlord, or
- (f) a demoted tenancy to which section 143A of the Housing Act 1996⁽²⁾ applies if—
 - (i) the original tenancy was a demoted tenancy, and
 - (ii) the new tenancy satisfies the first and second conditions in section 143A of the Housing Act 1996.”.

(1) Mewnosodwyd adran 20B gan adran 15(1) o Ddeddf Ymddygiad Gwrthgymdeithasol 2003.

(2) Mewnosodwyd adran 143A gan adran 14(5) o Ddeddf Ymddygiad Gwrthgymdeithasol 2003, a pharagraff 1 o Atodlen 1 iddi.

Natur tenantiaethau a roddir yn lle tenantiaethau a derfynwyd – darpariaethau pellach

5. Mae paragraff 18 yn gymwys fel pe bai—

- (a) yn is-baragraff (3), yn lle “ex-landlord”, y geiriau “successor landlord” wedi eu rhoi; a
- (b) yn lle is-baragraff (6), y canlynol wedi ei roi—

“(6) The terms and conditions of a new secure tenancy which arises by virtue of paragraph 17(a), where the original tenancy was—

- (a) an assured tenancy,
- (b) an introductory tenancy, or
- (c) a demoted tenancy

are to be treated as modified so far as necessary to reflect the fact that the new tenancy is a secure tenancy and not an assured tenancy, an introductory tenancy or a demoted tenancy (as the case may be).

(7) The terms and conditions of a new assured shorthold tenancy which arises by virtue of paragraph 17(b), where the original tenancy was—

- (a) an introductory tenancy, or
- (b) a demoted tenancy

are to be treated as modified so far as necessary to reflect the fact that the new tenancy is an assured shorthold tenancy and not an introductory tenancy or a demoted tenancy (as the case may be).

(8) The terms and conditions of a new assured tenancy which arises by virtue of paragraph 17(c), where the original tenancy was a secure tenancy, are to be treated as modified so far as necessary to reflect the fact that the new tenancy is an assured tenancy and not a secure tenancy.

(9) The terms and conditions of a new introductory tenancy which arises by virtue of paragraph 17(d), where the original tenancy was an assured shorthold tenancy, are to be treated as modified so far as necessary to reflect the fact that the new tenancy is an introductory tenancy and not an assured shorthold tenancy.

(10) The terms and conditions of a new demoted tenancy which arises by virtue of paragraph 17(e), where the original tenancy was a demoted tenancy to which section 143A of the Housing Act 1996 applied, are to be treated as modified so far as necessary to reflect the fact that the new tenancy is a demoted tenancy to which section 20B of the Housing Act 1988

applies and not a demoted tenancy to which section 143A of the Housing Act 1996 applies.

(11) The terms and conditions of a new demoted tenancy which arises by virtue of paragraph 17(f), where the original tenancy was a demoted tenancy to which section 20B of the Housing Act 1988 applied, are to be treated as modified so far as necessary to reflect the fact that the new tenancy is a demoted tenancy to which section 143A of the Housing Act 1996 applies and not a demoted tenancy to which section 20B of the Housing Act 1988 applies.”.

Parhad tenantiaethau

6. Mae paragraff 21 (parhad tenantiaethau) yn gymwys fel pe bai—

- (a) paragraff (a) o is-baragraff (2) wedi ei hepgor;
- (b) ar ôl is-baragraff (2), y canlynol wedi ei fewnosod—

“(2A) Where the ex-tenant was a successor in relation to the original tenancy, the ex-tenant shall be treated as a successor in relation to the new tenancy.”; a

- (c) yn lle is-baragraffau (3) i (5), y canlynol wedi ei roi—

“(3) In proceedings on a claim of a description specified in sub-paragraph (7), the court concerned may order that, for the purposes of the claim, the original tenancy is to be treated as having continued during the termination period until the relevant interest was transferred to the initial transferee.

(4) In proceedings on a claim of a description specified in sub-paragraph (8), the court concerned may order that, for the purposes of the claim, the original tenancy is to be treated as having continued during the termination period until the relevant interest was transferred to the successor landlord.

(5) In proceedings on a claim of a description specified in sub-paragraph (9), the court concerned may order that, for the purposes of the claim, the new tenancy is to be treated as having commenced when the relevant interest was transferred to the successor landlord.

(6) In proceedings on a claim of a description specified in sub-paragraph (8) together with a claim of a description specified in sub-paragraph (9), where those claims relate to the same alleged breach, the court concerned may order that, for the purposes of the claims, the original tenancy and the new tenancy are to be treated as—

- (a) the same tenancy, and
- (b) a tenancy which continued uninterrupted throughout the termination period.

(7) The following are claims specified for the purposes of sub-paragraph (3)—

- (a) a claim by the ex-tenant or the ex-landlord against the other for breach of a term or condition of the original tenancy—
 - (i) in respect of which proceedings are brought on or after the commencement date, or
 - (ii) in respect of which proceedings were brought, but were not finally determined, before that date, and
- (b) a claim by the ex-tenant against the ex-landlord for breach of statutory duty—
 - (i) where the alleged breach occurred before the relevant interest was transferred to the initial transferee, and
 - (ii) in respect of which proceedings are or were brought as mentioned in paragraph (a)(i) or (ii).

(8) Where any rights or liabilities in relation to the original tenancy were transferred to the successor landlord, the following is a claim specified for the purposes of sub-paragraph (4): a claim by the ex-tenant or the successor landlord against the other for breach of a term or condition of the original tenancy in respect of which proceedings are or were brought as mentioned in sub-paragraph (7)(a)(i) or (ii).

(9) The following are claims specified for the purposes of sub-paragraph (5)—

- (a) a claim by the ex-tenant or the successor landlord against the other for breach of a term or condition of the new tenancy, and
- (b) a claim by the ex-tenant against the successor landlord for breach of statutory duty, where the alleged breach occurred after the relevant interest was transferred to the successor landlord,

in respect of which proceedings are or were brought as mentioned in sub-paragraph (7)(a)(i) or (ii).

(10) For the purposes of sub-paragraphs (7) to (9) proceedings must be treated as finally determined if—

- (a) they are withdrawn,
- (b) any appeal is abandoned, or
- (c) the time for appealing has expired without an appeal being brought.”.

Dehongli

7. Mae is-baragraff (1) o baragraff 26 (atodol) yn gymwys fel pe bai—

- (a) ar ôl y diffiniad o “ex-tenant”, y canlynol wedi ei fewnosod—

““initial transferee” means the person to whom the relevant interest was transferred by the ex-landlord after the end of the original tenancy and before the commencement date,”;

- (b) ar ôl y diffiniad o “possession order”, y canlynol wedi ei fewnosod—

““registered social landlord” has the same meaning as in Part 1 of the Housing Act 1996,

“relevant interest” means the interest of the ex-landlord in the dwelling-house which was let under an original tenancy,”;

- (c) ar ôl y diffiniad o “secure tenancy”, y canlynol wedi ei fewnosod—

““subsequent transferee” means any person to whom, before the commencement date, the relevant interest was transferred after the transfer from the ex-landlord to the initial transferee,”;

- (ch) yn y diffiniad o “successor”—

- (i) ar ôl ““successor””, y geiriau “, except in the expression “successor landlord”” wedi eu mewnosod;

- (ii) yn lle “a new tenancy which is”, ym mhob man lle y mae'r geiriau hynny'n ymddangos, y geiriau “an original tenancy which was, or a new tenancy which is,” wedi eu rhoi; a

- (iii) ym mharagraff (a), yn lle “or which is a demoted tenancy”, y geiriau “, or in relation to an original tenancy which was, or a new tenancy which is, a demoted tenancy” wedi eu rhoi; a

- (d) ar ôl y diffiniad o “successor”, y canlynol wedi ei fewnosod—

““successor landlord” means the initial transferee, or, as the case may be, a subsequent transferee, to whom the relevant interest belongs on the commencement date,”.

Enw

O dan awdurdod y Gweinidog dros yr Amgylchedd,
Cynaliadwyedd a Thai, un o Weinidogion Cymru
Dyddiad