

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Occupation contracts and Landlords

Chapter 3 - Fundamental Provisions of Occupation Contracts

109. In addition to property-specific information such as the amount of rent and the address (referred to as key matters in the Act), occupation contracts will comprise fundamental terms (terms which incorporate the fundamental provisions in the Act), supplementary terms (terms which will incorporate supplementary provisions set out in regulations to be made by the Welsh Ministers under the power in section 23 of the Act), and any additional terms agreed between the landlord and contract-holder.
110. [Chapter 3](#) introduces the concept of fundamental provisions, which are provisions of the Act that are incorporated as fundamental terms of occupation contracts. Many fundamental provisions can be incorporated with modifications or not incorporated at all in an occupation contract, provided the landlord and the contract-holder agree, and the contract-holder is of the opinion that the position of the contract-holder is improved as a result. However, some fundamental provisions must always be incorporated without modifications, and these are listed in section 20(3).
111. [Schedule 1](#) lists the fundamental provisions that apply to each type of occupation contract. Generally, these Explanatory Notes do not separately identify fundamental provisions, but do identify where fundamental provisions must be incorporated without modification into occupation contracts, or where they are otherwise worthy of further explanation.

Section 18 - Fundamental provisions and Section 19 – Fundamental terms and fundamental provisions: definitions

112. Fundamental provisions are one of the key aspects of this Act and will be a key component of an occupation contract, where they will be reflected as fundamental terms. The Act specifies which fundamental provisions apply to which contracts. In some cases fundamental provisions are to be incorporated into all occupation contracts (for example the need to provide a written statement of the contract) and in other cases there are provisions which apply only to certain contracts.
113. Model written statements of contracts prescribed by the Welsh Ministers in the exercise of their power under section 29 will contain the fundamental and supplementary terms applying to each type of occupation contract, and these will reflect the relevant fundamental provisions in the Act, incorporated without modification.
114. In practice, the fundamental terms of the contract will very closely reflect the wording of the fundamental provisions of the Act, and section 33 sets out the limits of acceptable editorial changes.

Section 20 – Incorporation and modification of fundamental provisions

115. This allows landlords and contract-holders to agree not to incorporate fundamental provisions into an occupation contract (with the exception of the fundamental provisions listed in subsection (3), which must always be incorporated without modification). However, this is subject to the test that, in the opinion of the contract-holder, non-incorporation of the term would improve his or her position. Landlords and contract-holders are also able, by agreement, to modify fundamental provisions, provided the contract-holder is of the opinion that the modification would improve his or her position. For example, the contract-holder may be of the opinion that his or her position would be improved by not incorporating the fundamental provision in section 173 (which allows the landlord to end the contract by giving notice), or by modifying the notice period required under section 174 to require the landlord to give more than the minimum two months' notice. If the landlord was in agreement, section 20 would allow those terms not to be incorporated, or to be incorporated with modifications.
116. The fundamental provisions set out in section 20(3) must be incorporated as fundamental terms of every occupation contract to which they apply, without any modification. An example of a fundamental provision that must be incorporated without modification is section 55, which is about prohibiting anti-social behaviour and other conduct. The reasons why these provisions are given this special status differ from provision to provision, and are explained in the notes on the sections themselves.
117. Under sections 34 and 35, if a written statement hasn't been provided or is incomplete, a contract-holder may apply to the court for a declaration of the terms of the contract. If that happens, and the contract-holder is not at fault, each fundamental and supplementary provision applicable to the contract will be treated as incorporated without modification, unless the contract-holder claims that it was not incorporated, or that it was incorporated with modifications.

Section 21 – Effect of non-incorporation and modification of fundamental provisions

118. If a landlord and contract-holder agree to modify or not to incorporate a fundamental provision, section 21 provides for the automatic modification or non-incorporation of other fundamental and supplementary provisions that are capable of not being incorporated, or of being modified, in order to give effect to the agreement. For example, if the fundamental provision allowing for a possession claim to be made on the ground of serious rent arrears under a periodic standard contract (section 181) was not incorporated, the relevant fundamental provision restricting the use of that possession ground (in section 182) should also not be incorporated. This section ensures that that would happen.
119. Automatic modification and automatic non-incorporation are subject to the same constraints as an agreement to modify or not to incorporate; they must not result in the modification or non-incorporation of any of the fundamental provisions listed in section 20(3). This means that if, as a result of having agreed to modify or not to incorporate a fundamental provision, a fundamental provision listed in section 20(3) would not be incorporated or would be incorporated with modifications, the agreement not to incorporate the original provision or to incorporate that provision with modification (under subsection (1) or (2)) is of no effect.
120. The fundamental terms of an occupation contract can also be changed after the contract is made (and this is referred to in the Act as a 'variation'). However, there are limits to this right and the limits vary between secure contracts (see Chapter 2 of Part 5), periodic standard contracts (see Chapter 2 of Part 6) and fixed term standard contracts (see Chapter 2 of Part 7). Each of those Chapters is discussed further below.

Section 22 – Powers in relation to fundamental provisions

121. This enables the Welsh Ministers to make regulations which specify that any provision of an Act of Parliament or of a Measure or Act of the National Assembly for Wales (including any provision of this Act), or of subordinate legislation is, or is not, a fundamental provision. This will allow the Welsh Ministers to make certain existing provisions fundamental provisions, and to ensure that new rights and obligations in future legislation can become fundamental provisions.