

# RENTING HOMES (WALES) ACT 2016

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5 - Provisions Applying Only to Secure Contracts**

#### *Chapter 2 - Variation of Contracts*

#### *Section 108 – Limitation on variation*

283. The purpose of this section (together with section 103) is to ensure that the parties to a contract cannot, at any time during the life of the contract, vary the contract so as to subvert the provisions of this Act that deal with the incorporation and modification of fundamental provisions (see section 20 and 21). The paragraphs that follow summarise the effect of section 108 in greater detail but, generally, no variation will be permitted during the life of the contract that would result in the contract including terms that would not have been permitted under section 20 or 21 had they been included at the outset, or not including terms that would have been required to be included at the outset under section 20 or 21.
284. A fundamental term of a contract that incorporates this section will limit how terms of a secure contract can be varied. Fundamental terms incorporating subsections (1) and (2) will prohibit certain fundamental terms from being varied under any circumstances (unless they are varied as a result of legislation).
285. A fundamental term of a contract that incorporates subsection (3) will provide that a variation of any other fundamental term will have no effect unless, as a result of the variation, the fundamental provision which the term incorporated would still be incorporated without modification, or, in the contract-holder's opinion, the non-incorporation or incorporation with modification improves his or her position. This means that, if a term of the contract does not incorporate one of the fundamental provisions listed in subsection (2), it can be modified or left out under certain circumstances. But unless the contract-holder is of the opinion that the modification (or removal) improves his or her position, only very limited changes are likely to be permissible.
286. Similarly, a variation will be of no effect if it would mean that the fundamental term would be incompatible with any of the fundamental terms that cannot be varied (that is, ones that incorporate the fundamental provisions listed in subsection (2)).
287. Fundamental terms of a contract that incorporate subsections (4) and (5) will limit the way terms can be varied, so that they cannot conflict with any fundamental terms (unless the variation results from legislation).
288. To ensure that the ability to vary terms cannot be altered, this section is itself a fundamental provision which must be incorporated into occupation contracts without modification.