



Renting Homes (Wales) Act 2016

2016 anaw 1

PART 2

OCCUPATION CONTRACTS AND LANDLORDS

CHAPTER 3

FUNDAMENTAL PROVISIONS OF OCCUPATION CONTRACTS

18 Fundamental provisions

- (1) Fundamental provisions are provisions of this Act (and provisions which are fundamental provisions by virtue of section 22(1)(a)) that are incorporated as terms of occupation contracts or particular kinds or descriptions of occupation contract (subject to sections 20(1) and (2) and 21).
- (2) Each provision of this Act that is a fundamental provision identifies itself as such, and specifies the occupation contracts into which it is incorporated as a fundamental term.
- (3) Nothing in this Act is to be read as enabling a landlord or contract-holder to do anything which would have the effect that a fundamental provision which is applicable to the occupation contract is not, or is not to be treated as, a fundamental provision which is applicable to the contract (but this does not prevent an agreement to modify or not to incorporate a fundamental provision, or a variation of a fundamental term, which is in accordance with this Act).

19 Fundamental terms and fundamental provisions: definitions

- (1) This section applies for the purposes of interpreting this Act.
- (2) “Fundamental provision” has the meaning given in section 18.
- (3) A reference in this Act to a section or other provision which is a fundamental provision has effect, in relation to a contract in which the fundamental provision is incorporated

(with or without modifications), as a reference to the fundamental term of the contract which incorporates the fundamental provision.

- (4) “Fundamental term”, in relation to an occupation contract, means a term of the contract which incorporates a fundamental provision (with or without modifications).

20 Incorporation and modification of fundamental provisions

- (1) A fundamental provision is not incorporated as a term of an occupation contract if—
- (a) the landlord and the contract-holder agree that it should not be incorporated, and
 - (b) in the contract-holder’s opinion, the effect of its not being incorporated is that the position of the contract-holder is improved.
- (2) A fundamental provision is incorporated as a term of an occupation contract with modifications if—
- (a) the landlord and the contract-holder agree that it should be incorporated with those modifications, and
 - (b) in the contract-holder’s opinion, the effect of its being incorporated with those modifications is that the position of the contract-holder is improved.
- (3) Subsections (1) and (2) do not apply to the following fundamental provisions—
- (a) section 45 (requirement to use deposit scheme),
 - (b) section 52 (joint contract-holder ceasing to be a party to the occupation contract),
 - (c) section 55 (anti-social behaviour and other prohibited conduct),
 - (d) sections 103(1)(b) and (2) and 108 (variation of secure contracts),
 - (e) sections 122(1)(b) and (2) and 127 (variation of periodic standard contracts),
 - (f) section 134(1)(b) and (2) and 135 (variation of fixed term standard contracts),
 - (g) section 148 (permissible termination),
 - (h) section 149 (possession claims),
 - (i) section 155 (death of sole contract-holder),
 - (j) section 158 (securing contract by use of false statement),
 - (k) section 175 (restriction on giving landlord’s notice under a periodic standard contract during first four months of occupation),
 - (l) section 177 (breach of deposit requirements: periodic standard contracts),
 - (m) section 186(2) and (4) (restriction on ending fixed term standard contract during first six months of occupation),
 - (n) section 196 (restriction on use of landlord’s break clause in a fixed term standard contract during first four months of occupation),
 - (o) section 198 (breach of deposit requirements: fixed term standard contracts with landlord’s break clause), and
 - (p) paragraph 7 of Schedule 4 (variation of secure contract addressed in written statement of introductory standard contract).
- (4) Subsections (1) and (2) are subject to section 34 (landlord’s failure to provide written statement of contract) and section 36 (incomplete statement of contract).

21 Effect of non-incorporation and modification of fundamental provisions

- (1) Subsections (2) and (3) apply where—
 - (a) a fundamental provision is not incorporated as a term of an occupation contract because of an agreement under section 20(1), or
 - (b) a fundamental provision is incorporated with modifications because of an agreement under section 20(2).
- (2) If as a result it is necessary that another fundamental provision or a supplementary provision (see Chapter 4) is not incorporated, that other provision is not incorporated.
- (3) If as a result it is necessary that another fundamental provision or a supplementary provision is incorporated with modifications, that provision is incorporated with the necessary modifications (in addition to any modifications made because of an agreement under section 20(2) or section 24(2)).
- (4) But subsections (2) and (3) do not apply if their application would have the effect that a fundamental provision mentioned in section 20(3) would not be incorporated or would be incorporated with modifications; accordingly, the agreement mentioned in subsection (1)(a) or (b) has no effect.

22 Powers in relation to fundamental provisions

- (1) The Welsh Ministers may by regulations provide that—
 - (a) a provision of any enactment is a fundamental provision applicable to an occupation contract;
 - (b) a provision of any enactment that is for the time being a fundamental provision applicable to an occupation contract ceases to be a fundamental provision applicable to an occupation contract.
- (2) The Welsh Ministers may by regulations provide that—
 - (a) section 20(1) does not apply to a fundamental provision;
 - (b) section 20(2) does not apply to a fundamental provision.
- (3) The power under section 256(2) to make consequential amendments includes, in its application to regulations under this section, the power to make consequential amendments to this Act.