

## SCHEDULE 2

(introduced by section 7)

### EXCEPTIONS TO SECTION 7

#### PART 1

##### TENANCIES AND LICENCES NOT WITHIN SECTION 7 THAT ARE OCCUPATION CONTRACTS IF NOTICE IS GIVEN

###### *The rule*

- 1 (1) A tenancy or licence which is not within section 7 may be an occupation contract if—
  - (a) it confers the right to occupy the dwelling as a home on an individual (“the beneficiary”) other than the person with whom it is made, and
  - (b) the notice condition is met.
- (2) A tenancy or licence which is not within section 7 because no rent or other consideration is payable under it (and to which sub-paragraph (1) does not apply) may be an occupation contract if the notice condition is met.
- (3) The notice condition is met if, before or at the time when the tenancy or licence is made, the landlord gives a notice to the person with whom it is made stating that it is to be an occupation contract.

###### *Contracts for another’s benefit: further provision*

- 2 (1) This paragraph applies where a notice under paragraph 1(3) is given in relation to a tenancy or licence within paragraph 1(1)(a).
- (2) The notice may specify provisions of this Act and regulations made under it which are to have effect in relation to the occupation contract as if references to the contract-holder were references to the beneficiary.
- (3) If it does so, the provisions specified in the notice have effect accordingly.
- (4) Section 20(1)(b) and (2)(b) applies to fundamental provisions specified in the notice as if references to the contract-holder were references to the beneficiary.

#### PART 2

##### TENANCIES AND LICENCES WITHIN SECTION 7 THAT ARE NOT OCCUPATION CONTRACTS UNLESS NOTICE IS GIVEN

###### *The rule*

- 3 (1) A tenancy or licence within section 7, but to which sub-paragraph (2) applies, is not an occupation contract unless the notice condition is met.
- (2) This sub-paragraph applies to a tenancy or licence—
  - (a) which confers the right to occupy a dwelling for the purposes of a holiday,
  - (b) which relates to the provision of accommodation in a care institution (see paragraph 4),

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- (c) which is a temporary expedient (see paragraph 5), or
  - (d) to which the shared accommodation exception applies (see paragraph 6).
- (3) The notice condition is met if, before or at the time when the tenancy or licence is made, the landlord gives a notice to the person with whom it is made stating that it is to be an occupation contract.

*Meaning of “care institution”*

- 4 “Care institution” means—
- (a) a health service hospital within the meaning of the [National Health Service \(Wales\) Act 2006 \(c. 49\)](#) (see section 206(1) of that Act),
  - (b) an independent hospital, a care home or a residential family centre within the meaning of the [Care Standards Act 2000 \(c. 14\)](#) (see sections 2 to 4 of that Act), or
  - (c) a children’s home in respect of which a person is registered under Part 2 of that Act.

*Meaning of “temporary expedient”*

- 5 (1) A tenancy or licence is a temporary expedient if it is made as a temporary expedient with a person who entered the dwelling to which it relates (or any other dwelling) as a trespasser.
- (2) It is irrelevant whether or not, before the beginning of the tenancy or licence, another tenancy or licence to occupy the dwelling (or any other dwelling) had been made with the person.
- (3) A tenancy or licence which arises under section 238 is not a temporary expedient.

*Meaning of “shared accommodation”*

- 6 (1) The shared accommodation exception applies if—
- (a) the terms of the tenancy or licence provide for the tenant or licensee to share any accommodation with the landlord, and
  - (b) immediately before the tenancy or licence is made the landlord occupies as the landlord’s only or principal home a dwelling which includes all or part of the shared accommodation.
- (2) But the exception applies under sub-paragraph (1) only while the person who is from time to time the landlord in relation to the tenancy or licence continues to occupy such a dwelling as that person’s only or principal home.
- (3) The shared accommodation exception also applies if—
- (a) the terms of the tenancy or licence provide for the tenant or licensee to share any accommodation with another person (“the beneficiary”),
  - (b) immediately before the tenancy or licence is made the beneficiary occupies as his or her only or principal home a dwelling which includes all or part of the shared accommodation,
  - (c) that dwelling is subject to a trust, and
  - (d) under the trust the beneficiary—
    - (i) is entitled to an interest in the dwelling, and

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(ii) by reason of that interest, is entitled to occupy the dwelling.

- (4) But the exception applies under sub-paragraph (3) only while the beneficiary continues to occupy such a dwelling as the beneficiary's only or principal home.
- (5) A tenant or licensee shares accommodation with the landlord or beneficiary if the tenant or licensee has the use of it in common with the landlord or beneficiary (whether or not in common with others).
- (6) "Accommodation" does not include an area used for storage, or a staircase, passage, corridor or other means of access.
- (7) If two or more persons are the landlord in relation to a tenancy or licence, references to the landlord are references to any one of them.

### PART 3

#### TENANCIES AND LICENCES THAT ARE NEVER OCCUPATION CONTRACTS

##### *The rule*

- 7 (1) A tenancy or licence is not an occupation contract at any time when this paragraph applies to it.
- (2) This paragraph applies to a tenancy or licence if all the persons with whom it is made are excluded from being contract-holders by section 7(6) (individuals who have not reached the age of 18).
- (3) This paragraph also applies to—
- (a) a tenancy to which Part 2 of the [Landlord and Tenant Act 1954 \(c. 56\)](#) (business tenancies) applies;
  - (b) a protected occupancy or a statutory tenancy within the meaning of the [Rent \(Agriculture\) Act 1976 \(c. 80\)](#);
  - (c) a protected tenancy or a statutory tenancy within the meaning of the [Rent Act 1977 \(c. 42\)](#);
  - (d) a secure tenancy that is a housing association tenancy, within the meaning of section 86 of the Rent Act 1977;
  - (e) a tenancy of an agricultural holding within the meaning of the [Agricultural Holdings Act 1986 \(c. 5\)](#);
  - (f) a farm business tenancy within the meaning of the [Agricultural Tenancies Act 1995 \(c. 8\)](#);
  - (g) a long tenancy (see paragraph 8);
  - (h) a tenancy or licence which relates to armed forces accommodation (see paragraph 9);
  - (i) a tenancy or licence which relates to direct access accommodation (see paragraph 10).

##### *Meaning of "long tenancy"*

- 8 (1) "Long tenancy" means—

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- (a) a tenancy for a fixed term of more than 21 years (whether or not it is or may become terminable before the end of that term by notice given by the tenant or by re-entry or forfeiture),
  - (b) a tenancy for a term fixed by law because of a covenant or obligation for perpetual renewal, other than a tenancy by sub-demise from one which is not a long tenancy, or
  - (c) a tenancy made in pursuance of Part 5 of the [Housing Act 1985 \(c. 68\)](#) (the right to buy), including a tenancy made in pursuance of that Part as it has effect because of section 17 of the [Housing Act 1996 \(c. 52\)](#) (the right to acquire).
- (2) But a tenancy terminable by notice after a death is not a long tenancy unless it is a shared ownership tenancy.
- (3) A shared ownership tenancy is a tenancy which—
- (a) was made with a housing association which was a registered social landlord or a private registered provider of social housing,
  - (b) was made for a premium calculated by reference to a percentage of the value of the dwelling or of the cost of providing it, and
  - (c) when made complied with the requirements of the shared ownership regulations then in force.
- (4) A tenancy made before any shared ownership regulations were in force is to be treated as within sub-paragraph (3)(c) if, when the tenancy was made, it complied with the requirements of the first such regulations to come into force after it was made.
- (5) “Shared ownership regulations” means regulations under—
- (a) section 140(4)(b) of the [Housing Act 1980 \(c. 51\)](#), or
  - (b) paragraph 5 of Schedule 4A to the [Leasehold Reform Act 1967 \(c. 88\)](#) made for the purposes of paragraph 4(2)(b) of that Schedule.

*Meaning of “armed forces accommodation”*

- 9 Armed forces accommodation is accommodation which is provided to—
- (a) a member of any of Her Majesty’s forces,
  - (b) a member of the family of a member of any of Her Majesty’s forces, or
  - (c) a civilian subject to service discipline (within the meaning of section 370 of the [Armed Forces Act 2006 \(c. 52\)](#)),
- for the purposes of any of Her Majesty’s forces.

*Meaning of “direct access accommodation”*

- 10 (1) Direct access accommodation is accommodation which—
- (a) is provided by a community landlord or a registered charity,
  - (b) (subject to availability) is provided on demand to any person who appears to satisfy criteria determined by the community landlord or charity, and
  - (c) is provided only for periods of 24 hours (or less) at a time.
- (2) Accommodation may be direct access accommodation even if it is provided to the same person for several periods in succession.

## PART 4

### TENANCIES AND LICENCES TO WHICH SPECIAL RULES APPLY: HOMELESSNESS

- 11 A tenancy or licence within section 7, but made with an individual by a local housing authority because of the authority's functions under Part 2 of the [Housing \(Wales\) Act 2014 \(anaw 7\)](#) (homelessness), is not an occupation contract unless the authority is satisfied that it owes a duty to the individual under section 75(1) of that Act (duty to secure availability of suitable accommodation).
- 12 (1) This paragraph applies where a local housing authority, in pursuance of any of its homelessness housing functions, makes arrangements with a relevant landlord for the provision of accommodation.
- (2) A tenancy or licence within section 7 but made with a relevant landlord in pursuance of the arrangements is not an occupation contract until immediately after the end of the notification period.
- (3) Sub-paragraph (2) does not apply if, before the end of the notification period, the landlord gives the person with whom the tenancy or licence is made notice that it is an occupation contract.
- (4) The notification period is the period of 12 months starting with—
- (a) the day on which that person was notified of—
    - (i) the outcome of the authority's assessment under section 62 of the [Housing \(Wales\) Act 2014 \(anaw 7\)](#) or the authority's decision under section 80(5) of that Act, or (as the case may be)
    - (ii) the authority's decision under section 184(3) or 198(5) of the [Housing Act 1996 \(c. 52\)](#), or
  - (b) if there is—
    - (i) a review of that decision under section 85 of the Housing (Wales) Act 2014 or an appeal to the county court under section 88 of that Act, or (as the case may be)
    - (ii) a review of that decision under section 202 of the Housing Act 1996 or an appeal to the court under section 204 of that Act,
- the day on which that person is notified of the outcome of the assessment or the decision on review, or the day on which the appeal is finally determined.
- (5) In this paragraph—
- “homelessness housing functions” (“*swyddogaethau darparu tai i'r digartref*”) means—
    - (a) in relation to a local housing authority for an area in Wales, its functions under sections 68, 73, 75, 82 and 88(5) of the Housing (Wales) Act 2014, and
    - (b) in relation to a local housing authority for an area in England, its functions under sections 188, 190, 200 and 204(4) of the Housing Act 1996;
  - “local housing authority” (“*awdurdod tai lleol*”) means—
    - (a) in relation to Wales, a county council for an area in Wales or a county borough council, and
    - (b) in relation to England, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

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“relevant landlord” (“*landlord perthnasol*”) means—

- (a) a community landlord which is a registered social landlord or a private registered provider of social housing, or
- (b) a private landlord.

## PART 5

### TENANCIES AND LICENCES TO WHICH SPECIAL RULES APPLY: SUPPORTED ACCOMMODATION

- 13 (1) A tenancy or licence within section 7, but which relates to supported accommodation (see section 143), is not an occupation contract if the landlord intends that the accommodation provided under the tenancy or licence is not to be subject to an occupation contract.
- (2) But if the tenancy or licence continues after the end of the relevant period, it becomes an occupation contract immediately after the end of that period.
- (3) The relevant period is (subject to paragraph 14)—
- (a) the period of six months starting with the start date of the tenancy or licence, or
  - (b) if the relevant period has been extended under paragraph 15, the period starting with the start date of the tenancy or licence and ending with the date specified in the notice of extension.
- (4) The occupation date of a tenancy or licence which becomes an occupation contract under sub-paragraph (2) is the day immediately after the last day of the relevant period.
- (5) For the purposes of this Part, the start date of a tenancy or licence is the day on which the tenant or licensee is first entitled under the tenancy or licence to occupy the dwelling subject to the tenancy or licence.

#### *Meaning of relevant period where there are previous contracts*

- 14 (1) This paragraph applies in relation to a tenancy or licence mentioned in paragraph 13(1) (“the current tenancy or licence”) if—
- (a) the tenant or licensee was previously entitled to occupy supported accommodation under one or more relevant previous contracts, and
  - (b) the current tenancy or licence is the immediate successor of a relevant previous contract.
- (2) A relevant previous contract is a tenancy or licence which relates to supported accommodation and to—
- (a) the dwelling to which the current tenancy or licence relates (“the current dwelling”);
  - (b) if the current dwelling forms part only of a building, another dwelling which is in—
    - (i) that building, or
    - (ii) if that building is one of a number of buildings managed as a single entity, any of those buildings.

- (3) If there is a sole tenant or licensee and one relevant previous contract, the relevant period is—
  - (a) the period of six months starting with the start date of the relevant previous contract, or
  - (b) if the relevant period has been extended under paragraph 15, the period set out in the notice of extension.
- (4) If there is a sole tenant or licensee and two or more relevant previous contracts running in immediate succession, the relevant period is—
  - (a) the period of six months starting with the start date of the first of those contracts, or
  - (b) if the relevant period has been extended under paragraph 15, the period set out in the notice of extension.
- (5) If there are joint tenants or licensees, the relevant period is—
  - (a) the period of six months starting with the date determined by—
    - (i) identifying, in relation to each joint tenant or licensee, the date on which the relevant period would start under sub-paragraph (3)(a) or (4)(a) if he or she were the sole tenant or licensee, and
    - (ii) taking the earliest of those dates, or
  - (b) if the relevant period has been extended under paragraph 15, the period set out in the notice of extension.
- (6) A tenancy or licence (“contract 2”) is the immediate successor of another tenancy or licence (“contract 1”) if contract 1 ends immediately before the start date of contract 2.

*Extending the relevant period*

- 15 (1) The landlord may (on one or more occasions) extend the relevant period of a tenancy or licence mentioned in paragraph 13(1) by giving the tenant or licensee a notice of extension in accordance with this paragraph.
- (2) The relevant period may not be extended by more than three months on any separate occasion.
- (3) The notice of extension must be given at least four weeks before the date on which the relevant period would end under whichever of the following applies—
  - (a) paragraph 13(3)(a) or (b);
  - (b) paragraph 14(3)(a) or (b);
  - (c) paragraph 14(4)(a) or (b);
  - (d) paragraph 14(5)(a) or (b).
- (4) Before giving a notice of extension, the landlord must consult the tenant or licensee.
- (5) A landlord (other than a local housing authority) may not give a notice of extension without the consent of the local housing authority in whose area the accommodation is provided.
- (6) The notice of extension must—
  - (a) state that the landlord has decided to extend the relevant period,
  - (b) set out the reasons for extending the relevant period,

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- (c) if the landlord is not a local housing authority, state that the local housing authority in whose area the accommodation is provided has consented to the extension, and
  - (d) specify the date on which the relevant period will come to an end.
- (7) The notice of extension must also inform the tenant or licensee that he or she has a right to apply for a review in the county court under paragraph 16, and of the time by which the application must be made.
- (8) In making the decision to extend the relevant period, the landlord may take into account—
  - (a) the conduct of the tenant or licensee (or, if there is more than one tenant or licensee, the conduct of any of them), and
  - (b) the conduct of any person who appears to the landlord to live in the dwelling.
- (9) A landlord may take a person's conduct into account under sub-paragraph (8)(b) whether or not the person lives continuously in the dwelling, and whatever the capacity in which the person lives in the dwelling.
- (10) The Welsh Ministers may make provision by regulations for the purposes of sub-paragraph (5), including provision about the procedure to be followed in relation to obtaining the consent of a local housing authority.

*County court review of decision to extend*

- 16 (1) This section applies if a landlord gives a tenant or licensee a notice of extension under paragraph 15.
- (2) The tenant or licensee may apply to the county court for a review—
    - (a) where the landlord is a local housing authority, of the decision to give a notice of extension, or
    - (b) where the landlord is not a local housing authority, of the local housing authority's decision to consent to the landlord giving the notice of extension.
  - (3) The application must be made before the end of the period of 14 days starting with the day on which the landlord gives the tenant or licensee a notice of extension.
  - (4) The county court may give permission for an application to be made after the end of the period allowed by sub-paragraph (3), but only if it is satisfied—
    - (a) where permission is sought before the end of that period, that there is a good reason for the tenant or licensee to be unable to make the application in time, or
    - (b) where permission is sought after that time, that there is a good reason for the tenant or licensee's failure to make the application in time and for any delay in applying for permission.
  - (5) The county court may—
    - (a) confirm or quash the decision, or
    - (b) vary the length of the extension (subject to paragraph 15(2)).
  - (6) In considering whether to confirm or quash the decision or vary the length of the extension, the county court must apply the principles applied by the High Court on an application for judicial review.



- (7) If the county court varies the length of the extension, the notice of extension has effect accordingly.
- (8) If the county court quashes the decision—
  - (a) the notice of extension is of no effect, and
  - (b) the county court may make any order the High Court could make when making a quashing order on an application for judicial review.
- (9) If the county court quashes the decision and the landlord gives the tenant or licensee a further notice of extension under paragraph 15 before the end of the post-review period, the notice has effect as if given in accordance with paragraph 15(3) (other than for the purposes of sub-paragraph (3)).
- (10) The post-review period is the period of 14 days beginning with the day on which the county court varies the length of the extension or quashes the decision.

## **PART 6**

### **POWER TO AMEND SCHEDULE**

- 17      The Welsh Ministers may by regulations amend this Schedule.