

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Occupation contracts and Landlords

Chapter 2 - Nature of Contracts Which Can Be Made Etc. by Community Landlords and Private Landlords

Section 9 – Community landlords and Section 10 – Private landlords

72. *Section 9* sets out the persons who are community landlords under the Act. In addition to local authorities (defined in section 243) and registered social landlords (social housing providers such as housing associations registered under Part 1 of the Housing Act 1996), who provide the majority of social housing in Wales, the definition includes certain other providers, and potential providers, such as providers registered in England but which provide social housing in Wales.
73. The Welsh Ministers may amend the definition of community landlord. This is intended to ensure that the Act can reflect changes in the way social housing is provided.
74. Under section 10, a landlord who is not a community landlord, but who rents dwellings within Wales, is a private landlord for the purposes of the Act.

Section 11 – Contract made with community landlord

75. Under the Act the default contract issued by a community landlord is the secure contract, except where the following exceptions apply:
- The occupation contract is within Schedule 3 (see below) and the landlord gives notice under section 13 that it is to be a standard contract.
 - The contract is a prohibited conduct standard contract because of an order under section 116 (this is where a standard contract comes into force by order of the court as a result of prohibited conduct - see below).
 - A fixed term standard contract has come to an end and the contract-holder remains in the property. In such a situation (in the absence of any new fixed term contract being made) the parties are treated as having made a periodic standard contract. This exception also applies if a new contract is made at the end of a fixed term, which allows the contract-holder to occupy the same dwelling from a date falling immediately after the fixed term contract ends (see section 184(6)).
 - A trespasser is occupying the property as his or her home and makes payments which are accepted by the community landlord that owns the property (see section 238).

***Schedule 3 - Occupation contracts made with or adopted by community landlords
which may be standard contracts***

76. This Schedule lists a range of occupation contracts which arise in certain circumstances or which concern certain kinds of accommodation. Under sections 11(2) and 12(4), each such occupation contract may be a standard contract, regardless of the fact that it is made by, or adopted by (that is, taken over by) a community landlord. The relevant types of occupation contract are as follows:
- *Occupation contracts by notice* - An occupation contract that would not be an occupation contract unless notice of that fact had been given under paragraph 1 or 3 of Schedule 2 (see notes above). The relevant contracts are contracts that allow someone other than the contract-holder to occupy a dwelling, contracts where no rent is payable, contracts of holiday accommodation, contracts relating to care home accommodation, ‘temporary expedients’ and contracts relating to shared accommodation .
 - *Supported accommodation* - An occupation contract for supported accommodation (a supported standard contract).
 - *Introductory occupation* - An introductory standard contract. Generally, an introductory standard contract is a new contract which is made with a community landlord (or a contract adopted by a community landlord), where the landlord has given the contract-holder a notice under section 13 stating that it will be an introductory standard contract during the ‘introductory period’ (see section 16 and Schedule 4, and the first exception in sections 11 and 12). An introductory standard contract will not arise where the contract-holder previously held a secure contract with a community landlord, for example where a transfer of contracts has taken place between secure contract-holders.
 - *Accommodation for asylum seekers or displaced persons* - Occupation contracts relating to accommodation for asylum seekers (asylum seekers are individuals awaiting the outcome of applications for asylum) or persons with temporary protection under the Immigration Rules (which is given to persons where there is a mass influx of displaced persons).
 - *Accommodation for homeless persons* - An occupation contract made in connection with a local housing authority’s homelessness functions under Part 2 of the Housing (Wales) Act 2014 and to which the rules set out in Part 4 of Schedule 2 apply (see notes above).
 - *Service occupancy: general* - Occupation contracts where the contract-holder is employed by one of the employers listed in the paragraph (generally, the kind of employers that would be required to issue a secure contract), and the employee is required by a term of his or her employment contract to occupy the dwelling (for example school caretakers, sheltered accommodation wardens).
 - *Service occupancies in relation to the police or fire and rescue services* - Occupation contracts provided in connection with working for the police or for a fire and rescue service.
 - *Student accommodation* - An occupation contract relating to accommodation provided to a student studying a course designated by the Welsh Ministers, at a further education institution (an institution providing education beyond school leaving age, below the level of a degree) or at a higher education institution (an institution providing education at degree level or beyond).
 - *Temporary accommodation: land acquired for development* - An occupation contract relating to accommodation which is being provided on a temporary basis on land which has been acquired for development.

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- *Temporary accommodation: persons taking up employment* - An occupation contract relating to temporary accommodation provided to people who have moved to a local authority area where they were not previously resident to take up employment, whilst they seek permanent accommodation.
- *Temporary accommodation: short term arrangements* - An occupation contract which relates to a dwelling that has been let to the community landlord to be used as temporary housing accommodation, and the terms on which it has been let requires the community landlord to return the dwelling to the lessor at the end of a specified period, or when required by the lessor. The lessor must not himself be a community landlord.
- *Temporary accommodation: accommodation during works* - An occupation contract which relates to accommodation which is provided on a short term basis whilst work is carried out on the contract-holder's usual home. A standard contract can be offered in these circumstances if the temporary accommodation is provided by a different landlord and the contract-holder did not previously have a secure contract.
- *Accommodation which is not social accommodation* - An occupation contract where the contract-holder is a key worker or the making of the occupation contract was not subject to the normal 'allocation rules'. Allocation rules address how housing is allocated to those in need of accommodation. Whether a person is a key worker for these purposes will be determined in accordance with regulations made by the Welsh Ministers.
- *Dwellings intended for transfer* - An occupation contract relating to accommodation which has been acquired, built or developed by a community landlord, a registered social landlord (see section 1 of the Housing Act 1996) or a private registered provider of social housing (see section 80(3) of the Housing and Regeneration Act 2008) with the intention of transferring it to a fully mutual housing association or a co-operative housing association. A fully mutual housing association or co-operative housing association is a housing association where the residents are also members of the association and therefore direct its management (see section 1(2) of the Housing Associations Act 1985).

77. The Welsh Ministers may amend the Schedule by regulation.

Section 12 – Contract adopted by community landlord

78. Where a community landlord becomes the landlord under an existing secure contract (for example where a local authority's housing stock is transferred to a housing association), that secure contract will continue. Where a community landlord becomes the landlord under an existing standard contract because of a transfer of the rights of the landlord under a sub-occupation contract (under sections 62 or 66) it will continue as a standard contract.
79. In all other circumstances, the contract will end when the community landlord becomes the landlord, and will be replaced with a secure contract, unless one of the following exclusions apply:
- The occupation contract is within Schedule 3 (see above) and the landlord gives notice under section 13 that it is to be a standard contract.
 - The contract is a prohibited conduct standard contract because of an order under section 116 (where a standard contract is created by order of the court as a result of prohibited conduct - see below).

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- The contract was a fixed term standard contract that has ended and become a periodic standard contract, or a new contract has been made at the end of a fixed term (see section 184(6)).
- A trespasser is occupying the property as his or her home and makes payments which are accepted by the community landlord that owns the property (see section 238).
- The contract is a fixed term standard contract for which a premium was paid (for example through buying a leasehold property with less than 21 years remaining before the lease expires) and the contract-holder has not elected (before the community landlord became the landlord) for the contract to remain a fixed term standard contract (see section 15).

Section 13 – Notice of standard contract

80. Where a community landlord wishes to enter into a standard contract, or does not wish for an existing contract it is adopting to become a secure contract, and the contract is of a kind listed in Schedule 3, notice under this section must be given to the contract-holder (see section 11(2)(b) and section 12(4)(b)). The notice must inform the contract-holder of their right to ask a county court to review the landlord's decision to give the notice within 14 days (see section 14).

Section 14 – Review of notice

81. This section applies where a community landlord has given a notice under section 13. The contract-holder, may ask for a review of the landlord's decision by the county court.
82. The court may confirm or quash the decision to give the notice. If the court quashes the original notice, the landlord may give a further notice. If it does so within 14 days of the court's decision, the notice has effect as though it had been given at the time the occupation contract was made or when the community landlord became the landlord, as the case may be. This does not affect the time limit within which the contract-holder may seek a review so, in practice, a contract-holder can apply to the county court again under section 14 for a review of that further notice.

Section 15 – Notice of right to decide to remain on fixed contract

83. As set out in section 12, if a community landlord adopts a fixed term standard contract for which a premium was paid, it will become a secure contract unless the contract-holder elects for their contract to remain as a fixed term standard contract.
84. This section requires that a community landlord gives the contract-holder notice at least one month before it becomes the landlord informing them of their right to elect to remain on a fixed term standard contract.

Section 16 – Introductory standard contracts

85. This section establishes the concept of an 'introductory standard contract'. A new occupation contract made with a community landlord (or a contract adopted by a community landlord) is an introductory standard contract if the landlord gives the contract-holder notice of that fact under section 13. This section provides that introductory standard contracts are periodic standard contracts during the introductory period (generally twelve months unless that period is extended; see Schedule 4). At the end of the introductory period the introductory standard contract ends and is replaced by a secure contract unless a private landlord becomes the landlord under the contract. If a private landlord becomes the landlord before the end of the introductory period, the introductory period will end, and the contract will continue as a standard contract (because of section 17(3)).

86. The introductory standard contract provides less security of occupation than a secure contract. Introductory standard contracts allow community landlords to ascertain, during the introductory period, whether a contract-holder can sustain a secure contract. In instances where the contract-holder has demonstrated that they will not be able to sustain a secure contract, if section 173 is incorporated as a term of the contract without modification, the landlord can seek to terminate the contract by notice, which means that an introductory standard contract can be terminated more swiftly than is possible under a secure contract.

Schedule 4 - Introductory standard contracts

87. This schedule sets out in more detail the arrangements under the Act that apply to introductory standard contracts. Introductory standard contracts are a type of periodic standard contract that can be issued by community landlords, in the first instance for an introductory period of 12 months, instead of issuing a secure contract.
88. A community landlord can also extend the introductory period to a total of 18 months by giving the contract-holder a notice of extension at least eight weeks before the introductory period with otherwise end. The contract-holder can request that the landlord reviews the landlord's decision to seek an extension. Furthermore if, after an internal review of the decision by the landlord, the landlord gives a notice informing the contract-holder that the landlord has decided to confirm the decision, or fails to give notice at all, the contract-holder can apply to the county court for a review of the decision to extend the introductory period.
89. The processes relating to extension, internal review and review by the county court set out in this schedule are very similar to those applying to prohibited conduct standard contracts (see Schedule 7).

Paragraph 1

90. This paragraph sets out what constitutes the introductory period during which an occupation contract granted by a community landlord is a periodic standard contract (because of the exception in paragraph 3 of Schedule 3)
91. Where a community landlord has sought to terminate the contract through making a possession claim, or given notice to the contract-holder of its intention to do so, but the claim has not concluded, the contract will remain a standard contract beyond the introductory period until:
- the notice is withdrawn,
 - the time for making the claim runs out without the claim being pursued,
 - the claim is determined in favour of the contract-holder, or
 - the contract ends without any of those events having happened.

Paragraph 2

92. This paragraph sets out how the date on which the introductory period starts is determined if the contract-holder was a party to an introductory standard contract which ended just as the right to occupy the dwelling under the new introductory standard contract began. In the case of joint contract-holders, the date is the earliest of the dates that would apply if each joint contract-holder was treated individually.

Paragraph 3

93. A landlord may extend the introductory period from 12 months to 18 months. In deciding whether to extend the introductory period, the landlord may consider the

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behaviour of the contract-holder(s) and the behaviour of any person who the landlord considers to be living in the dwelling.

94. A community landlord seeking an extension to the introductory period must notify the contract-holder at least eight weeks before the introductory period is due to end. The notice must:
- inform the contract-holder of the decision to extend and the reasons why the landlord is seeking the extension, and
 - inform the contract-holder that they have the right to request the community landlord to review its decision, and set out the time by which such a request must be made.
95. The Welsh Ministers may extend or shorten the period within which notice of extension must be given to the contract-holder in order for the notice to be valid.

Paragraph 4

96. If the contract-holder requests a review, the landlord must review its decision, following which it may confirm or reverse the decision to give the notice. The landlord must notify the contract-holder of the outcome of the review before the day on which introductory period would end if it was not extended.
97. The Welsh Ministers may by regulations set out the procedure to be followed for any review of the notice.

Paragraph 5

98. Where a review has taken place and the landlord gives the contract-holder notice confirming the original decision, or where the landlord fails to notify the contract-holder of the outcome, the contract-holder may apply to the county court for a review of the decision to give the notice of extension. An application must be made within 14 days of the date on which the landlord gives the contract-holder notice of its decision or 14 days from the date by which the landlord should have notified the contract-holder of the decision (that being the day on which the introductory period would have ended, if it hadn't been extended).
99. The court may confirm or quash the decision to give the notice of extension. If the court quashes the decision and the landlord gives the contract-holder a further notice of extension within 14 days of the court's decision, the notice is deemed to comply with the notice requirement in paragraph 3(2) (that is, it is taken to have been given at least eight weeks before the day on which the introductory period would have ended). This does not affect the time limit within which the contract-holder may seek a review so, in practice, the contract-holder's right to ask the landlord (within 14 days of receiving the notice) to review the decision to give the notice then applies again. If the contract-holder requests such a review, the landlord has to give the contract-holder notice of the outcome of the review before the end of the period of 14 days starting with the day on which the contract-holder asked for the review.

Paragraph 6

100. **Paragraph 6** explains how a written statement (which a landlord is required to give the contract-holder if a term of the contract incorporates section 31) can deal with the introductory standard contract and with the secure contract that may arise at the end of an introductory standard contract. If the landlord and the contract-holder have agreed before the end of the introductory period what the terms of the secure contract will be, the landlord may provide a written statement which sets out the terms of both the introductory standard contract and the secure contract which may arise at the end of the introductory period. The written statement can do this either by identifying the terms of the introductory standard contract that will not be terms of the secure contract (for

instance, by marking up the written statement of the introductory standard contract) and setting out the terms that will only apply to the secure contract, or by separately setting out all the terms of the secure contract.

101. Where a landlord has provided a written statement of an introductory standard contract which addresses the secure contract, the statement is not taken to be incorrect merely because it addresses the secure contract. A landlord providing such a statement is treated as having complied with the requirement in section 31 to provide a written statement in relation to the secure contract.
102. Should the introductory period be extended by the landlord (meaning that the occupation date of the secure contract changes) the written statement will not be incorrect merely because it does not set out the new occupation date of the secure contract.

Paragraph 7

103. If the landlord gives the contract-holder a written statement that addresses both the introductory standard contract and the secure contract which may arise at the end of the introductory period, the landlord and contract-holder may, prior to the occupation date of the secure contract, agree to vary the secure contract addressed in the written statement. However, this is subject to sub-paragraphs (2) to (5), which provide:
 - that there are limits on the extent to which fundamental terms can be varied (see section 108(1) to (5),
 - that the landlord is required to give a written statement of a variation (and that compensation is payable if the landlord fails to comply) (see sections 109(1) to (3) and 110),
 - that the specific requirements for varying rent or other consideration set out in sections 104(1) to (3) or section 105(1)(b) and (2) to (4) apply, and
 - that the variation of rent or other consideration can take effect from the occupation date of the secure contract, or from a later date.
104. **Section 20** provides for this paragraph to be a fundamental provision which is incorporated without modification as a term of all introductory standard contracts where the written statement is a 'relevant written statement' (that is, it addresses both the introductory standard contract and the secure contract that may follow).

Paragraph 8

105. **Paragraph 8** explains what the terms of a secure contract will be when an introductory standard contract ends and is replaced with a secure contract and the terms of the secure contract have not been addressed in the written statement in accordance with paragraph 6(2) (see note on paragraph 6 above). If the landlord and the contract-holder have agreed the terms of the secure contract, the terms of the contract are as agreed. If the landlord and contract-holder have not agreed the terms of the secure contract, paragraph 8(4) explains what the terms of the secure contract are to be.

Paragraph 9

106. Where a secure contract arises following an introductory standard contract, and the contract incorporates section 39(1) without modification, there is no requirement under that term for the landlord to provide the contract-holder with an address to which documents can be sent. The address of the landlord will not have altered as a consequence of the change from an introductory standard contract to a secure contract.

Section 17 – Contract made with or adopted by private landlord

107. An occupation contract made between a private landlord and a contract-holder will by default be a standard contract. But if a landlord has given notice to the contract-holder (before or when the contract is made) that the contract is a secure contract it will be a secure contract.
108. Where a private landlord becomes the landlord under an existing secure contract or an existing standard contract, the contract will remain, respectively, a secure or standard contract.