

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Occupation contracts and Landlords

Chapter 4 - Supplementary Provisions of Occupation

Contracts

122. **Chapter 4** introduces the concept of supplementary provisions, which are provisions which will be set out in regulations, and will be incorporated as supplementary terms within occupation contracts. As with most fundamental provisions, supplementary provisions can be incorporated with modifications or not incorporated at all in an occupation contract. However, unlike with fundamental provisions, there is no restriction regarding the non-incorporation or modification of supplementary provisions having to improve the position of the contract-holder. Therefore, the modification or non-incorporation could have the effect of improving the position of either the landlord or the contract-holder.

Section 23 – Supplementary provisions

123. This section provides for supplementary provisions to be set out in regulations made by the Welsh Ministers. Examples of supplementary provisions would include provisions relating to maintenance of a garden, or a requirement to pay council tax and utility bills.

Section 24 – Incorporation and modification of supplementary provisions

124. The default position is that supplementary provisions are incorporated as supplementary terms of an occupation contract. But this section provides for landlords and contract-holders to agree that a supplementary provision is either not incorporated or incorporated with modifications. However, where not incorporating a supplementary provision or modifying a supplementary provision would render the related supplementary term incompatible with a fundamental term of the contract, the agreement not to incorporate the original supplementary provision or to incorporate it with modification has no effect. If a landlord fails to provide a written statement of the contract, or provides an incomplete statement, sections 34 and 36 allow the contract-holder to apply to the court for a declaration of the terms. If that happens, and the contract-holder is not at fault, each 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 25 – Effect of non-incorporation and modification of supplementary provisions

125. If a landlord and contract-holder agree to modify or not to incorporate a supplementary provision, section 25 provides for the automatic modification or non-incorporation of other supplementary provisions in order to give effect to the agreement.