

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Provisions Applying to All Occupation Contracts

Chapter 2 - Provision of Information

132. The Act places a requirement on landlords to provide certain information to contract-holders. This includes a requirement for a written statement of the contract to be provided within 14 days of the date the contract-holder becomes entitled to occupy the dwelling. This chapter also sets out what the contract-holder can do to enforce the requirement to provide information, and also provides for compensation of up to two months' rent to be payable by the landlord for failing to provide a written statement of the contract.

Section 31 – Written statement

133. If this section is incorporated as a term of the contract without modification, the landlord is required to provide a written statement of the occupation contract to the contract-holder within 14 days of the date the contract-holder becomes entitled to occupy the dwelling. This requirement is intended to ensure that all parties know precisely what their rights and obligations are under the contract. The landlord cannot charge a fee to the contract-holder for providing this statement.
134. Where the identity of the contract-holder, or one of the contract-holders under a joint contract, has changed, the landlord must provide a copy of the written statement of the contract to the new contract-holder within 14 days of the identity of the contract-holder changing. Where a landlord was unaware that the identity of the contract-holder had changed, a written statement of the contract must be provided within 14 days of the landlord becoming aware (or, in the case of joint landlords, within 14 days of any one of the landlords becoming aware) of the change of identity. The landlord cannot charge a fee to the contract-holder for providing this statement.
135. If a contract-holder requires a further copy of the written statement, the landlord may charge a reasonable fee for providing that further copy. The further copy must be provided within 14 days of the request being made or, if the landlord charges a fee, within 14 days of the contract-holder paying the fee.

Section 32 – Contents of written statement

136. This section sets out the information to be included in the written statement of an occupation contract. The matters are the names of the landlord and contract-holder(s), the key matters (see sections 26 and 27), the fundamental terms (see Chapter 3) and the supplementary terms (see Chapter 4), together with any additional terms which have been agreed between the landlord and contract-holder.

137. Where the landlord and contract-holder have agreed not to incorporate a fundamental or supplementary provision there is a requirement for the statement to specifically identify those provisions.

Section 33 – Editorial changes

138. This section allows for ‘editorial changes’ to be made to the wording of fundamental or supplementary terms, and gives examples of what these might be.

Section 34 – Failure to provide a written statement etc.

139. Where a landlord has not provided the written statement within 14 days, and that is required by a term of the contract which incorporates section 31, the contract-holder may apply to the court for a declaration of the terms of the contract.
140. If an application is made to the court, the default position is that the relevant fundamental and supplementary provisions that apply to the contract are to be treated as incorporated without modification as terms of the contract. However, if the contract-holder claims that particular provisions were not incorporated or were incorporated with modifications, then the court will determine the position, unless the landlord’s failure to issue the written statement is attributable to the contract-holder. The court may either issue a statement of the contract or order the landlord to give the contract-holder a written statement.

Section 35 - Failure to provide statement: compensation

141. This section provides for compensation to be payable by the landlord to the contract-holder where the landlord has failed to provide a written statement of the contract, unless the failure is attributable to the contract-holder. The time period within which a written statement must be given to the contract-holder will be set out in any term of the contract that incorporates section 31.
142. The compensation is payable in accordance with section 87 and is equivalent to a day’s rent for each day that the written statement is not provided, up to a maximum of two month’s rent, until the statement has been provided. Interest will be added to the compensation amount if the landlord fails to provide the statement within the two month period. If the contract-holder believes the failure to provide the written statement was intentional, section 87 also enables the contract-holder to apply to the court for the compensation amount to be increased. Section 87 enables the court to increase the amount of compensation up to a maximum of double the original amount. Section 88 enables the contract-holder to set off any compensation he or she is owed against rent.

Section 36 – Incomplete statement

143. This section provides that where an incomplete written statement of the contract has been provided, the contract-holder may apply to the court for a declaration of the terms of the contract. The contract-holder may not do so before the end of a 14 day period starting on whichever of the following is the relevant date:
- the occupation date (if the written statement was provided in accordance with a term of the contract that incorporates section 31(1)),
 - the day the landlord provided the written statement (if the written statement was provided in accordance with a term of the contract that incorporates section 31(2)),
or
 - if the landlord provided a further written statement (in accordance with a term of the contract that incorporates section 31(6)), either the day the contract-holder requested the further written statement or the day the contract-holder paid any fee for the further written statement (if a fee was required).

144. Where the court concludes that the landlord deliberately provided an incomplete statement (for example, the landlord omitted the repairing obligation term in an attempt to avoid that obligation), it can order the landlord to pay compensation of up to two-months' rent to the contract-holder under Section 87, plus interest. Section 87 also enables the contract-holder to apply to have the amount of compensation increased up to a maximum of double the original amount. Section 88 enables the contract-holder to set off any compensation he or she is owed against rent.

Section 37 – Incorrect statement: contract-holder's application to court

145. This section deals with the circumstance where the landlord has provided an incorrect written statement of the contract, for instance, where the contract-holder believes that the terms have been incorrectly set out, or terms have been included which were not agreed. The contract-holder may apply to the court seeking a declaration as to the terms of the contract. If the court decides the provision of an incorrect written statement was deliberate, it can order a landlord to pay compensation of up to two month's rent, plus interest. Under Section 87, the contract-holder may apply to the court for the compensation amount to be increased. Section 88 enables the contract-holder to set off any compensation he or she is owed against rent.
146. The written statement will not be incorrect just because it doesn't set out a term that has been varied in accordance with the contract if either a written statement or a written notice of the variation has been provided separately by the landlord. However, where a landlord is required to provide a written statement under a term of the contract which incorporates section 31(2) (because the identity of the contract-holder has changed), or a further written statement under a term of the contract which incorporates sections 31(4) to (6), any previously varied terms must be reflected within this written statement.

Section 38 – Incorrect statement: landlord's application to court for declaration that contract is a standard contract

147. Where a community landlord has provided a notice to a contract-holder under section 13 (notice of standard contract) but has mistakenly provided a written statement of a secure contract, the landlord may apply to the court to have this rectified.

Section 39 – Provision by landlord of information about the landlord and Section 40 - Compensation for breach of section 39

148. If these sections are incorporated as terms of the contract without modification, within 14 days of the occupation date, a landlord is required to provide the contract-holder with an address to which any documents for the landlord can be sent (this may be an agent, if the landlord uses one). If there is a change in the identity of the landlord, the new landlord must notify the contract-holder of the change, along with an address to which the contract-holder may send documents to the new landlord, within 14 days of the new landlord becoming the landlord. Where there is a change in the address to which documents for the landlord can be sent, the landlord must notify the contract-holder of the new address within 14 days.
149. Where a landlord fails to provide this information to the contract-holder within the required time, they are liable to pay the contract-holder compensation equivalent to a day's rent for each day that the information is not provided (up to a maximum of two months' rent) until the information has been provided. Interest will begin to be added to that amount if the landlord fails to provide the statement within the two month period.

Section 41 – Form of notices etc.

150. If this section is incorporated as a term of a contract without modification, any notices or other documents which relate to the contract must be in writing (for example a request by a contract-holder to be permitted to add another person to the contract, or a

*These notes refer to the Renting Homes (Wales) Act 2016
(c.1) which received Royal Assent on 18 January 2016*

notice from the landlord informing the contract-holder that the landlord's identity has changed). Sections 236 and 237 deal with notices in greater detail.