

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Provisions Applying to All Occupation Contracts

Chapter 5 - Joint Contract-Holders and Joint Landlords

Section 48 – Joint contract-holders: joint liability etc.

162. Two or more persons who agree to rent a dwelling together are referred to as joint contract-holders in the Act. Where there are joint contract-holders under an occupation contract, this section provides (amongst other general provisions about how the Act operates in relation to joint contract-holders) that each joint contract-holder is fully liable in respect of the contract-holders' obligations under the occupation contract.

Section 49 – Adding a joint contract-holder

163. If this section is incorporated as a term of the contract without modification, where a contract-holder under an occupation contract wishes to add another person as contract-holder to the contract, the contract-holder can do so with the consent of the landlord. A person added to the contract as a joint contract-holder becomes entitled to the same rights and subject to the same obligations as the original contract-holder(s).

Section 50 - Adding a joint contract-holder: landlord's consent

164. A landlord is able to refuse a contract-holder's request to add a new contract-holder to the contract (made under a term of the contract that incorporates section 49 without modification), provided their reasons for refusing are reasonable. Alternatively, a landlord can consent subject to conditions (provided the conditions are reasonable). Section 84 sets out how requests for consent are to be made and dealt with.
165. Under section 50, what is reasonable for the landlord to take into account when considering whether to grant consent is to be determined in accordance with Schedule 6 (and see in particular paragraph 9).
166. [Schedule 6](#) sets out certain circumstances that must be considered, if relevant. For example a relevant circumstance might be whether the person the contract-holder wishes to add as a joint contract-holder has been a contract-holder previously and, if so, whether they complied with the occupation contract to which they were a party.
167. [Paragraph 10](#) of Schedule 6 enables the landlord to make it a condition of consent that, if the landlord considers that the probable effect of giving consent is to lengthen substantially the period during which the occupation contract is likely to continue in force, the joint contract-holder is to be treated as a priority successor or as a reserve successor in relation to the occupation contract (see notes on sections 74 to 77 for an explanation of what a 'priority successor' and 'reserve successor' is).

Schedule 6 - Reasonableness of withholding consent etc.

Part 1 – Introductory

168. [Schedule 6](#) sets out circumstances which must be taken into account, so far as are relevant, for the purpose of determining whether a landlord has acted reasonably in refusing consent or imposing a condition on the grant of consent in various circumstances. The schedule applies only to consents under the following sections:
- Section 49 - Adding a joint contract-holder;
 - Section 57 – Permissible forms of dealing (for example, consenting to creating a tenancy or licence, to a transfer of the contract, or to a mortgage, if the contract permits that);
 - Section 114 - transfer of secure contract to a potential successor;
 - Section 118 - Transfer of secure contract with a community landlord to another secure contract-holder.
169. [Part 2](#) sets out circumstances that may be relevant to all of the above consents. [Part 3](#) sets out circumstances that may be relevant to particular transactions.

Part 2 – Circumstances which may be relevant to reasonableness generally

170. The general circumstances are:
- the status of the contract (whether any party has taken steps to end the contract);
 - the dwelling (e.g., the size and suitability of the dwelling for the transaction being proposed);
 - the circumstances of the contract-holder and other occupiers; and
 - the circumstances of the landlord.

Part 3 - Circumstances which may be relevant to reasonableness in relation to particular transactions

171. [Paragraphs 9 and 10](#) set out relevant circumstances in relation to granting consent to add another person to a contract under a term of the contract which incorporates section 49 (see note on section 50 above).
172. [Paragraph 11](#) sets out relevant circumstances in relation to granting consent to a transfer of a contract to a potential successor, such as a spouse or a child, under a term of the contract which incorporates section 114.
173. If the landlord considers that granting such consent is likely to substantially extend the length of the contract, then paragraph 12 provides that it would be reasonable for the landlord to make it a condition of consent that the potential successor is treated as being a priority or reserve successor (see sections 74 to 77).
174. [Paragraph 13](#) sets out relevant circumstances in relation to granting consent to a transfer of a secure contract (under a term of the contract which incorporates section 118), to another secure contract-holder of a community landlord. Paragraph 14 provides that it is reasonable for the landlord to impose a condition that, if the transfer is part of a chain of transfers, the transfer may only proceed if all the other transfers in the chain take place. It is also reasonable for the landlord to impose a condition that, if the person to whom the contract is being transferred is a priority or reserve successor under his or her current contract, he or she will be retain the same succession status under the transferred contract.

Section 51 - Adding a joint contract-holder: formalities

175. The addition of a joint contract-holder under an occupation contract can only take place if a document has been signed (or executed) by all of the parties to the agreement. The document also needs to be signed (or executed) by the landlord, if landlord's consent is required. However, sections 84(6) (8) and (10) set out circumstances under which a landlord will be taken to have consented to a request from a contract-holder if they have not responded within one month. If consent is taken to have been given in any of those circumstances, there is no need for the document to be signed (or executed) by the landlord.

Section 52 - Joint contract-holder ceasing to be a party to the occupation contract

176. This section deals with the situation where a joint contract-holder dies or otherwise ceases to be a party to the contract. A term of a contract which incorporates this section will provide that, in such cases, the remaining joint contract-holder(s) are entitled to the same rights, and are bound by the same terms, as they were previously. For example, the remaining joint contract-holders remain jointly and severally liable in respect of the rent. However, a joint contract-holder who leaves a contract remains liable for anything which occurred during their time as a contract-holder, such as a failure to pay rent.
177. [Section 20](#) provides that this section must be incorporated without modification as a term of all occupation contracts.

Section 53 - Joint landlords

178. Where there are joint landlords, each of them is fully responsible for the performance of the obligations owed to the contract-holder under the contract.