

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Provisions Applying to All Occupation Contracts

Chapter 8 - Dealing

Section 57 – Permissible forms of dealing and Section 58 - Dealing and landlord’s consent

196. If a term of the contract incorporates this section without modification, a contract-holder may not ‘deal’ with their occupation contract in any way which is not permitted by the contract itself or by a family property order. Family property orders are defined in section 251, and include an order to transfer a tenancy made by the court under the Family Law Act 1996.
197. For these purposes, ‘dealing’ includes creating a sub-tenancy or sub-licence, transferring the contract to another or taking out a mortgage on the dwelling.
198. A contract-holder dealing with the occupation contract outside of the terms of their contract or of a family property order, or without the landlord’s consent, will be in breach of contract.
199. Where an occupation contract contains provision which allows for dealing subject to the landlord’s consent, then, as set out in section 84, the landlord cannot withhold consent unreasonably or consent subject to unreasonable conditions. Furthermore, Schedule 6 sets out specific matters that are relevant to considering reasonableness in relation to a consent relating to dealing.

Sections 59 - Sub-occupation contracts: interpretation

200. In most rental situations there is only a landlord and a contract-holder. However, on occasions a contract-holder may wish to sub-let the dwelling to another person. This would create a ‘sub-occupation contract’ between the contract-holder and that person, who is known as the ‘sub-holder’ under the Act. In this scenario the contract-holder is the landlord of the sub-holder. The contract-holder’s landlord is known as the ‘head landlord’ and the head landlord’s contract with the contract-holder known as the ‘head contract’.
201. There is no right under the Act for the contract-holder to enter into a sub-occupation contract with another person, but the head landlord may however agree to sub-occupation. This will generally be addressed as an additional term of the ‘head contract’ between the head landlord and the contract-holder.

Section 60 - Sub-occupation contract never takes effect as transfer

202. This section establishes that, where a contract-holder enters into a sub-occupation contract and the term of the sub-occupation contract ends at the same time as the head

contract, this is not treated as a transfer of the original contract, but as a sub-occupation contract.

Section 61 - Failure to comply with conditions imposed by head landlord

203. Where any conditions imposed by the head landlord on a contract-holder in relation to sub-letting are not notified to a prospective sub-holder in advance of contracting, the contract-holder is to be treated as having committed a repudiatory breach of the sub-occupation contract. This will enable the sub-holder to end the sub-occupation contract immediately. Alternatively, the sub-holder may make an application to the court for a declaration as to whether a head landlord's condition is correctly included in the sub-holder's written statement of contract.
204. Where the head landlord has given conditional consent to a sub-occupation contract, but the conditions have not been complied with, the sub-occupation contract is still valid. However, the head landlord may treat it as a periodic standard contract. Those terms of the contract which do not conflict with the fundamental and supplemental terms of a periodic standard contract will continue to have effect, but any terms that conflict with the fundamental or supplementary provisions will cease to have effect.
205. Where the head landlord chooses to treat the sub-occupation contract as a periodic standard contract, notice of this decision must be given to the contract-holder after the sub-occupation contract is made, but no later than two months after the day the head contract ends.

Section 62 - End of head contract

206. Where the head contract ends, for example due to the contract-holder giving notice under section 168, the sub-occupation contract continues as an occupation contract. The head landlord becomes the landlord and the sub-holder becomes the contract-holder. In these circumstances, if the head landlord (who is now the landlord) gave notice under section 61(7) that they were treating the sub-occupation contract as a periodic standard contract, there is a requirement at this point to give the contract-holder (who was previously the sub-holder) a written statement of the contract (if the contract incorporates section 31 (written statements)). The landlord must give the contract-holder the written statement within 14 days of the occupation date. For these purposes, the occupation date is to be treated as either the date the head contract ended (if the notice mentioned in section 61(7) was given before the end of the head contract) or the date notice under section 61(7) was given (if the notice was given on or after the day on which the head contract ended).
207. However, the sub-occupation contract does not continue if the head contract is a fixed term standard contract, and it has ended at the end of the fixed term.

Section 63 - End of head contract: further provision

208. [Section 62](#) does not affect the right of the head landlord under section 61(6) to treat the sub-occupation contract as a periodic standard contract. Furthermore, the head landlord and sub-holder are not liable to one another for any breach of the sub-occupation contract, but may be liable for any continuing breach once the head contract ends.

Section 64 - Possession claim against contract-holder where there is a sub-holder

209. There may be circumstances when the head landlord wishes to end the head contract, for example because the contract-holder has stopped paying rent to the head landlord. This section requires the landlord to give to the sub-holder a notice of the landlord's intention to make a possession claim against the contract-holder.

Section 65 - Extended possession order against sub-holder

210. When making a possession claim against the contract-holder, the head landlord may also apply to the court for an 'extended possession order' against the sub-holder, providing the notice requirements in subsection (3) have been met, or the court considers it reasonable to allow the application to go ahead even if those requirements have not been met. The court may only consider the application for an extended possession order against the sub-holder where it has decided to make a possession order against the contract-holder. Furthermore, the court may only make an extended possession order if it would have made a possession order had the contract-holder made a possession claim against the sub-holder.

Section 66 - Exclusion of contract-holder after abandoning contracts

211. Where the sub-holder believes the contract-holder no longer wishes to be a party to the head contract, the sub-holder may act to end the head contract. The effect of this will be to transfer the contract-holder's rights and obligations (as landlord under the sub-occupation contract) to the head landlord. The parties to the occupation contract will then be the head landlord and the (former) sub-holder. Such a scenario may occur where the contract-holder has disappeared.
212. To end the head contract, the sub-holder must serve the contract-holder with a notice stating that he or she no longer considers the contract-holder to be a party to the head contract and sub-occupation contract. This notice must be copied to the head landlord. The notice must inform the contract-holder that he or she has a four-week 'warning period' during which he or she must confirm that he or she is still a party to the contracts. The sub-holder must, during this warning period, conduct investigations in order to be satisfied that the contract-holder has abandoned the contracts.
213. After the four week period, if the sub-holder is satisfied abandonment of the contracts has taken place, he or she may apply to the court to have the rights and responsibilities of the contract-holder (as landlord) transferred to the head landlord. The court may not make the order if the head landlord asserts that the court would have made a possession order against the sub-holder, had the contract-holder brought such a claim, and the court is satisfied this is the case.

Section 67 - Excluded contract-holder's remedies

214. This section provides a remedy to a contract-holder where the court makes an order excluding him or her from the contract under Section 66. The contract-holder may, within six months of the date of the order, apply for a declaration that the head contract continues. The grounds for making the application are set out in subsection (3). They include inadequate investigations by the sub-holder and that the failure to respond to the sub-holder's notice was reasonable. The court may rescind its previous order and declare that the head contract continues, and make any further order it thinks fit.

Section 68 - Power to vary periods of time relating to exclusion after abandonment of contracts

215. This section confers on the Welsh Ministers power by regulations to amend the required warning period under section 66 and the appeal period under section 67.

Section 69 - Form of transfer and Section 70 - Effect of authorised transfer

216. The Act makes provision about the transfer of an occupation contract from a contract-holder to another person, and about the effect of authorised and unauthorised transfers. A transfer might be desirable, for example, where an elderly contract-holder wishes to transfer his or her secure contract on to a family member before entering residential care. Generally, an occupation contract can only be transferred in a way that is permitted by the contract (see section 57 which, if incorporated as a term of a contract without

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modification, provides that an occupation contract can only be transferred in a way permitted by the contract, or in accordance with a family property order).

217. **Section 69** sets out who must sign (or execute) a transfer in order for it to be valid, and applies to transfers of all occupation contracts apart from transfers of fixed term standard contracts on death (see section 139 and 142).
218. **Section 70** says that, if a contract is transferred in accordance with the contract, and the requirements about signing it (in section 69) have been complied with, the rights and obligations under the contract will transfer on the agreed transfer date. The transfer does not remove any rights or obligations of the former contract-holder that accrued before the transfer date, for example in relation to any rent arrears. These provisions also apply to joint contract-holders under an occupation contract.

Section 71 – Effect of unauthorised transfer

219. Generally, a landlord may seek possession against a contract-holder who transfers an occupation contract other than in accordance with the contract, but this section provides an exception to this. Where there is an unauthorised transfer and the landlord accepts payments from the person to whom the contract is transferred for two months, knowing that the transfer was not in accordance with the contract (or where the landlord should have known that), the transfer will become binding on the landlord immediately after that period. Where there are joint landlords and any one of them accepts payment from the person as mentioned in this section, the transfer is binding on all joint landlords. Where a transfer becomes binding on the landlord in this way, the rights and obligations will be transferred immediately after the end of the two month period in the way described in section 70, just as if there had been an authorised transfer.
220. This does not apply where the landlord takes steps to end the contract or brings eviction proceedings within two months of the date on which the landlord started accepting payments.

Section 72 – Deeds and covenants

221. Subsection (2) disapplies section 52 of the Law of Property Act 1925 (conveyances of land or interests in land to be made by deed). The effect of this is that the transfer of an occupation contract does not need to be entered into by means of a deed.
222. Subsection (3) provides that the Landlord and Tenant (Covenants) Act 1995 does not apply to certain transfers that relate to occupation contracts (including transfers that would have been treated as an assignment under section 28(6)(b) of the 1995 Act). Amongst other things, the 1995 Act makes provision about how the rights and obligations of landlords and tenants are transferred when there is a transfer of a tenancy (including provision about outgoing tenants or landlords being released from obligations, and incoming tenants and landlords becoming liable). This Act makes separate provisions about those matters, so the 1995 Act is disapplied.

Section 73 – Succession on death

223. If a sole contract-holder dies and there is a person who survives the contract-holder who is qualified to replace, or to ‘succeed’ the contract-holder, then that surviving person will ‘succeed to the occupation contract’, that is, the surviving person will become the contract-holder under the contract in place of the contract-holder who has died. This principle applies to all occupation contracts apart from:
- a. contracts where there is a surviving joint contract-holder, and
 - b. fixed term standard contracts that contain a provision allowing the contract to be transferred by will or intestacy (see section 139).
224. **Section 78** deals with instances where there is more than one possible successor.

Sections 74 to 76 – Persons qualified to succeed

225. A person can be qualified to succeed to an occupation contract as either a priority successor or a reserve successor. This will mean that in practice there may, in the fullness of time, be two successions to an occupation contract (but no more). That is because,
- Where a person has succeeded as a priority successor then, in the event of his or her death, there can be one more succession (by a reserve successor).
 - But if a person has succeeded to the contract as a reserve successor (and this includes anyone who succeeded to the contract after the death of a person who was a priority successor), then no further succession is possible.
226. A priority successor is the spouse or civil partner (or those living together as spouse or civil partner) of the contract-holder, who occupied the dwelling as their only or principal home at the time of the contract-holder's death.
227. A reserve successor is a family member who occupied the dwelling as their only or principal home at the time of the contract-holder's death. A family member is defined, in section 250, as being:
- a. the spouse or civil partner of the contract-holder, or someone living with the contract-holder as a spouse or civil partner;
 - b. the contract-holder's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece (see section 250).
228. A person who is related to the contract-holder in one of the ways mentioned in paragraph (b) above must also meet the basic residence condition in order to be a reserve successor, which is that throughout the 12 months preceding the contract-holder's death the person lived in the dwelling that is subject to the occupation contract, or lived with the contract-holder. Such a requirement does not apply to a spouse or civil partner (or those living together as spouse or civil partner) succeeding as a reserve successor.
229. Where the contract-holder who has died was a priority successor in relation to the current occupation contract, then a person who is a member of the original contract-holder's family will be a reserve successor. If the person is related to the original contract-holder in one of the ways mentioned in paragraph 227(b) above, for the purposes of calculating a 12 month period of living with the contract-holder, any periods living with the original contract-holder will be taken into account.
230. There are two classes of person unable to succeed to a contract. First, anyone under 18 years of age (because they cannot be a party to an occupation contract).
231. Secondly, those who occupied the dwelling (or part of it) under a sub-occupation contract at any time during the 12 month period before the contract-holder died. But where a sub-occupation contract has ended before the contract-holder's death, and the sub-holder was the contract-holder's spouse or civil partner, that person can still succeed to the contract (despite being a former sub-holder).

Section 77 – Reserve successor: carer

232. A carer is entitled to succeed as a reserve successor if he or she occupied the dwelling as his or her only or principal home at the time the contract-holder died. To qualify as a carer who is a reserve successor, a person must have been providing a substantial amount of care (or intending to provide a substantial amount of care) for the contract-holder, or a member of the contract-holder's family who was living with the contract-holder when the care was provided, at any time in the period of 12 months ending with the contract-holder's death. For the purposes of working out whether care has been provided in a period of 12 months, if the contract-holder who has died was a priority

successor in relation to the contract, any time spent caring for the original contract-holder can be taken into account.

233. The carer must also have occupied the dwelling or lived with the contract-holder (or, if the contract-holder was a priority successor, lived with the original contract-holder) throughout the period of 12 months ending with the contract-holder's death, and must have no other dwelling they are entitled to occupy as a home at the time of the contract-holder's death. A carer employed to provide care, or providing care under a contract, does not meet the conditions for being a 'carer' for these purposes, and does not qualify as a reserve successor under the Act on that basis.

Section 78 – More than one qualified successor

234. This section explains what happens where more than one person is qualified to succeed:
- If there is one priority successor amongst those qualified to succeed, that person will succeed.
 - If there is more than one priority successor amongst those qualified to succeed, the priority successors may decide between themselves who the contract-holder will be. If they cannot decide, or they fail to notify the landlord within a reasonable time, the landlord selects the successor.
 - If all the persons qualified to succeed are reserve successors, they may decide between themselves who the contract-holder will be. If they cannot decide, or they fail to notify the landlord within a reasonable time, the landlord selects the successor.
235. Any decision made by the landlord with regard to the succession can be appealed to the court by any other person qualified to succeed within 4 weeks of the day they were notified of the landlord's decision.

Section 79 – Effect of succession

236. This section makes provision for when a successor becomes the contract-holder.
237. In a situation where there is only one person qualified to succeed, or where there is more than one person qualified to succeed, but only one of those persons is a priority successor, the successor becomes the contract-holder either when the landlord is notified of the death of the former contract-holder, or one month after the death, whichever is earlier.
238. In a situation where there is more than one person qualified to succeed, and either two or more of those persons are priority successors, or all of those persons are reserve successors, the successor becomes the contract-holder either on the date on which the persons qualified to succeed decide who will take over the contract or, if the landlord makes the selection (where agreement cannot be reached between the potential successors), on the date the landlord makes that selection.
239. In a situation where a successor has appealed against the landlord's appointment of a successor, the successor becomes the contract-holder on the date the court determines the appeal.
240. But if either of those things happen before the landlord is notified of the death (or, if the landlord is not notified of the death within one month of the contract-holder dying, before the end of that one month period), the person does not succeed to the contract until the landlord is notified of the death, or until one month after the death (whichever is earlier). In reality, an appeal situation may result in an extended period before a person qualified to succeed becomes a contract-holder.
241. In situations where no contract-holder has been appointed because a decision has not yet been reached about who the successor is to be (either because the successors haven't

reached a decision, because the landlord hasn't chosen a successor, or because the court hasn't determined an appeal), and individuals with a succession right are living in the property, they are not treated as trespassers, but rather as joint contract-holders.

Section 80 - Substitute succession on early termination and Section 81- Effect of substitute succession

242. **Section 78(2)** provides that, in a situation where there are several persons qualified to succeed to a contract, but there is only one priority successor, that person will automatically succeed. If that individual gives notice, within 6 months of the death of the former contract-holder, that he or she intends to end the contract (and the contract could have been brought to an end in that way), this section says that, if there was more than one person qualified to succeed to the original contract, the contract does not end. In those circumstances, if there was only one other person qualified to succeed to the contract, the contract passes to that remaining successor.
243. If there is more than one remaining successor, the succession will be determined in accordance with the provisions in section 78(4). Section 81 makes provision for working out when a person succeeds to an occupation contract in these circumstances, and also about the status of any individuals who are qualified to succeed to the contract that are living in the dwelling during any period before a successor is chosen. Those provisions are similar to the provisions in section 79.

Section 82 – Notice of rights under section 80

244. Where a priority successor decides to leave the contract within 6 months, and has given notice or reached an agreement with the landlord, the landlord must give notice of that fact to any potential successors whose address is known to the landlord, and to the occupiers of the dwelling. That notice must be given within 14 days of the current contract-holder giving the landlord notice (or of an agreement being reached). This notice must contain information about the effect of section 80 (substitute succession).
245. This section applies equally where there are joint landlords. If any one of the joint landlords is aware of any potential successor, the requirement under this section to notify that person will arise.

Section 83 – Succession interpretation

246. This section makes provision for the interpretation of terms used in the sections dealing with succession for the purposes of the Act more widely. It includes provision to clarify that where a person succeeds to a fixed term standard contract, and at the end of that contract a periodic standard contract arises, the person will continue to be treated as a successor in relation to that periodic contract (in the same way that he or she was a successor in relation to the preceding fixed term contract).
247. This section also makes similar provision where a contract is ended on the basis of abandonment (see section 220), but the court decides there was no abandonment and the contract-holder must be given suitable alternative accommodation. This means that if the contract-holder was a priority or reserve successor in relation to the original contract they will also be a priority or reserve successor in relation to any occupation contract that arises as a result of an order under section 222.
248. The section also makes provision maintaining the status of priority and reserve successors in the following circumstances:
- where there has been a transfer of a contract in accordance with a family property order,
 - where being treated as a priority or reserve successor was a condition of consent to a transaction, and

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- where a contract-holder under a secure contract becomes a contract-holder under another secure contract, either with the same landlord as under the original contract or in respect of the same dwelling.