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Renting Homes (Wales) Act 2016

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A brief summary of the Act:

- Based on Law Commission's 2006 'Renting Homes' report
- Single legal framework for social and private renting
- Enables 'single social tenancy' for Wales
- Clarity on rights and responsibilities through written contracts
- Model contracts freely available to all
- Secure Contract: high level of security protected by law; replaces Secure and Assured Tenancies; can also be used by private landlords.
- Standard Contract: low level of security under law; greater security can be agreed through fixed terms; replaces Assured Shorthold, Introductory and Demoted Tenancies
- A legal basis for supported housing

Key Concepts – “Occupation Contracts”

Chapter 1 of Part 2 of the Act (including Schedule 2 to the Act)

- People who rent homes in Wales do so under a *tenancy* or *licence*.
- Under the Act, this will remain the case - but regardless of whether occupier is a tenant or licensee, they will (in most cases) rent their home under an **occupation contract** (and Act refers to them as “contract-holders”).
- Two kinds of occupation contract:
 - Secure contract (which is periodic);
 - Standard contract (which can be periodic or fixed term, as parties wish).

Key Concepts – Landlords

Chapter 2 of Part 2


- The Act provides for two types of landlord -
 - **Community landlords**
 - **Private landlords**
- “Community landlord” is defined in section 9 -
 - Local authorities for areas in Wales (defined in section 243)
 - Registered social landlords providing housing in Wales (e.g. Housing Associations)


i.e. providers of social housing.
- “Private landlord” is defined in section 10: any landlord-
 - who is a landlord of a dwelling which is in Wales, and
 - who is not a community landlord.

Key Concepts – Landlords and Contracts

- As a general rule, type of landlord dictates what kind of contract the occupier occupies under.

- Default positions -

Community landlord  Secure contract
(see sections 11(1) and 12(1))

Private landlord  Standard contract
(see section 17)

- Variations are possible...
 - Introductory Standard Contracts, Prohibited Conduct Standard Contracts, non-social letting

Key Concepts – Written Statement

Chapter 2 of Part 3

- The Act requires every landlord to issue a written statement of contract to the contract-holder, including a new contract-holder in a joint contract, within 14 days of the day on which the contract-holder is entitled to begin to live in the dwelling – the “occupation date” (section 31).
- This means that the contract (tenancy or licence) can be agreed and become effective before the written statement is given.
- Ensures that contract-holders are given an accurate and complete document setting out their rights and obligations under the contract.
- Sections 34 to 38 deal with remedies where written statement is inaccurate or incomplete etc. There are financial remedies: see sections 87 and 88 (compensation).

What are the terms of the contract?

- Act provides for 4 kinds of term-
 - “Fundamental terms”;
 - “Supplementary terms”;
 - Terms relating to “key matters”;
 - “Additional terms”.
- What the final terms of the contract are varies depending on whether contract is:
 - A secure contract;
 - A periodic standard contract;
 - A fixed term standard contract.
- Terms of contract can also vary depending on what is agreed between landlord and contract-holder, but nature of term impacts on the right to vary.
- Under section 29, the Welsh Ministers may set out, in regulations, model written statement of contracts.

Fundamental provisions/terms I

Chapter 3 of Part 2 (sections 18 to 22)

- Perhaps most important concept in the Act.
- The Act contains a number of “fundamental provisions”.
- These are Sections in the Act (and Part 1 of Schedule 8) which, as well as being part of Act, are also incorporated into every kind of occupation contract to which they apply.
- MUST be included in essentially unmodified form unless-
 - Landlord and contract-holder agree, and
 - Modification/non-incorporation *improves position of contract-holder*.
- Once a “fundamental provision” is part of an occupation contract, the term which incorporates it is referred to as a “fundamental term”.
- Some *must* be incorporated *without* modification (see below).

Fundamental provisions/terms 2

Chapter 3 of Part 2 (sections 18 to 22)

- Some fundamental provisions apply to all occupation contracts (see Parts 3 and 9), but some apply only to specific kinds of contract.
- Each fundamental provision contains a subsection specifying that it is a fundamental provision, and dealing with its application.
- Schedule 1 contains three tables, setting out all the fundamental provisions that apply to each of the three kinds of occupation contract.

Supplementary provisions/terms

Chapter 4 of Part 2 (sections 23 to 25)

- Supplementary provisions will be set out in Regulations made by the Welsh Minister.
- These are automatically incorporated into occupation contracts to which they apply *unless both landlord and contract-holder agree* (no further constraints or requirements).
- Once a “supplementary provision” is part of an occupation contract, the term which incorporates it is referred to as a “supplementary term”.

Additional terms and key matters

Chapter 5 of Part 2

- Terms of contract relating to key matters are terms dealing with the dwelling's address, the occupation date, rent etc. – see sections 26 and 27.
- Additional terms are terms agreed between landlord and contract-holder which are not fundamental or supplementary terms, or terms addressing key matters (section 28).
- The written statement needs to set out *all* the terms of the contract.

Changing the contract when made

- **Fundamental provisions** – may be changed if agreed, and improves contract-holder's position. Changing a fundamental provision at time contract is made is referred to in Act as "*modification*". But:
 - Note section 33 (editorial changes) and
 - Note section 20(3) – list of fundamental provisions that must be incorporated without modification e.g.
 - Prohibition of anti-social behaviour (section 55);
 - Use of false statements to get contract (section 158).
- **Supplementary provisions** – may be changed by agreement.

Changing the contract after it has been made

- Changing the terms of contract after it takes effect is referred to in Act as “*variation*”.
- Extent to which variations are possible differs between kinds of occupation contracts:
 - **Secure contracts** – Chapter 2 of Part 5 (sections 103 to 110);
 - **Periodic standard contracts** – Chapter 2 of Part 6 (sections 122 to 129);
 - **Fixed term standard contracts** – Chapter 2 of Part 7 (sections 134 to 137).

Structure of the Act

- For a landlord or contract-holder, not necessary to read all of Act – structure is intended to enable reader to bypass material irrelevant to them.
- This means the Act contains some repetition, but only a small amount, and with a view to keeping the Parts of the Act self-contained.
- The Act is structured as follows
 - Part 1: provides introduction to Act and key concepts;
 - Part 2: sets out the key concepts in detail;
 - Part 3: rights and obligations of parties to all occupation contracts;
 - Part 4: all contracts except longer-term fixed term standard contracts;

Structure of the Act (contd.)

- Part 5: secure contracts only;
- Part 6: periodic standard contracts only;
- Part 7: fixed term standard contracts only;
- Part 8: supported contracts only (see section 143 – accommodation which is connected with “support services” e.g. support in overcoming addiction or finding employment);
- Part 9: Termination of contract-
 - Although Part 9 applies to all occupation contracts, it is sub-divided into Chapters which have differing application;
 - See section 147 for table explaining structure of Part 9.
- Parts 10 and 11 contain provisions which supplement the rest of the Act (e.g. definitions, requirements about giving notice, exercise of powers).

I am a contract-holder

- When does my contract start?
 - Whenever you make it with the landlord. But the most important date is the date you are allowed to move in (“the occupation date” – section 245).
- How do I know my rights and obligations (and my landlord’s)?
 - Your landlord has to give you a written statement of the contract within 14 days of the occupation date (section 31).
- I have been asked to pay a deposit – what happens now?
 - Your landlord can only ask for a deposit as money or a guarantee (section 43), and
 - Your landlord must put the money in an “authorised deposit scheme” (section 45 and Schedule 5).

I am a contract-holder

- Can someone I live with also be a contract-holder?
 - Yes, they can be a “joint contract-holder” (Chapter 5 of Part 3) either from the outset, or, if the landlord consents, after the contract begins. The Act makes a range of provision about how such arrangements work in practice.
- What protection do I have from the landlord interfering with my rights?
 - The landlord must not do anything (other than in the reasonable exercise of the landlord’s rights under the contract) which interferes with your right to live in the dwelling (section 54). This used to be known as the right to “quiet enjoyment”.

I am a contract-holder

- What am I not allowed to do under the contract?
 - You must not engage in “anti-social behaviour”; that is causing nuisance and annoyance to people in or near, or connection with, your home (section 55)
 - The consequences of this are serious –
 - you can be evicted on the ground of breach of contract (section 157), or
 - your landlord can apply to court for your contract to end and be replaced with a “prohibited conduct standard contract” (section 116 and Schedule 7). This means that for 12 months, or 18 months if the landlord extends the “probation period”, you have a periodic standard contract and reduced security of occupation.
- Do I have any other rights?
 - If the contract permits, you can make an occupation contract with someone else to live in your dwelling (sub-occupation: sections 59 to 68);
 - If the contract permits, you can transfer your rights and obligations to someone else (sections 69 to 72);
 - The landlord must ensure the building is fit for human habitation and in keep it in repair (Part 4).

Fitness for Human Habitation

- A landlord must ensure the property is fit for human habitation at the outset of and during the occupation contract.
- The exact details of the requirements for fitness for human habitation will be set out in regulations.

I am a secure contract-holder – other rights, obligations etc.

In addition to what has already been set out...

- You and your landlord can vary the terms of the contract in accordance with sections 103 to 110:
 - Your landlord can vary your rent by notice,
 - You and your landlord can agree to vary fundamental terms (subject to section 108), and
 - The other terms can be varied by agreement, or by the landlord by notice.
- Joint contract-holders may leave the contract (“withdrawal”) by giving notice (section 111).
- You can have a lodger (section 113).
- You can transfer the contract-
 - to someone who could succeed to the contract in the event of your death (sections 114 and 115), and
 - If you have a community landlord, to another secure contract-holder (section 118).

I am a periodic standard contract-holder

In addition to what has already been set out (other than in relation to secure contracts)...

- The contract can provide that you will not be allowed to live in the dwelling during specified periods (section 121).
- You and your landlord can vary the terms of the contract in accordance with sections 122 to 129:
 - Your landlord can vary your rent by notice,
 - The other terms can be varied by agreement, or by the landlord by notice.
- Joint contract-holders may leave the contract (“withdrawal”) by giving notice (section 130).

I am a fixed term standard contract-holder

In addition to what has already been set out (other than in relation to secure contracts and periodic standard contracts)...

- You and your landlord can agree that you will not be allowed to live in the dwelling during specified periods (section 133).
- You and your landlord can vary the terms of the contract by agreement (sections 134 to 137).
- If the contract has a contract-holder's break clause, joint contract-holders may leave the contract ("withdrawal") by giving notice (section 138).
- Sections 139 to 142 make provision about what you, or any joint contract-holders, may and must do if the contract gives you certain rights to transfer your rights and obligations under the contract.

How can the contract end?

Part 9

- This depends on what kind of contract you have. **Section 147** contains a table providing a guide as to which Chapters of Part 9 apply to which kinds of contract.
- The following apply to **all contracts**, and involve the end of a contract without eviction:
 - You can end the contract before the earlier of the occupation date and provision of a written statement (section 152) ;
 - At any time you and the landlord can agree to end the contract (section 153);
 - The contract ends if the landlord commits a major breach of contract (section 154);
 - The contract ends if a sole contract-holder dies, and there is no one to succeed him or her.

Termination: all contracts

The landlord can apply to the court for an order for possession (make a “possession claim”) if-

- You have **breached your contract** (sections 157 to 159) – the court *may* make an order for possession only if it thinks it reasonable (see section 205, and as to “reasonableness”, see Schedule 10) – *discretionary ground*;
- One of the “**estate management grounds**” applies – these are a range of grounds enabling landlords to use their estate, or housing stock, properly. (Sections 160 to 162 and Schedule 8). The court *may* make an order for possession only if it thinks it reasonable, and if it is satisfied that suitable alternative accommodation is available (see section 210, and as to alternative accommodation, see Schedule 11) – *discretionary ground*.

Termination: secure contracts

- If you have a secure contract, **you may end the contract by giving notice to the landlord** (section 163).
- If you do not leave the dwelling on the date specified in the notice, the landlord can make a possession claim to the court for an order for possession.
- If the court is satisfied the ground is made out, it *must* make an order for possession (subject to any human rights defence) (section 212) – *absolute ground*.
- *But, as a secure contract-holder, the landlord has no further rights to evict you.*

Termination: periodic standard contracts

- As with secure contracts, **you may end the contract by giving notice to the landlord** (section 168).
- The **landlord may end the contract for any reason by giving you notice** (section 173):
 - You must be given at least two months notice (section 174);
 - Under section 175, the landlord may not serve a section 173 notice during first four months (unless contract is listed in Schedule 9);
 - You can't be evicted at a time when you haven't been given a written statement (section 176) or when the landlord is in breach of deposit or security requirements (section 177).
- If the landlord makes a claim to the court and the court is satisfied the ground is made out, it *must* make an order for possession (subject to any human rights defence) (section 215) – *absolute ground*.
- But, “retaliatory evictions”...

Retaliatory evictions

Retaliatory evictions (section 217) - applies in relation to the following possession grounds:

- landlords' "no fault" notices under section 173 (periodic standard contracts), and
 - Landlords' break clauses (fixed term standard contracts: see section 194).
-
- Turns "absolute ground" into "discretionary ground".
 - Applies where court is satisfied that landlord is trying to avoid obligations to keep dwelling fit for human habitation and in repair (Part 4).
 - Power to provide for further descriptions of retaliatory claim.

Termination: periodic standard contracts 2

- Finally, a landlord may end the contract on the ground that you are in “**serious rent arrears**” (section 181).
- If the court is satisfied the ground is made out, it *must* make an order for possession (subject to any human rights defence) (section 216) – *absolute ground*.

Termination: fixed term standard contracts

Very similar to termination of periodic standard contracts:

- If the contract has a “contract-holder’s break clause”, then you can end the contract by giving notice (sections 189 to 193) .
- If the contract has a “landlord’s break clause”, then your landlord can end the contract by giving notice (sections 194 to 201). A landlord’s break clause cannot be used within first four months (unless contract is listed in Schedule 9).
- Also, landlord may give notice in connection with end of the fixed term (section 186), providing notice provides for minimum occupation of six months (unless contract is listed in Schedule 9).
- If contract-holder does not leave after such a notice expires, this leads to an *absolute ground* for possession.
- Serious rent arrears (section 187) – virtually identical to provision about periodic standard contracts.

Abandonment

Chapter 13 of Part 9

- Section 220 gives landlords the right to recover property which has been abandoned without recourse to the court.
- The landlord can “give” notice to the contract-holder which effectively requires him or her to contact the landlord within four weeks to confirm that he or she has not abandoned the dwelling.
- Meanwhile, the landlord must make “inquiries” as to whether the property has been abandoned.
- At the end of the process, the landlord can recover possession.
- If, within six months of recovery of possession, the contract-holder wishes to contest this, he or she can apply to the court under section 222 (e.g. because there was a good reason for the failure to respond to the notice).

Succession

Sections 73 to 83

- The Act sets out a system for succession (i.e. inheritance) of occupation contracts.
- Potential successors are either-
 - **Priority successors**, or
 - **Reserve successors**.
- Priority (section 75): spouse/civil partner (or living together as spouses/civil partners), and living in dwelling.
- Reserve - family: other kind of family member (section 76, and see section 250 for definition of family member) who lives in dwelling.
- Reserve – carer: a carer who lives in dwelling (section 77).
- Priority successors have precedence over reserve successors. Where there are multiple successors of the same type, they can agree between them who succeeds; but if they cannot, the landlord chooses (section 78).
- The system allows only for a limited number of successions, after which the contract ends with the death of the last contract-holder.

Joint contracts

- The Act will provide for new flexibility around joint contracts. As is currently the position the ending of a tenancy for one tenant will end the whole joint tenancy. Under the Act this will no longer bring a tenancy to an end.
- This new flexibility will allow joint contact-holders to leave a contract or be added to an existing occupation contract.

Other notable aspects of Act

- **Trespassers and implied contracts** – where people have been living in a dwelling as a trespasser, but the landlord accepts this and accepts payments from the trespasser, the Act creates a contract between the parties (section 238).
- **Landlord's consent** – the Act creates a system which applies whenever a landlord is asked to consent to something; it addresses time limits, process, deemed consent, appeals etc.

55 Anti-social behaviour and other prohibited conduct

- (1) The contract-holder under an occupation contract must not engage or threaten to engage in conduct capable of causing nuisance or annoyance to a person with a right (of whatever description)—
 - (a) to live in the dwelling subject to the occupation contract, or
 - (b) to live in a dwelling or other accommodation in the locality of the dwelling subject to the occupation contract.

- (2) The contract-holder must not engage or threaten to engage in conduct capable of causing nuisance or annoyance to a person engaged in lawful activity—
 - (a) in the dwelling subject to the occupation contract, or
 - (b) in the locality of that dwelling.

55 Anti-social behaviour and other prohibited conduct

- (3) The contract-holder must not engage or threaten to engage in conduct—
 - (a) capable of causing nuisance or annoyance to—
 - (i) the landlord under the occupation contract, or
 - (ii) a person (whether or not employed by the landlord) acting in connection with the exercise of the landlord's housing management functions, and
 - (b) that is directly or indirectly related to or affects the landlord's housing management functions.

- (4) The contract-holder may not use or threaten to use the dwelling subject to the occupation contract, including any common parts and any other part of a building comprising the dwelling, for criminal purposes.

55 Anti-social behaviour and other prohibited conduct

- (5) The contract-holder must not, by any act or omission—
- (a) allow, incite or encourage any person who is living in or visiting the dwelling to act as mentioned in subsections (1) to (3), or
 - (b) allow, incite or encourage any person to act as mentioned in subsection (4).
- (6) This section is a fundamental provision which is incorporated as a term of all occupation contracts; section 20 provides that this section—
- (a) must be incorporated, and
 - (b) must not be incorporated with modifications.

56 Power to amend section 55

The Welsh Ministers may by regulations amend section 55.

Model Contracts

- Essential that landlords have easy access to contracts that comply with the law.
- Welsh Government will produce model contracts for use by landlords. These will include all relevant fundamental and supplementary terms.
- A 'Key Matters' template for setting out details specific to the let, e.g. landlord and tenant details, address and rent, plus any additional terms.
- Landlords will be able to produce their own versions - but the models will be freely available to download.

National Assembly Scrutiny:

Communities, Equality and Local Government Committee scrutinised the Bill. Assembly web page:

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=12055>

4 stages:

Stage 1 - Committee considerations of general principles

Stage 2 - Committee consideration of amendments

Stage 3 - Plenary consideration of amendments

Stage 4 - Passing of the Bill in Plenary

Four-week 'period of intimation'

Royal Assent received on 18 January 2016

Renting Homes (Wales) Act 2016:

www.legislation.gov.uk/anaw/2016/1/contents/enacted

Implementation

- Model contracts freely available in advance to help prepare.
- All existing tenancies would automatically convert to the appropriate new contract on a set date – arrears transfer too.
- New contracts could then be issued at suitable point, e.g. in private sector when one tenancy ends and another starts.
- Continued engagement with stakeholders to minimise administrative burden.
- Guidance for landlords and tenants to assist in the change.
- Long timescale to enable full stakeholder engagement.

Implementation

Consultation completed & ready for publication:

- Deposit scheme prescribed information
- Supported Accommodation: Temporary exclusion
- Supported Accommodation: Guidance on extending relevant period
- Procedure for reviews of extension of Introductory Periods
- Procedure for reviews of extension of Probationary Periods
- Procedure for reviews of decision to terminate Introductory and Prohibited Conduct Standard Contracts

Consultation Phase:

- Fitness for human habitation
- Safeguarding property in abandoned dwellings

Work is ongoing:

- Prescribing form of certain notices
- Supplementary terms
- Model written statements of occupation contracts
- Amendments to Schedule 2 (e.g. bail hostels and asylum accommodation)
- Prescribe Persons Determining Rent Applications
- Amending Civil Procedure Rules, Court Forms and Notices



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Thank you – any questions?

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