

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Occupation contracts and Landlords

Chapter 1 - Occupation Contracts

Section 7 – Tenancies and licences that are occupation contracts

31. **Section 7** sets out the basic proposition which underpins the Act, and which is considered above in relation to Part 1; most tenancies and licences under which people rent their homes will be occupation contracts.
32. The effect of subsections (1) to (3) is that a tenancy or licence is an occupation contract if it allows at least one individual over the age of 18 to occupy a dwelling as a home, and someone is paying rent (or ‘other consideration’; for example, doing something equivalent to paying rent, such as providing a service to the landlord) in exchange for that individual’s right to live in the dwelling.
33. **Schedule 2** sets out a number of exceptions and qualifications to the basic proposition in section 7.

Schedule 2 - Exceptions to section 7

Part 1 - tenancies and licences not within section 7 that are occupation contracts if notice is given

Paragraph 1

34. A tenancy or licence which is made with a person (‘person A’), but which allows a different person to live in the dwelling to which the tenancy or licence relates (such a person is described in paragraph 1 as a ‘beneficiary’), is not an occupation contract under section 7.
35. The same is true of a tenancy or licence where no rent or other consideration (for example work undertaken by the contract-holder as a form of rent) is payable.
36. But under paragraph 1, such a tenancy or licence can be an occupation contract if the landlord wishes. If so, the landlord must give notice to the person with whom the tenancy or licence is made (which would be person A in relation to a tenancy or licence where the beneficiary will live in the dwelling) stating that the tenancy or licence is to be an occupation contract. That notice must be given before the tenancy or licence is made, or at the time it is made.

Paragraph 2

37. **Paragraph 2** applies to a tenancy or licence where a beneficiary lives in the dwelling, and the landlord has given notice under paragraph 1. It allows the landlord to specify in

the notice that certain provisions of the Act (and provisions of regulations made under it) should be read as if they referred to the beneficiary. Paragraph 2 is necessary because the Act contains references to ‘contract-holders’ (including in ‘fundamental provisions’ which will become terms of the occupation contract). Similarly, regulations made under the Act will include references to ‘contract-holders’ (including in ‘supplementary provisions’, which will also become terms of the occupation contract).

38. Those provisions give rights to, and impose obligations on, the contract-holder, which in these circumstances will be person A. It may be necessary for those provisions to be treated in practice as applying to the beneficiary, to ensure the smooth day-to-day operation of the contract.

Part 2 - Tenancies and licences within section 7 that are not occupation contracts unless notice is given

39. This Part addresses certain tenancies and licences which are within section 7, and which would therefore be occupation contracts were it not for paragraph 3. But if a tenancy or licence is mentioned in paragraph 3(2), it is not an occupation contract unless the landlord wants it to be (in which case, as under Part 1, the landlord must give the contract-holder notice that it is an occupation contract before the tenancy or licence is made, or at the time it is made).

Paragraph 3

40. Paragraph 3(2) sets out the tenancies and licences which, although within section 7, are not occupation contracts unless notice is given by the landlord. They are tenancies and licences relating to the following-
- Holiday accommodation,
 - Accommodation in a care institution (see paragraph 4 of Schedule 2),
 - ‘Temporary expedient’ – that is, a tenancy or licence made as a temporary expedient with a person who was a trespasser when he or she entered the dwelling (see paragraph 5), and
 - Accommodation that is shared with the landlord - for example, where the landlord takes on a lodger (see paragraph 6).

Part 3 - Tenancies and licences that are never occupation contracts

41. As with Part 2, this Part addresses certain tenancies and licences which are within section 7, and which would therefore be occupation contracts were it not for this Part. If a tenancy or licence is mentioned in paragraph 7, despite the fact that it is within section 7, it can never be an occupation contract.

Paragraph 7

42. A tenancy or licence is not an occupation contract if the tenant or licensee is under 18 years of age (or, where there is more than one tenant or licensees, all of them are under 18).
43. This paragraph also excludes various other tenancies from being occupation contracts. The following are excluded from being occupation contracts:
- a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies, which provides protection for business tenants when renewing or terminating their lease. These tenancies are not covered under this Act as they are not used for the purpose of renting a home.

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

- a protected occupancy or a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976, which affords security of tenure for agricultural workers housed by their employers, and their successors.
- a protected tenancy or a statutory tenancy within the meaning of the Rent Act 1977; tenants under this Act have defined rights concerning the amount of rent they can be charged and security of tenure.
- a secure tenancy that is a housing association tenancy, within the meaning of section 86 of the Rent Act 1977; tenants of a housing association under this Act have defined rights concerning the amount of rent they can be charged and security of tenure.
- a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986; land comprised in a contract for an agricultural tenancy.
- a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995; landlords and tenants have the right to negotiate their own provisions on rent levels and decide whether or not they want to have rent reviews, land must be farmed throughout the life of the tenancy to qualify.
- a long tenancy (see paragraph 8).
- accommodation provided to a member of the armed forces, to a family member of a member of the armed forces or to a civilian subject to service discipline for the purposes of any of the armed forces (see paragraph 9 of Schedule 2).
- a tenancy or licence which relates to ‘direct access accommodation’ (see paragraph 10).

Paragraph 8

44. Long tenancies are excluded from being occupation contracts. This paragraph defines a long tenancy under the Act as being:
- a tenancy that is for a fixed term of more than 21 years (that is, at the outset the parties agreed that the tenancy would last for a specified period of time exceeding 21 years),
 - a tenancy for a term fixed by law because of a covenant or obligation for perpetual renewal (such as an option for the tenant to renew the tenancy upon expiry, for example to continually renew the tenancy every 5 years), or
 - a tenancy made under the ‘right to buy’ (Part 5 of the Housing Act 1985) or ‘right to acquire’ (section 17 of the Housing Act 1996).
45. But a tenancy that can be terminated by notice after a death is not a long tenancy (unless it is a shared ownership tenancy - see below).
46. A shared ownership tenancy is a tenancy that relates to a dwelling owned by a registered social landlord where the tenant has purchased a percentage of the property on a leasehold basis and pays rent on the un-owned share. Further shares of the un-owned part can be purchased until potentially the remaining un-owned portion is reduced to nil.

Paragraph 10

47. Direct access accommodation is accommodation provided by a community landlord or a charity registered with the Charity Commission (under the Charities Act 2011), which is provided on a very short-term basis (24 hours or less) to people who satisfy criteria set by the landlord (which will generally require the person to have an immediate need for accommodation).

Part 4 - Tenancies and licences to which special rules apply: homelessness

48. A local housing authority has a duty to those who are homeless and in need. This includes a duty to provide interim accommodation under section 68 of the Housing (Wales) Act 2014 ('the interim duty') and a duty to secure accommodation (on a longer term basis) under section 75 of that Act ('the full duty'). A local housing authority's interim duty requires it to secure accommodation for an applicant that it has reason to believe is homeless, eligible for help and in priority need.
49. An interim duty arises whilst the local authority carries out an assessment under section 62 of the Housing (Wales) Act 2014 to consider whether the applicant is actually owed a full duty.
50. Following this assessment the local authority will notify the applicant of the outcome. If this assessment shows the local authority owes a full duty to the applicant, they have a duty to provide suitable accommodation.

Paragraph 11

51. This paragraph provides that accommodation provided by a local housing authority in connection with its homelessness functions (other than accommodation provided in accordance with the full duty) is not provided under an occupation contract. Accommodation provided under the interim duty will not be provided by means of an occupation contract.

Paragraph 12

52. Paragraph 12 sets out the rules that apply where a local housing authority enters into arrangements with another landlord in discharging its homelessness functions.

Part 5 - Tenancies and licences to which special rules apply: supported accommodation

Paragraph 13

53. Tenancies and licences relating to supported accommodation which a landlord initially intends to provide for no more than six months are not occupation contracts. The landlords to whom this applies are community landlords and registered charities. Section 143(2) defines supported accommodation.
54. If a tenancy or licence relating to supported accommodation continues beyond six months it will automatically become an occupation contract which is a 'supported standard contract'; see section 143 and Part 8 of the Act generally. An exception to the automatic conversion to an occupation contract applies where the landlord extends the six month period by giving a notice under paragraph 15.
55. This means that an occupation contract will arise either immediately after the initial six-month period has ended (where there has been no extension) or (where there has been an extension) immediately after the date specified in the notice of extension. The period before the tenancy or licence becomes an occupation contract is referred to as the 'relevant period'.

Paragraph 14

56. This paragraph sets out the effect previous contracts relating to supported accommodation have on the calculation of the relevant period. Generally, if there have been previous contracts that relate to supported housing, the relevant period will be calculated from the start date of the first of those contracts.

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

57. For any previous contract to be treated in this way it must relate to supported accommodation, and either to the same dwelling as the current contract or to a dwelling within the same building or unit.

Paragraph 15

58. As referred to in the preceding paragraphs, a landlord may extend the period during which a person living in supported accommodation does not have an occupation contract.
59. Where a landlord wishes to continue to provide supported accommodation beyond the six month period, but does not wish for the accommodation to be provided under an occupation contract, the landlord may extend that period. If the landlord is not a local housing authority, the landlord must obtain the consent of the local housing authority (defined in section 243) in whose area the accommodation is situated. An extension can be granted for a period of up to three months at a time, but there can be more than one extension.
60. In order to extend the period, the landlord must give notice of an extension to the resident at least four weeks before the tenancy or licence would otherwise become an occupation contract (whether because an initial period is coming to end, or because a previous extension is in force but will soon be coming to an end).
61. The notice must provide all the details set out in paragraph 15(6) and (7) to the resident. This includes giving the reasons for the extension, informing the resident when the relevant period, as extended, will end, and informing the resident of his or her right to apply to the county court for a review of the decision to extend the period. The landlord is also required to consult with the resident before giving notice.
62. In considering whether to apply for an extension the landlord may consider the behaviour of the tenant or licensee and the behaviour of anyone appearing to the landlord to be living in the property.
63. The Welsh Ministers may make regulations setting out details of the procedure for obtaining consent from local housing authorities.

Paragraph 16

64. A person given a notice of extension by the landlord may ask the county court to review the decision to give the notice (if the landlord is a local housing authority) or to review the decision of the local housing authority to consent to the giving of the notice (if the landlord is not a local housing authority).
65. The court may confirm or quash the decision to give (or to consent to) the notice. The court may also vary the extension period, but not beyond the maximum extension of three months.
66. If the court quashes the original notice, the landlord may issue a further notice of extension. Should the landlord issue this new notice within 14 days of the court's decision, it will be considered that the notice complies with the minimum 4 weeks' notice period set out in paragraph 15, even if in practice it does not. This does not affect the time limit within which the resident may seek a review so, in practice, a resident can apply to the county court again under paragraph 16 for a review of that further notice.
67. A review of decisions to extend the relevant period is carried out by the county court, albeit in accordance with the principles applied by the High Court in a judicial review application. The same is true of all reviews undertaken by the county court under the Act.

68. Paragraph 17 provides a power for the Welsh Ministers to amend Schedule 2. The schedule contains significant detail and many definitions which are likely to require updating over time.

Section 8 – Secure contracts and standard contracts

69. This section sets out the two types of occupation contract established by the Act, *secure* and *standard* contracts. As noted above in the commentary on Part 1, a secure contract is a periodic contract that typically runs from week to week or month to month. Secure contracts are the default contract issued by community landlords under the Act. The exceptions to this are set out below.
70. A standard contract can be either a periodic or a fixed term contract. Standard contracts are the default contract issued by private landlords, that is, all landlords that are not community landlords. But private landlords can issue secure contracts if they so choose.
71. A periodic contract runs for the agreed rental period, typically from month to month or sometimes week to week. A fixed term contract is for a pre-agreed specified length of time, usually a number of months or years. The Act provides that fixed term standard contracts automatically become periodic contracts on expiry of the fixed term period.