

# RENTING HOMES (WALES) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 - Provisions Applying to All Occupation Contracts**

##### *Chapter 1*

##### *Section 30 – Overview of this Part*

131. This section provides an overview of Part 3, which sets out provisions that apply 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)),

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- 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 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.

### ***Chapter 3 - When Contract Becomes Enforceable***

#### ***Section 42 – When terms of occupation contract become enforceable***

151. This section sets out the time at which an occupation contract becomes enforceable against the contract-holder. A landlord is not able to enforce any term of an occupation-contract before the landlord gives the written statement of the contract or, if earlier, the date on which the contract-holder is entitled to occupy the dwelling.
152. Where there has been a change in the identity of the contract-holder, no term of the occupation contract is enforceable against the new contract-holder before the landlord gives the written statement to the new contract-holder, or the new contract-holder becomes entitled to occupy the dwelling.

### ***Chapter 4 - Deposits and Deposit Schemes***

#### ***Section 43 – Form of security***

153. If this section is incorporated as a term of the contract without modification, where a contract-holder is required by the landlord to pay a deposit in relation to a dwelling, the landlord can only ask for this deposit in the form of money or a guarantee, for example, a deposit guarantee scheme provided by a local authority for those unable to afford a deposit.

#### ***Section 44 – Form of security: county court proceedings***

154. Where a landlord requires a contract-holder to provide security in a form other than money or a guarantee, for example an item of jewellery, the contract-holder (or any person who has given the security for the contract-holder) may seek an order in the county court requiring the person who appears to be holding the security to return it.

#### ***Section 45 – Requirement to use deposit scheme***

155. In accordance with the term of the contract that incorporates this section, a landlord who requires a deposit from a contract-holder must place any deposit received into an authorised deposit scheme (see Schedule 5). A landlord must, within 30 days of receiving the deposit, comply with the initial requirements of the scheme and provide the contract-holder with details of the scheme being used, their rights with regard to the deposit and confirmation that the landlord is complying with the initial requirements of that scheme. Protection of deposits paid by contract-holders is of great importance in practice, and in order to ensure that this protection extends to all contract-holders this section is a fundamental provision in relation to all occupation contracts which must be incorporated without modification.

#### ***Section 46 – Deposit schemes: further provision***

156. This section introduces Schedule 5. It also highlights the connection between Chapter 4 and sections 177 and 198. In summary, a term of the contract which incorporates

section 177 will prevent a landlord who has entered into a periodic standard contract from issuing a notice for possession (under the term of the contract which incorporates section 173) if the landlord is not complying with the requirements of section 43 or section 45. Section 198 makes the same provision in relation to fixed term standard contracts.

### ***Schedule 5 - Deposit schemes: further provision***

157. The Act makes provision about deposit scheme requirements. The provisions requiring the use of deposit schemes must be incorporated into all occupation contracts without modification. This means that all occupation contracts will include requirements about deposit schemes, similar to those that currently apply to Assured Shorthold Tenancies. The requirements will apply equally to private and community landlords. Schedule 5 sets out additional provisions relating to the protection of deposits.

#### ***Paragraph 1***

158. **Paragraph 1** requires the Welsh Ministers to make arrangements for the availability of deposit schemes, and allows the Welsh Ministers to make payments etc. to scheme administrators. The paragraph also includes a power for the Welsh Ministers to make regulations, conferring powers and imposing duties on scheme administrators.

#### ***Paragraphs 2 and 3***

159. **Paragraph 2** applies where an occupation contract is ongoing. If a landlord does not arrange for a deposit to be held in accordance with an authorised deposit scheme, or fails to comply with certain requirements (including the requirements of section 45(2)), the contract-holder, or a person who paid a deposit on his or her behalf, may apply to the court for a remedy. If the court is satisfied that the landlord has not complied with the requirements, or is not satisfied that the deposit is being held in accordance with an authorised deposit scheme, it must either order the deposit to be repaid or order it to be paid into a custodial deposit scheme (defined in the paragraph), if one is in existence. The court must also order the landlord to pay a sum of money to the applicant, which can be up to three times the amount of the deposit. **Paragraph 3** provides a similar right to apply to the court for a remedy in situations where the occupation contract has ended, but the landlord did not comply with certain requirements relating to deposits

#### ***Paragraph 4***

160. Where the landlord and contract-holder enter into an occupation contract that immediately follows a previous contract (in relation to the same, or substantially the same, dwelling), **paragraph 4** provides for the deposit paid in relation to the first contract to apply to the substitute contract, and any further substitute contracts. Therefore, if the landlord complied with the requirements in relation to the deposit with respect to the first contract, there is no requirement to re-protect a deposit.

### ***Section 47 - Deposit schemes: interpretation***

161. This section sets out definitions of terms used in the provisions about deposit schemes in the Act.

## ***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);



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- 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.

## ***Chapter 6 - Right to Occupy Without Interference***

### ***Section 54 – Right to occupy without interference from landlord***

179. Where a term of the contract incorporates this provision without modification, a landlord must not interfere with the contract-holder's right to occupy the dwelling. This is also known as the contract-holder's right to 'quiet enjoyment' of the property. This does not prevent the landlord carrying out any repairs. It means a landlord must not act in a way that affects the contract-holder's right to live in their home without interference from the landlord on a day-to-day basis.

## ***Chapter 7 - Anti-Social Behaviour and Other Prohibited Conduct***

180. The Act includes a fundamental provision relating to 'prohibited conduct'. To ensure universal application, this provision in section 55 must be incorporated without modification as a fundamental term of all occupation contracts. Breach of a term of the contract is a ground for the landlord to seek possession and, if section 159 is incorporated as a term of the contract without modification, the landlord may make a possession claim to the court immediately after giving a possession notice to the contract-holder in reliance on a breach of a term of the contract which incorporates section 55. The court may not make an order for possession unless it considers it reasonable to do so.

### ***Section 55 - Anti-social behaviour and other prohibited conduct***

181. In accordance with the term of the contract that incorporates section 55, the contract-holder must not engage, or threaten to engage, in behaviour capable of causing nuisance or annoyance to another person with a right to live in the dwelling or in the locality, or to a person engaged in lawful activity in the dwelling or in the locality. The contract-holder must also not behave in such a way towards the landlord, or a person acting on the landlord's behalf, in relation to the landlord's housing management functions.
182. The contract-holder must also not use, or threaten to use, the dwelling, common parts (defined in Section 252) or any part of the building in which the dwelling is located for criminal purposes.
183. It would also be a breach of a term of a contract incorporating section 55 if the contract-holder allowed, incited or encouraged another person living in the dwelling or visiting the dwelling to behave as described above. Furthermore, the contract-holder must not allow, incite or encourage any person to use, or threaten to use, the dwelling for criminal purposes. For the purposes of any term of the contract that incorporates this section, a contract-holder will be in breach of contract if they fail to take action to prevent another person who is living in or visiting the dwelling from behaving in the manner described.

## ***Schedule 7 - Prohibited conduct standard contracts***

### ***Paragraph 1***

184. Where a community landlord or registered charity has entered into a secure contract, and the contract-holder has breached the fundamental term incorporating section 55 (anti-social behaviour and other prohibited conduct), the landlord may, under section 116, apply to the court for an order ending the secure contract and creating a periodic standard contract in its place.



185. **Paragraph 1** sets out the procedure on an application for an order under section 116. A landlord applying for such an order must give the contract-holder notice, setting out the information specified in paragraph 1(2), unless the court considers it reasonable to dispense with a notice. Paragraph 1(2) also sets the time limits within which an application may be made. Paragraph 1(3) provides that proceedings may be brought on the day the notice is given. Paragraph 1(4) enables the landlord to make a possession claim in the same proceedings.

### **Paragraph 2**

186. Where a periodic standard contract is imposed by order of the court, the terms of the contract are as agreed by the landlord and contract-holder (subject to the requirements regarding incorporation of fundamental and supplementary terms). Where no agreement of terms is reached, then all fundamental and supplementary terms applying to periodic standard contracts will be incorporated without modification and any other terms incompatible with those terms will cease to have effect. Any other terms of the secure contract will apply, subject to those fundamental and supplementary terms. Any rent arrears (or overpayments) under the secure contract become payable under (or are credited to) the periodic standard contract.
187. Where a prohibited standard contract is imposed by a court order, there is no requirement for the landlord to provide the contract-holder with an address to which documents can be sent under any term of the contract which incorporates section 39(1). The address of the landlord will not have altered as a consequence of the change to a prohibited conduct standard contract.

### **Paragraph 3**

188. **Paragraph 3** makes provision for calculating the probation period applying to prohibited conduct standard contracts. A probation period is the period for which an occupation contract remains a periodic standard contract as a result of a court order under section 116. The period is 12 months from the occupation date of the prohibited conduct standard contract, as set out in the order. This is subject to a landlord being able to apply for an extension of the probation period to 18 months under paragraph 4. The landlord may also end the probation period early by giving a notice under paragraph 3(2). The paragraph also makes provision dealing with situations where possession notices are given by the landlord but possession claims are neither brought nor concluded prior to the expiry of the probation period.

### **Paragraph 4**

189. This paragraph enables a landlord to extend the probation period to 18 months. This may be relevant where, for example, there is continuing concern about the conduct of a contract-holder. In such a situation a landlord must notify the contract-holder, at least eight weeks before the probation period is due to end that the landlord wishes to extend the period. A contract-holder has a right to ask for a review of this decision to extend under paragraph 5. Paragraph 4 also sets out what information the notice provided to the contract-holder must contain. The Welsh Ministers may by regulations amend the length of the notice period.

### **Paragraphs 5 and 6**

190. **Paragraph 5(1)** confers a right on a contract-holder to request a review by the landlord of a decision to give a notice of extension under paragraph 4. Paragraph 5(2) sets out the time limit within which the contract-holder must request the review. The landlord must inform the contract-holder of the outcome of this review before the 12 month probation period has ended. If the review confirms the decision to extend, the landlord must provide the contract-holder with a notice including the information set out in paragraph 5(6).

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191. Where the landlord has confirmed their decision to give a notice of extension, the contract-holder may apply to the county court for a review of the decision. Paragraph 6 sets out the time limit for making an application. The court, in considering this review, may confirm or quash the decision.

**Paragraph 7**

192. A contract-holder who is at least six months into the probation period may apply to the court to end the probation period. The probation period can only be ended if the court is satisfied of the matters set out in sub-paragraph (3).

**Paragraph 8**

193. At the end of the probation period, a prohibited conduct standard contract is replaced with a secure contract. This paragraph sets out the terms that are to apply to the contract in default of agreement by the landlord and contract-holder, subject to incorporation of fundamental and supplementary terms.
194. Where a secure contract arises following a prohibited conduct standard contract there is no requirement for the landlord to provide the contract-holder with an address to which documents can be sent under any term of the contract which incorporates section 39(1). The address of the landlord will not have altered as a consequence of the change from a prohibited conduct standard contract to a secure contract.

**Section 56 – Power to amend section 55**

195. This allows the Welsh Ministers to amend section 55 by making regulations.

**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 contact-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 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



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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.

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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
  - 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.

## ***Chapter 9 - Landlord's Consent***

### ***Section 84 – Landlord's consent: reasonableness***

249. Any request from a contract-holder to do something which requires the landlord's consent must be in writing. A landlord can agree the request (and can agree subject to any reasonable conditions if they wish) or refuse it, although a refusal must not be unreasonable. The landlord has 14 days from the request to ask for further information before making a decision. Any request for further information must not be unreasonable.
250. In deciding whether it is reasonable to withhold consent to the adding of a joint contract holder (see sections 49 and 50), to various forms of 'dealing' with the contract (see section 57 and 58), to a transfer of a secure contract to a potential successor (see sections 114 and 115) or to a transfer of a secure contract to another secure contract-holder (see sections 118 and 119), the circumstances set out in Schedule 6 will also be relevant.
251. Where a landlord does not give or refuse consent within the relevant period (which is the period of one month from the date of the request, or in the event of a landlord requesting more information, one month from the date that information is provided), the landlord is treated as having given unconditional consent. Similarly, if the landlord consents subject to conditions, and the landlord does not give the contract-holder written notice of the conditions at the same time as the consent is given, the landlord is treated as having consented without conditions.
252. Where consent has been refused, or granted subject to certain conditions, a contract-holder may request a written explanation from the landlord of the reasons for the decision. If the explanation is not given within one month of the date that the person requests the explanation, the landlord is treated as having given unconditional consent.

### ***Section 85 - Application to court relating to consent***

253. This section confers a right on a person who requests consent to apply to the court on the grounds that the landlord has unreasonably refused consent or attached unreasonable conditions to any consent given. The court may overturn a landlord's refusal to consent, or may declare that the landlord is treated as having consented without any conditions, or without any conditions it deems unreasonable, or it may ask the landlord to reconsider the request.

### ***Section 86 – Landlord's consent: timing***

254. This section relates to the timing of consent. In circumstances where a contract-holder requires the landlord's consent to do something, for example, to make alterations to

the property, the consent can be given retrospectively by the landlord. However, this does not apply to adding additional contract-holders to the contract, nor to transferring the contract to another person (or to a transferral of a joint contract-holder's rights and obligations under the contract).

## ***Chapter 10 - Compensation***

### ***Section 87 – Compensation for failures relating to provision of written statements etc.***

255. This section sets out the other sections in the Act under which a landlord may become liable to pay compensation to the contract-holder. If a landlord becomes liable under any of those sections, section 87 applies for the purpose of calculating how much compensation is to be paid.
256. The compensation that is payable for any particular day is equivalent to the amount of rent that is payable under the contract for that day. A contract-holder may apply to the court for an order increasing the amount of compensation, if they believe the landlord's failure to provide a written statement of the contract or a written statement relating to a variation was intentional. The contract-holder can also apply for an increase if the written statement of the contract was incomplete or incorrect. In such circumstances, the court may increase the compensation to a maximum of double the original amount payable in respect of any particular day.

### ***Section 88 – Right of set off***

257. This section provides a contract-holder with a right of 'set-off'. Where this section is incorporated as a term of the contract without modification, if a landlord is required to pay a contract-holder compensation for failing to comply with a term of the contract that requires a written statement of the contract, a written statement of variation or information about the landlord to be provided (see list of relevant provisions in section 87), the contract-holder may withhold rent to the value of the outstanding compensation.