

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 - Provisions Applying Only to Periodic Standard Contracts

Chapter 3 - Variation of Contracts

Section 122 - Variation

309. Where a term of a periodic standard contract incorporates this section without modification it will provide that the contract may only be varied in accordance with terms that incorporate sections 123 to 127 or as a consequence of legislation made by the National Assembly for Wales or Parliament. The approach is similar to the approach for secure contracts (see section 103). This section is a fundamental provision, and section 122(1)(b) and (2) are fundamental provisions which must be incorporated without modification.

Section 123 – Variation of rent and Section 124 – Variation of other consideration

310. Both of these sections are fundamental provisions, to be incorporated as fundamental terms of a periodic standard contract if either rent or other consideration is payable (though they can be left out or modified in accordance with section 20). Terms that incorporate these sections without modifications will set out how the terms of the contract as to rent or other consideration (which are terms relating to key matters) may be varied. The contract-holder under a periodic standard contract must be given two months' notice of any change in the amount of rent or other consideration payable. The provisions allow for annual variation.

Section 125 – Variation of other terms

311. If this section is incorporated as a term of a periodic standard contract without modification, subject to the restrictions set out in a term of the contract that incorporates section 127, the fundamental, supplementary and additional terms of a periodic standard contract may be varied by agreement between the landlord and the contract-holder or, if the contract incorporates section 126 and 173 (landlord's notice to end contract), by the landlord giving the contract-holder notice.

Section 126 - Variation by landlord of other terms: notice procedure

312. If a term of a periodic standard contract incorporates section 126 without modification, a landlord may vary a term of the contract without the agreement of the contract-holder (subject to the limitations set out in a term of the contract that incorporates section 127). This section should be read together with sections 173 to 180.

313. In order to vary a term of the contract without the contract-holder's agreement, the landlord must provide the contract-holder with a notice detailing the proposed variation at least two months before the variation takes effect. The notice must also state that it serves as a notice under the term of the contract that incorporates section 173 (landlord's

notice to end contract). If the contract-holder does not give written consent to the variation before it is due to take effect, the landlord may seek possession of the property under a term of the contract that incorporates section 173 (landlord's notice).

314. If a fundamental term of the contract incorporates subsection (5) and section 173 then, so long as the landlord has complied with the requirements for giving a notice of variation, he or she is to be treated as having given the required notice under the term of the contract that incorporates section 173 (landlord's notice ground for seeking possession).
315. If this section is incorporated without modification, the landlord will be prevented from giving the notice (informing the contract-holder that unless they consent to a variation, the landlord will make a possession claim) within the first four months of occupancy. This has the effect of preventing any notice taking effect as a landlord's notice seeking possession (see section 173) within the first six months of occupancy.
316. Similarly, a landlord may not give the notice of variation if he or she is prevented from giving a notice under a term of the contract that incorporates section 173 due to not complying with terms that incorporate sections 175 and 176. This ensures that a landlord cannot use a notice of variation as a means of ending the contract when the landlord is prevented from giving a landlord's notice to end the contract.

Section 127 - Limitation on variation

317. The purpose of section 127, together with section 122, is to ensure that the parties to a periodic standard contract cannot, at any time during the life of the contract, vary the contract so as to subvert the provisions of this Act that deal with the incorporation and modification of fundamental provisions (see section 20 and 21). The paragraphs that follow summarise the effect of section 127 in greater detail but, generally, no variation will be permitted during the life of the contract that would result in the contract including terms that would not have been permitted under section 20 or 21 had they been included at the outset, or not including terms that would have been required to be included at the outset under section 20 or 21.
318. A fundamental term of a contract that incorporates this section will limit how terms of periodic standard contracts can be varied (in the same way as a term incorporating section 108 limits how terms of secure contracts can be varied). Fundamental terms incorporating subsections (1) and (2) will prohibit certain fundamental terms from being varied under any circumstances (unless they are varied as a result of legislation).
319. A fundamental term of a contract that incorporates subsection (3) will provide that a variation of any other fundamental term will have no effect unless, as a result of the variation, the fundamental provision which the term incorporated would still be incorporated without modification or, in the contract-holder's opinion, the non-incorporation or incorporation with modification improves his or her position. This means that, if a term of the contract does not incorporate one of the fundamental provisions listed in subsection (2), it can be modified or left out under certain circumstances. But unless the contract-holder is of the opinion that the modification (or removal) improves his or her position, only very limited changes are likely to be permissible.
320. Similarly, a variation will be of no effect if it would mean that the fundamental term would be incompatible with any of the fundamental terms that cannot be varied (that is, ones that incorporate the fundamental provisions listed in subsection (2)).
321. Fundamental terms of a contract that incorporate subsections (4) and (5) will limit the way terms can be varied so that they cannot conflict with any fundamental terms (unless the variation results from legislation).

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

322. To ensure that the restriction on varying terms cannot be altered, this section is itself a fundamental provision which must be incorporated into occupation contracts without modification.

Section 128 – Written statement of variation

323. Where this section is incorporated without modification, if a variation has been made in accordance with the contract, or as a result of legislation, the landlord must either provide a written statement of the terms varied or a written statement of the whole occupation contract with the varied terms included. But this obligation won't apply if the landlord has already provided a notice of variation (under terms of the contract that incorporate sections 123, 124(2) to (4) or 126(1)(b) and (2) to (6)). The written statement must be provided within 14 days of the date on which the contract was varied, and the landlord cannot charge a fee for providing it.

Section 129 – Failure to provide written statement etc.

324. A landlord who fails to provide a written statement in accordance with a term of the contract that incorporates section 128 is liable to pay the contract-holder compensation under section 87. This section also provides that interest accrues on the compensation if the landlord fails to provide the statement.