

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 - Termination Etc. of Occupation Contracts

Chapter 5 - Termination of Periodic Standard Contracts

Section 168 to 172 - Contract-holder's notice and minimum notice period

400. These sections provide that the contract-holder under a periodic standard contract may end the occupation contract by giving at least four weeks' notice to the landlord.
401. These sections are essentially the same as the provisions in Chapter 4 on the termination of secure contracts by contract-holders, discussed above.

Section 173 – Landlord's notice and Section 174 - Minimum notice period

402. **Section 173** provides that the landlord under a periodic standard contract may end that contract by giving the contract-holder notice that he or she must give up possession of the dwelling on a date specified in the notice. Where this section is not incorporated within an occupation contract, the related provisions in sections 125(1)(b) and 126 regarding variation of the contract by the landlord by giving notice will not apply (because those sections concern the power of the landlord to unilaterally vary the contract, and to treat a notice of variation as a notice seeking possession given under the term of the contract incorporating section 173, where the contract-holder does not accept the variation).
403. **Section 174** sets out the minimum notice period. The landlord cannot specify a date by which a person must give up possession which is less than two months from the date on which the notice is given.

Section 175 - Restrictions on section 173: notice may not be given in first four months of occupation

404. A landlord is prevented from giving a notice under section 173 during the first four months of occupation. In the case of a substitute occupation contract (defined in subsection (3)), the four-month period is calculated from the occupation date of the original contract (also defined in subsection (3)). This section has the effect of preventing a landlord from obtaining possession of a dwelling using a landlord's notice during the first six months of a person's occupation of the dwelling. Section 20 provides that this section must be incorporated without modification in all periodic standard contracts, unless the contract does not incorporate section 173 as a term or is of a type listed in Schedule 9.

Schedule 9 – Standard contracts to which limits in sections 175, 185(2) and 196 (landlord’s notice during first six months of occupation) do not apply

405. This Schedule sets out the types of standard contract to which the restrictions (under sections 175, 185(2) and 196) on issuing a landlord’s notice, or the use of a landlord’s break clause, do not apply. For various differing reasons, these contracts need to retain the landlord’s ability to terminate the contract within the first six months of occupation. They include, for example, service occupancies, where it would not be reasonable for an employer, on the termination of an employment contract, to have to wait six months to recover possession of accommodation provided in relation to that employment.

Section 176 – Restrictions on section 173: breach of information requirements

406. Where a landlord has not provided the contract-holder with a written statement of their contract, as required by section 31(1) or (2), they may not give a possession notice under section 173. Furthermore, the landlord is prevented from giving a notice under section 173 for a period of six months starting with the day the written statement is provided.
407. Where a landlord has failed to provide the contract-holder with a contact address, or any of the other information required under the term of the contract incorporating section 39, the landlord is prevented from giving a notice under section 173 until information is provided.

Section 177 - Restrictions on section 173: breach of security and deposit requirements

408. A landlord may not give a possession notice under the term of the contract incorporating section 173 where security has been taken in a form that does not comply with section 43 (that is, a form other than money or a guarantee), and has not been returned.
409. A landlord is also prevented from giving a notice under the term of the contract incorporating section 173 (subject to the exception below) where: a deposit has not been protected under an authorised deposit scheme; a deposit has been paid but the landlord has not met the initial requirements of the deposit scheme; or a deposit has been paid but the information required by the term of the contract incorporating section 45(2)(b) (that is, information prescribed by regulations under section 45(3)) has not been provided to the contract-holder.
410. The restrictions in the paragraph above on giving notice do not apply where a deposit has been returned or matters relating to an application to the court under paragraph 2 of Schedule 5 have come to an end. Section 20 provides that this section must be incorporated without modification in all periodic standard contracts, unless the contract does not incorporate section 173 as a term.

Section 178 – Recovery of possession

411. Where a landlord has given a notice under the term of the contract incorporating section 173, the landlord may make a claim for possession to the court. Section 215 provides that the court must make an order for possession if satisfied that the ground in section 178(1) is made out (subject to any defence based on the contract-holder’s human rights, and to the application of section 217, on retaliatory evictions, addressed below).

Section 179 – Restriction on section 178

412. A landlord may not make a possession claim under the term of the contract incorporating section 178 before the date specified in the notice given under the term incorporating section 173, or after two months have elapsed from that date. This, therefore, provides for a two-month period in which the landlord is able to make a possession claim.

Section 180 – Termination of contract on landlord’s notice

413. Where the contract-holder gives up possession of the dwelling on or before the date specified in the notice given under the term incorporating section 173, the contract ends on the specified date. Where the contract-holder fails to give up possession on or before that date, the contract ends on the date that the contract-holder gives up possession or, if a possession order is made, on the date determined in accordance with section 206 (effect of possession order).
414. However, if the landlord withdraws the possession notice before the contract ends, and the contract-holder does not object to this in writing within a reasonable period, the notice will cease to have effect.

Section 181 - Serious rent arrears

415. Where the contract-holder has fallen into ‘serious rent arrears’ the landlord may make a possession claim to the court on this ground. ‘Serious rent arrears’ is defined in subsection (2); for example, it arises where there is at least two months’ unpaid rent where rent is payable monthly, or eight weeks’ unpaid rent where rent is payable weekly.
416. Subject to any available defence based on the contract-holder’s human rights, the court must make a possession order if it is satisfied the contract-holder was in serious rent arrears at the time the possession notice was given and also when the possession claim is heard by the court (see section 216).

Section 182 - Restrictions on section 181

417. The landlord must give the contract-holder a possession notice stating the ground of serious rent arrears before making a possession claim on that ground. The landlord under most periodic standard contracts may make a possession claim after 14 days have passed from the date on which notice was given. The landlord under an introductory standard contract or a prohibited conduct standard contract may not make the claim before the end of the period of one month starting with the day on which the notice was given; this is to allow time for any review under Chapter 8 of this Part to take place. In either case, the claim must be made within six months of the date on which notice was given. Subsection (4) provides for these restrictions to be fundamental provisions incorporated into periodic standard contracts, and sets out which descriptions of periodic standard contract the specific restrictions apply to.

Section 183 – Relevance of events under fixed term standard contract

418. Where the contract-holder remains in occupation following the end of the fixed term under a fixed term standard contract, and a periodic standard contract has arisen under section 184(2), the landlord may make a possession claim based on a notice given during the fixed term. Such a notice could be either a possession notice or a notice given under section 186 (landlord’s notice in connection with end of fixed term).
419. The provisions relating to a landlord’s notice set out in sections 174 to 177, 179 and 180 apply to a notice, and any related possession claim, under the term of a contract incorporating section 186.
420. In any possession notice given in relation to a periodic standard contract arising under section 184(2) the landlord may rely on events that occurred during the fixed term period.
421. This section is a fundamental provision but only in relation to a periodic standard contract which arises at the end of a fixed term standard contract, under section 184(2).