

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.

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.

Chapter 2 - Nature of Contracts Which Can Be Made Etc. by Community Landlords and Private Landlords

Section 9 – Community landlords and Section 10 – Private landlords

72. Section 9 sets out the persons who are community landlords under the Act. In addition to local authorities (defined in section 243) and registered social landlords (social housing providers such as housing associations registered under Part 1 of the Housing Act 1996), who provide the majority of social housing in Wales, the definition includes certain other providers, and potential providers, such as providers registered in England but which provide social housing in Wales.
73. The Welsh Ministers may amend the definition of community landlord. This is intended to ensure that the Act can reflect changes in the way social housing is provided.
74. Under section 10, a landlord who is not a community landlord, but who rents dwellings within Wales, is a private landlord for the purposes of the Act.

Section 11 – Contract made with community landlord

75. Under the Act the default contract issued by a community landlord is the secure contract, except where the following exceptions apply:
- The occupation contract is within Schedule 3 (see below) and the landlord gives notice under section 13 that it is to be a standard contract.
 - The contract is a prohibited conduct standard contract because of an order under section 116 (this is where a standard contract comes into force by order of the court as a result of prohibited conduct - see below).
 - A fixed term standard contract has come to an end and the contract-holder remains in the property. In such a situation (in the absence of any new fixed term contract being made) the parties are treated as having made a periodic standard contract. This exception also applies if a new contract is made at the end of a fixed term, which allows the contract-holder to occupy the same dwelling from a date falling immediately after the fixed term contract ends (see section 184(6)).
 - A trespasser is occupying the property as his or her home and makes payments which are accepted by the community landlord that owns the property (see section 238).

***Schedule 3 - Occupation contracts made with or adopted by community landlords
which may be standard contracts***

76. This Schedule lists a range of occupation contracts which arise in certain circumstances or which concern certain kinds of accommodation. Under sections 11(2) and 12(4), each such occupation contract may be a standard contract, regardless of the fact that it is made by, or adopted by (that is, taken over by) a community landlord. The relevant types of occupation contract are as follows:

- *Occupation contracts by notice* - An occupation contract that would not be an occupation contract unless notice of that fact had been given under paragraph 1 or 3 of Schedule 2 (see notes above). The relevant contracts are contracts that allow someone other than the contract-holder to occupy a dwelling, contracts where no rent is payable, contracts of holiday accommodation, contracts relating to care home accommodation, 'temporary expedients' and contracts relating to shared accommodation .
- *Supported accommodation* - An occupation contract for supported accommodation (a supported standard contract).
- *Introductory occupation* - An introductory standard contract. Generally, an introductory standard contract is a new contract which is made with a community landlord (or a contract adopted by a community landlord), where the landlord has given the contract-holder a notice under section 13 stating that it will be an introductory standard contract during the 'introductory period' (see section 16 and Schedule 4, and the first exception in sections 11 and 12). An introductory standard contract will not arise where the contract-holder previously held a secure contract with a community landlord, for example where a transfer of contracts has taken place between secure contract-holders.
- *Accommodation for asylum seekers or displaced persons* - Occupation contracts relating to accommodation for asylum seekers (asylum seekers are individuals awaiting the outcome of applications for asylum) or persons with temporary protection under the Immigration Rules (which is given to persons where there is a mass influx of displaced persons).
- *Accommodation for homeless persons* - An occupation contract made in connection with a local housing authority's homelessness functions under Part 2 of the Housing (Wales) Act 2014 and to which the rules set out in Part 4 of Schedule 2 apply (see notes above).
- *Service occupancy: general* - Occupation contracts where the contract-holder is employed by one of the employers listed in the paragraph (generally, the kind of employers that would be required to issue a secure contract), and the employee is required by a term of his or her employment contract to occupy the dwelling (for example school caretakers, sheltered accommodation wardens).
- *Service occupancies in relation to the police or fire and rescue services* - Occupation contracts provided in connection with working for the police or for a fire and rescue service.
- *Student accommodation* - An occupation contract relating to accommodation provided to a student studying a course designated by the Welsh Ministers, at a further education institution (an institution providing education beyond school leaving age, below the level of a degree) or at a higher education institution (an institution providing education at degree level or beyond).
- *Temporary accommodation: land acquired for development* - An occupation contract relating to accommodation which is being provided on a temporary basis on land which has been acquired for development.

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(c.1) which received Royal Assent on 18 January 2016*

- *Temporary accommodation: persons taking up employment* - An occupation contract relating to temporary accommodation provided to people who have moved to a local authority area where they were not previously resident to take up employment, whilst they seek permanent accommodation.
- *Temporary accommodation: short term arrangements* - An occupation contract which relates to a dwelling that has been let to the community landlord to be used as temporary housing accommodation, and the terms on which it has been let requires the community landlord to return the dwelling to the lessor at the end of a specified period, or when required by the lessor. The lessor must not himself be a community landlord.
- *Temporary accommodation: accommodation during works* - An occupation contract which relates to accommodation which is provided on a short term basis whilst work is carried out on the contract-holder's usual home. A standard contract can be offered in these circumstances if the temporary accommodation is provided by a different landlord and the contract-holder did not previously have a secure contract.
- *Accommodation which is not social accommodation* - An occupation contract where the contract-holder is a key worker or the making of the occupation contract was not subject to the normal 'allocation rules'. Allocation rules address how housing is allocated to those in need of accommodation. Whether a person is a key worker for these purposes will be determined in accordance with regulations made by the Welsh Ministers.
- *Dwellings intended for transfer* - An occupation contract relating to accommodation which has been acquired, built or developed by a community landlord, a registered social landlord (see section 1 of the Housing Act 1996) or a private registered provider of social housing (see section 80(3) of the Housing and Regeneration Act 2008) with the intention of transferring it to a fully mutual housing association or a co-operative housing association. A fully mutual housing association or co-operative housing association is a housing association where the residents are also members of the association and therefore direct its management (see section 1(2) of the Housing Associations Act 1985).

77. The Welsh Ministers may amend the Schedule by regulation.

Section 12 – Contract adopted by community landlord

78. Where a community landlord becomes the landlord under an existing secure contract (for example where a local authority's housing stock is transferred to a housing association), that secure contract will continue. Where a community landlord becomes the landlord under an existing standard contract because of a transfer of the rights of the landlord under a sub-occupation contract (under sections 62 or 66) it will continue as a standard contract.
79. In all other circumstances, the contract will end when the community landlord becomes the landlord, and will be replaced with a secure contract, unless one of the following exclusions apply:
- The occupation contract is within Schedule 3 (see above) and the landlord gives notice under section 13 that it is to be a standard contract.
 - The contract is a prohibited conduct standard contract because of an order under section 116 (where a standard contract is created by order of the court as a result of prohibited conduct - see below).

- The contract was a fixed term standard contract that has ended and become a periodic standard contract, or a new contract has been made at the end of a fixed term (see section 184(6)).
- A trespasser is occupying the property as his or her home and makes payments which are accepted by the community landlord that owns the property (see section 238).
- The contract is a fixed term standard contract for which a premium was paid (for example through buying a leasehold property with less than 21 years remaining before the lease expires) and the contract-holder has not elected (before the community landlord became the landlord) for the contract to remain a fixed term standard contract (see section 15).

Section 13 – Notice of standard contract

80. Where a community landlord wishes to enter into a standard contract, or does not wish for an existing contract it is adopting to become a secure contract, and the contract is of a kind listed in Schedule 3, notice under this section must be given to the contract-holder (see section 11(2)(b) and section 12(4)(b)). The notice must inform the contract-holder of their right to ask a county court to review the landlord's decision to give the notice within 14 days (see section 14).

Section 14 – Review of notice

81. This section applies where a community landlord has given a notice under section 13. The contract-holder, may ask for a review of the landlord's decision by the county court.
82. The court may confirm or quash the decision to give the notice. If the court quashes the original notice, the landlord may give a further notice. If it does so within 14 days of the court's decision, the notice has effect as though it had been given at the time the occupation contract was made or when the community landlord became the landlord, as the case may be. This does not affect the time limit within which the contract-holder may seek a review so, in practice, a contract-holder can apply to the county court again under section 14 for a review of that further notice.

Section 15 – Notice of right to decide to remain on fixed contract

83. As set out in section 12, if a community landlord adopts a fixed term standard contract for which a premium was paid, it will become a secure contract unless the contract-holder elects for their contract to remain as a fixed term standard contract.
84. This section requires that a community landlord gives the contract-holder notice at least one month before it becomes the landlord informing them of their right to elect to remain on a fixed term standard contract.

Section 16 – Introductory standard contracts

85. This section establishes the concept of an 'introductory standard contract'. A new occupation contract made with a community landlord (or a contract adopted by a community landlord) is an introductory standard contract if the landlord gives the contract-holder notice of that fact under section 13. This section provides that introductory standard contracts are periodic standard contracts during the introductory period (generally twelve months unless that period is extended; see Schedule 4). At the end of the introductory period the introductory standard contract ends and is replaced by a secure contract unless a private landlord becomes the landlord under the contract. If a private landlord becomes the landlord before the end of the introductory period, the introductory period will end, and the contract will continue as a standard contract (because of section 17(3)).

86. The introductory standard contract provides less security of occupation than a secure contract. Introductory standard contracts allow community landlords to ascertain, during the introductory period, whether a contract-holder can sustain a secure contract. In instances where the contract-holder has demonstrated that they will not be able to sustain a secure contract, if section 173 is incorporated as a term of the contract without modification, the landlord can seek to terminate the contract by notice, which means that an introductory standard contract can be terminated more swiftly than is possible under a secure contract.

Schedule 4 - Introductory standard contracts

87. This schedule sets out in more detail the arrangements under the Act that apply to introductory standard contracts. Introductory standard contracts are a type of periodic standard contract that can be issued by community landlords, in the first instance for an introductory period of 12 months, instead of issuing a secure contract.
88. A community landlord can also extend the introductory period to a total of 18 months by giving the contract-holder a notice of extension at least eight weeks before the introductory period with otherwise end. The contract-holder can request that the landlord reviews the landlord's decision to seek an extension. Furthermore if, after an internal review of the decision by the landlord, the landlord gives a notice informing the contract-holder that the landlord has decided to confirm the decision, or fails to give notice at all, the contract-holder can apply to the county court for a review of the decision to extend the introductory period.
89. The processes relating to extension, internal review and review by the county court set out in this schedule are very similar to those applying to prohibited conduct standard contracts (see Schedule 7).

Paragraph 1

90. This paragraph sets out what constitutes the introductory period during which an occupation contract granted by a community landlord is a periodic standard contract (because of the exception in paragraph 3 of Schedule 3)
91. Where a community landlord has sought to terminate the contract through making a possession claim, or given notice to the contract-holder of its intention to do so, but the claim has not concluded, the contract will remain a standard contract beyond the introductory period until:
- the notice is withdrawn,
 - the time for making the claim runs out without the claim being pursued,
 - the claim is determined in favour of the contract-holder, or
 - the contract ends without any of those events having happened.

Paragraph 2

92. This paragraph sets out how the date on which the introductory period starts is determined if the contract-holder was a party to an introductory standard contract which ended just as the right to occupy the dwelling under the new introductory standard contract began. In the case of joint contract-holders, the date is the earliest of the dates that would apply if each joint contract-holder was treated individually.

Paragraph 3

93. A landlord may extend the introductory period from 12 months to 18 months. In deciding whether to extend the introductory period, the landlord may consider the

behaviour of the contract-holder(s) and the behaviour of any person who the landlord considers to be living in the dwelling.

94. A community landlord seeking an extension to the introductory period must notify the contract-holder at least eight weeks before the introductory period is due to end. The notice must:
- inform the contract-holder of the decision to extend and the reasons why the landlord is seeking the extension, and
 - inform the contract-holder that they have the right to request the community landlord to review its decision, and set out the time by which such a request must be made.
95. The Welsh Ministers may extend or shorten the period within which notice of extension must be given to the contract-holder in order for the notice to be valid.

Paragraph 4

96. If the contract-holder requests a review, the landlord must review its decision, following which it may confirm or reverse the decision to give the notice. The landlord must notify the contract-holder of the outcome of the review before the day on which introductory period would end if it was not extended.
97. The Welsh Ministers may by regulations set out the procedure to be followed for any review of the notice.

Paragraph 5

98. Where a review has taken place and the landlord gives the contract-holder notice confirming the original decision, or where the landlord fails to notify the contract-holder of the outcome, the contract-holder may apply to the county court for a review of the decision to give the notice of extension. An application must be made within 14 days of the date on which the landlord gives the contract-holder notice of its decision or 14 days from the date by which the landlord should have notified the contract-holder of the decision (that being the day on which the introductory period would have ended, if it hadn't been extended).
99. The court may confirm or quash the decision to give the notice of extension. If the court quashes the decision and the landlord gives the contract-holder a further notice of extension within 14 days of the court's decision, the notice is deemed to comply with the notice requirement in paragraph 3(2) (that is, it is taken to have been given at least eight weeks before the day on which the introductory period would have ended). This does not affect the time limit within which the contract-holder may seek a review so, in practice, the contract-holder's right to ask the landlord (within 14 days of receiving the notice) to review the decision to give the notice then applies again. If the contract-holder requests such a review, the landlord has to give the contract-holder notice of the outcome of the review before the end of the period of 14 days starting with the day on which the contract-holder asked for the review.

Paragraph 6

100. **Paragraph 6** explains how a written statement (which a landlord is required to give the contract-holder if a term of the contract incorporates section 31) can deal with the introductory standard contract and with the secure contract that may arise at the end of an introductory standard contract. If the landlord and the contract-holder have agreed before the end of the introductory period what the terms of the secure contract will be, the landlord may provide a written statement which sets out the terms of both the introductory standard contract and the secure contract which may arise at the end of the introductory period. The written statement can do this either by identifying the terms of the introductory standard contract that will not be terms of the secure contract (for

instance, by marking up the written statement of the introductory standard contract) and setting out the terms that will only apply to the secure contract, or by separately setting out all the terms of the secure contract.

101. Where a landlord has provided a written statement of an introductory standard contract which addresses the secure contract, the statement is not taken to be incorrect merely because it addresses the secure contract. A landlord providing such a statement is treated as having complied with the requirement in section 31 to provide a written statement in relation to the secure contract.
102. Should the introductory period be extended by the landlord (meaning that the occupation date of the secure contract changes) the written statement will not be incorrect merely because it does not set out the new occupation date of the secure contract.

Paragraph 7

103. If the landlord gives the contract-holder a written statement that addresses both the introductory standard contract and the secure contract which may arise at the end of the introductory period, the landlord and contract-holder may, prior to the occupation date of the secure contract, agree to vary the secure contract addressed in the written statement. However, this is subject to sub-paragraphs (2) to (5), which provide:
 - that there are limits on the extent to which fundamental terms can be varied (see section 108(1) to (5),
 - that the landlord is required to give a written statement of a variation (and that compensation is payable if the landlord fails to comply) (see sections 109(1) to (3) and 110),
 - that the specific requirements for varying rent or other consideration set out in sections 104(1) to (3) or section 105(1)(b) and (2) to (4) apply, and
 - that the variation of rent or other consideration can take effect from the occupation date of the secure contract, or from a later date.
104. **Section 20** provides for this paragraph to be a fundamental provision which is incorporated without modification as a term of all introductory standard contracts where the written statement is a 'relevant written statement' (that is, it addresses both the introductory standard contract and the secure contract that may follow).

Paragraph 8

105. **Paragraph 8** explains what the terms of a secure contract will be when an introductory standard contract ends and is replaced with a secure contract and the terms of the secure contract have not been addressed in the written statement in accordance with paragraph 6(2) (see note on paragraph 6 above). If the landlord and the contract-holder have agreed the terms of the secure contract, the terms of the contract are as agreed. If the landlord and contract-holder have not agreed the terms of the secure contract, paragraph 8(4) explains what the terms of the secure contract are to be.

Paragraph 9

106. Where a secure contract arises following an introductory standard contract, and the contract incorporates section 39(1) without modification, there is no requirement under that term for the landlord to provide the contract-holder with an address to which documents can be sent. The address of the landlord will not have altered as a consequence of the change from an introductory standard contract to a secure contract.

Section 17 – Contract made with or adopted by private landlord

- 107. An occupation contract made between a private landlord and a contract-holder will by default be a standard contract. But if a landlord has given notice to the contract-holder (before or when the contract is made) that the contract is a secure contract it will be a secure contract.
- 108. Where a private landlord becomes the landlord under an existing secure contract or an existing standard contract, the contract will remain, respectively, a secure or standard contract.

Chapter 3 - Fundamental Provisions of Occupation Contracts

- 109. In addition to property-specific information such as the amount of rent and the address (referred to as key matters in the Act), occupation contracts will comprise fundamental terms (terms which incorporate the fundamental provisions in the Act), supplementary terms (terms which will incorporate supplementary provisions set out in regulations to be made by the Welsh Ministers under the power in section 23 of the Act), and any additional terms agreed between the landlord and contract-holder.
- 110. [Chapter 3](#) introduces the concept of fundamental provisions, which are provisions of the Act that are incorporated as fundamental terms of occupation contracts. Many fundamental provisions can be incorporated with modifications or not incorporated at all in an occupation contract, provided the landlord and the contract-holder agree, and the contract-holder is of the opinion that the position of the contract-holder is improved as a result. However, some fundamental provisions must always be incorporated without modifications, and these are listed in section 20(3).
- 111. [Schedule 1](#) lists the fundamental provisions that apply to each type of occupation contract. Generally, these Explanatory Notes do not separately identify fundamental provisions, but do identify where fundamental provisions must be incorporated without modification into occupation contracts, or where they are otherwise worthy of further explanation.

Section 18 - Fundamental provisions and Section 19 – Fundamental terms and fundamental provisions: definitions

- 112. Fundamental provisions are one of the key aspects of this Act and will be a key component of an occupation contract, where they will be reflected as fundamental terms. The Act specifies which fundamental provisions apply to which contracts. In some cases fundamental provisions are to be incorporated into all occupation contracts (for example the need to provide a written statement of the contract) and in other cases there are provisions which apply only to certain contracts.
- 113. Model written statements of contracts prescribed by the Welsh Ministers in the exercise of their power under section 29 will contain the fundamental and supplementary terms applying to each type of occupation contract, and these will reflect the relevant fundamental provisions in the Act, incorporated without modification.
- 114. In practice, the fundamental terms of the contract will very closely reflect the wording of the fundamental provisions of the Act, and section 33 sets out the limits of acceptable editorial changes.

Section 20 – Incorporation and modification of fundamental provisions

- 115. This allows landlords and contract-holders to agree not to incorporate fundamental provisions into an occupation contract (with the exception of the fundamental provisions listed in subsection (3), which must always be incorporated without modification). However, this is subject to the test that, in the opinion of the contract-holder, non-incorporation of the term would improve his or her position. Landlords and contract-holders are also able, by agreement, to modify fundamental provisions,

provided the contract-holder is of the opinion that the modification would improve his or her position. For example, the contract-holder may be of the opinion that his or her position would be improved by not incorporating the fundamental provision in section 173 (which allows the landlord to end the contract by giving notice), or by modifying the notice period required under section 174 to require the landlord to give more than the minimum two months' notice. If the landlord was in agreement, section 20 would allow those terms not to be incorporated, or to be incorporated with modifications.

116. The fundamental provisions set out in section 20(3) must be incorporated as fundamental terms of every occupation contract to which they apply, without any modification. An example of a fundamental provision that must be incorporated without modification is section 55, which is about prohibiting anti-social behaviour and other conduct. The reasons why these provisions are given this special status differ from provision to provision, and are explained in the notes on the sections themselves.
117. Under sections 34 and 35, if a written statement hasn't been provided or is incomplete, a contract-holder may apply to the court for a declaration of the terms of the contract. If that happens, and the contract-holder is not at fault, each fundamental and supplementary provision applicable to the contract will be treated as incorporated without modification, unless the contract-holder claims that it was not incorporated, or that it was incorporated with modifications.

Section 21 – Effect of non-incorporation and modification of fundamental provisions

118. If a landlord and contract-holder agree to modify or not to incorporate a fundamental provision, section 21 provides for the automatic modification or non-incorporation of other fundamental and supplementary provisions that are capable of not being incorporated, or of being modified, in order to give effect to the agreement. For example, if the fundamental provision allowing for a possession claim to be made on the ground of serious rent arrears under a periodic standard contract (section 181) was not incorporated, the relevant fundamental provision restricting the use of that possession ground (in section 182) should also not be incorporated. This section ensures that that would happen.
119. Automatic modification and automatic non-incorporation are subject to the same constraints as an agreement to modify or not to incorporate; they must not result in the modification or non-incorporation of any of the fundamental provisions listed in section 20(3). This means that if, as a result of having agreed to modify or not to incorporate a fundamental provision, a fundamental provision listed in section 20(3) would not be incorporated or would be incorporated with modifications, the agreement not to incorporate the original provision or to incorporate that provision with modification (under subsection (1) or (2)) is of no effect.
120. The fundamental terms of an occupation contract can also be changed after the contract is made (and this is referred to in the Act as a 'variation'). However, there are limits to this right and the limits vary between secure contracts (see Chapter 2 of Part 5), periodic standard contracts (see Chapter 2 of Part 6) and fixed term standard contracts (see Chapter 2 of Part 7). Each of those Chapters is discussed further below.

Section 22 – Powers in relation to fundamental provisions

121. This enables the Welsh Ministers to make regulations which specify that any provision of an Act of Parliament or of a Measure or Act of the National Assembly for Wales (including any provision of this Act), or of subordinate legislation is, or is not, a fundamental provision. This will allow the Welsh Ministers to make certain existing provisions fundamental provisions, and to ensure that new rights and obligations in future legislation can become fundamental provisions.

Chapter 4 - Supplementary Provisions of Occupation

Contracts

122. Chapter 4 introduces the concept of supplementary provisions, which are provisions which will be set out in regulations, and will be incorporated as supplementary terms within occupation contracts. As with most fundamental provisions, supplementary provisions can be incorporated with modifications or not incorporated at all in an occupation contract. However, unlike with fundamental provisions, there is no restriction regarding the non-incorporation or modification of supplementary provisions having to improve the position of the contract-holder. Therefore, the modification or non-incorporation could have the effect of improving the position of either the landlord or the contract-holder.

Section 23 – Supplementary provisions

123. This section provides for supplementary provisions to be set out in regulations made by the Welsh Ministers. Examples of supplementary provisions would include provisions relating to maintenance of a garden, or a requirement to pay council tax and utility bills.

Section 24 – Incorporation and modification of supplementary provisions

124. The default position is that supplementary provisions are incorporated as supplementary terms of an occupation contract. But this section provides for landlords and contract-holders to agree that a supplementary provision is either not incorporated or incorporated with modifications. However, where not incorporating a supplementary provision or modifying a supplementary provision would render the related supplementary term incompatible with a fundamental term of the contract, the agreement not to incorporate the original supplementary provision or to incorporate it with modification has no effect. If a landlord fails to provide a written statement of the contract, or provides an incomplete statement, sections 34 and 36 allow the contract-holder to apply to the court for a declaration of the terms. If that happens, and the contract-holder is not at fault, each supplementary provision applicable to the contract will be treated as incorporated without modification, unless the contract-holder claims that it was not incorporated, or that it was incorporated with modifications.

Section 25 – Effect of non-incorporation and modification of supplementary provisions

125. If a landlord and contract-holder agree to modify or not to incorporate a supplementary provision, section 25 provides for the automatic modification or non-incorporation of other supplementary provisions in order to give effect to the agreement.

Chapter 5 - Key Matters and Additional Terms of Occupation Contracts

Section 26 – Key matters of all occupation contracts

126. This section sets out the key matters which must be included in all occupation contracts. These are:
- the address of the dwelling;
 - the occupation date (the date from which the contract-holder is able to occupy the dwelling);
 - the amount of rent or other consideration; and
 - the rental periods (for example weekly or monthly). ‘Rental period’ is defined in Section 252.

Section 27 – Further key matters of standard contracts

127. This section sets out the additional key matters which must be included in all standard contracts. These are:
- whether the contract is periodic or made for a fixed term;
 - if it is made for a fixed term, the term for which it is made (how long does the contract run, when does it begin and when does it end);
 - any periods during which the contract-holder is not entitled to occupy the dwelling as a home (for example, to allow student accommodation to be used for other purposes during vacations periods).

Section 28 – Additional terms

128. This section defines 'additional terms' as any terms other than fundamental terms, supplementary terms and terms relating to key matters. Additional terms can be included in the contract to cover issues such as the keeping of pets. However, such terms cannot conflict with the terms relating to key matters, or with fundamental and supplementary terms.

Chapter 6 - Model Contracts

Section 29 – Model written statement of contract

129. This section provides the Welsh Ministers with a power to issue 'model' written statements of occupation contracts (a landlord is required to provide a written statement of the contract because of section 31).
130. These written statements will include fundamental and supplementary terms which incorporate all of the fundamental and supplementary provisions relevant to each form of contract without modification. So, for example, there will be model written statements for secure, fixed term standard and periodic standard occupation contracts.