

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

INTRODUCTION

What are the terms of an occupation contract?

Fundamental provisions

14. The Act establishes the concept of the ‘fundamental provision’. A fundamental provision is a provision of the Act (generally a section in the Act) which automatically becomes a term of an occupation contract to which it applies.
15. For example, section 45 (which concerns schemes for looking after deposits paid by contract-holders to landlords) is a fundamental provision of *all* occupation contracts. In practice, this means that every occupation contract between a landlord and a contract-holder will contain a term which is, in substance, identical to section 45.
16. A fundamental provision, once it is incorporated into an occupation contract, is referred to in the Act as a ‘fundamental term’ of the contract. A fundamental term of the contract must closely reflect the wording and terminology used in the fundamental provision of the Act which it incorporates; section 33 sets out the limits of acceptable editorial changes.
17. Some fundamental provisions apply only to certain kinds of occupation contract; for example, section 113, which concerns the right to take on a lodger, applies only to secure contracts, and not to standard contracts. Schedule 1 to the Act sets out the fundamental provisions which apply to each kind of occupation contract.
18. Landlords and contract-holders can agree not to have a particular fundamental provision in their contract (in other words, they can choose not to *incorporate* that provision). Or, they can agree to make changes to a fundamental provision. The Act describes a change to a fundamental provision as a ‘modification’.
19. However, there are limitations on the ability to agree to modify, or not to incorporate, a fundamental provision. Firstly, any change must ultimately improve the position of the contract-holder (regardless of whether it improves, or worsens, the landlord’s position). Secondly the fundamental provisions set out in section 20(3) must be incorporated as fundamental terms of every occupation contract they apply to, without changes, regardless of whether the change would improve the contract-holder’s position (section 45, mentioned above, is one such fundamental provision).
20. Fundamental terms of an occupation contract (that is, the terms of the contract which incorporate fundamental provisions) can be changed once the contract has been made; the Act describes a change to a fundamental term as a ‘variation’. However, there are limits to this, and those limits vary between secure contracts (see Chapter 2 of Part 5), periodic standard contracts (see Chapter 3 of Part 6) and fixed term standard contracts (see Chapter 3 of Part 7).