

RENTING HOMES (WALES) ACT 2016

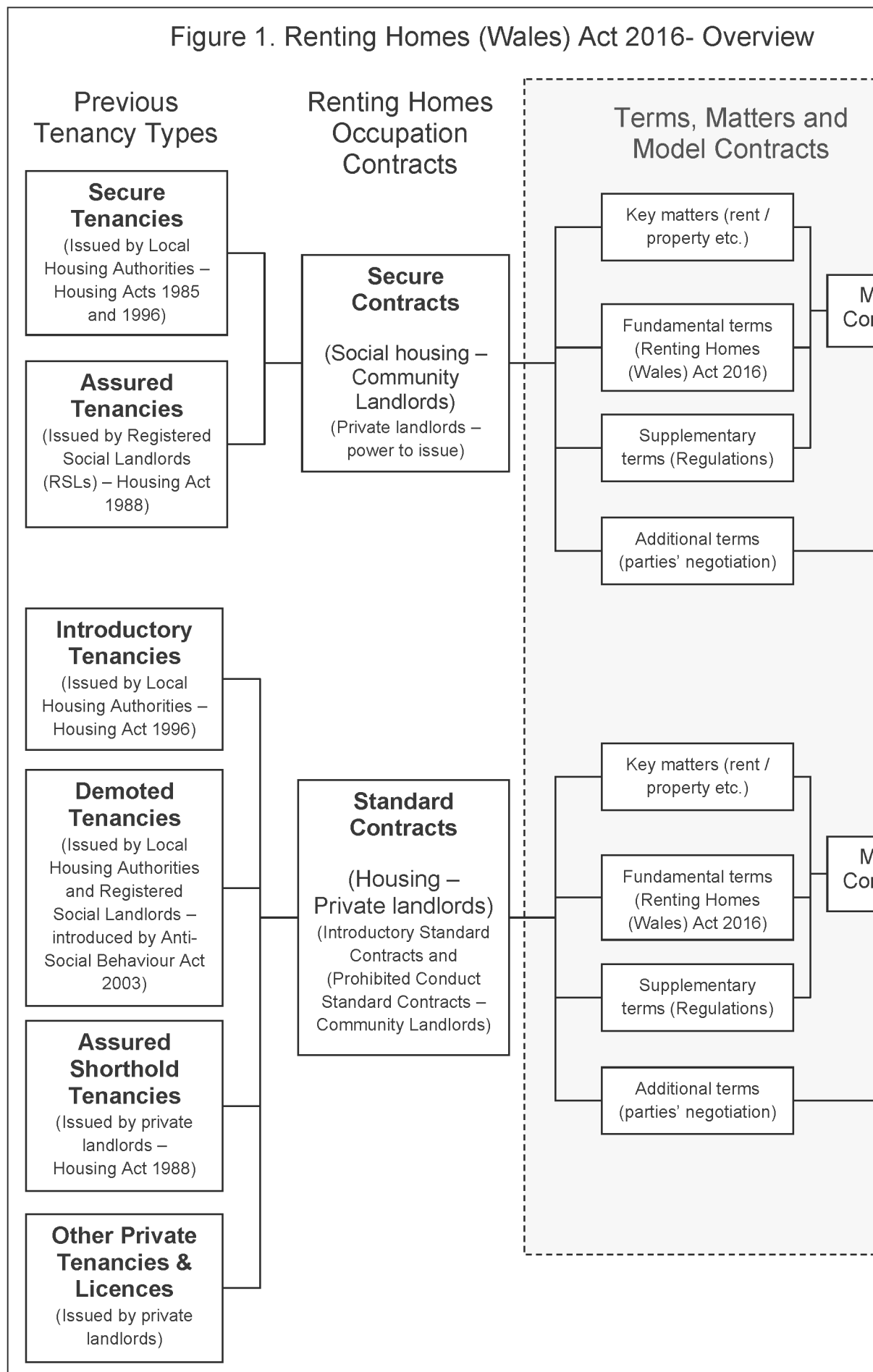
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Renting Homes (Wales) Act 2016 which was passed by the National Assembly for Wales on 17 November 2015 and received Royal Assent on 18 January 2016. They have been prepared by the Education and Public Services Group of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.
2. The Act provides for most tenancies and licences conferring the right to occupy a dwelling as a home to be one of two kinds of ‘occupation contract’: a ‘secure contract’, which is periodic; or a ‘standard contract’, which can be periodic or of a fixed term. Most previously established statutory tenancies are abolished by the Act, being replaced by the appropriate kind of occupation contract. The Act also makes provision as to the terms of occupation contracts, and the setting out of those terms in a written statement of the contract.

Tenancies and licences

3. Generally, people who live in a home they do not own do so under a tenancy or licence. A tenancy is a contract between two or more persons (a tenant or tenants and a landlord) under which the tenant lives in the home. The tenant (and people who live with him or her) does not have to share the dwelling with anyone else, because the tenant has an interest in the land which is subject to the tenancy. Rent is payable by the tenant. A tenancy gives rights to, and imposes obligations on, both the tenant and the landlord.
4. A licence is also a contract between two or more persons (a licensee or licensees and a landlord). The licensee is allowed to live in the dwelling which is the subject of the licence. A key legal difference between a tenancy and licence is that a licensee does not have an interest in the relevant land, and in practice the main difference between a tenancy and a licence is that a licensee does not have the right to sole occupation of the home. So, for example, a lodger will usually be a licensee.
5. The Act will not change this; a person who rents a home in Wales will rent it under a tenancy or licence. But in many respects that distinction will be less important in practice, because the Act makes virtually no distinction between tenancies and licences.
6. The diagram below illustrates how occupation contracts relate to the various kinds of tenancies and licences in existence before they were abolished by the Act.



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which received Royal Assent on 18 January 2016*

7. In effect, the occupation contract, with all of its rights and obligations, will sit on top of the tenancy or licence with a view to helping the parties to the tenancy or licence to have clarity as to what their rights and obligations are, and what the other party's rights and obligations are, regardless of the legal basis for the occupation.
8. This means that, under the Act, the key questions for a tenant or licensee will be:
 - a. whether or not they live in their home under an occupation contract, and
 - b. if so, what kind of occupation contract they have with their landlord.

Is a tenancy or licence an occupation contract?

9. This question can be resolved by reference to section 7 of the Act, which describes the kinds of tenancies and licences that are occupation contracts, and to Schedule 2 to the Act, which sets out various exceptions to section 7. (See the commentary on section 7 and Schedule 2 in these Notes)

If so, what kind of occupation contract is it?

10. This question can be resolved by reference to Chapter 2 of Part 2 of the Act. The two main factors in answering this question are:
 - a. who the landlord is, and
 - b. what has been agreed between the tenant or licensee (referred to in the Act as the 'contract-holder') and the landlord.
11. As a general rule, though the Act does provide for exceptions, an occupation contract made with a 'community landlord' will be a 'secure contract'. 'Community landlord' is defined in section 9; the main kinds of community landlord are local authorities, housing associations and other kinds of registered social landlord, and private registered providers of social housing. A secure tenancy gives the strongest security of occupation (sometimes referred to as 'security of tenure') to the contract-holder.
12. Again as a general rule, subject to exceptions, an occupation contract made with a 'private landlord' will be a 'standard contract'. Any landlord who is not a community landlord is a private landlord for the purposes of the Act.
13. Secure contracts are 'periodic'; this means that they will roll from period to period (generally, from week to week or month to month). Standard contracts can be either periodic or made for a fixed term. Aside from differences relating to security of occupation, there are a range of differences between secure and standard contracts (and between periodic and fixed term standard contracts); these are set out throughout the Act, and are considered in the section-by-section commentary in these Notes.

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

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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).

What are the terms of an occupation contract?

Supplementary provisions

21. Supplementary provisions are provisions set out in Regulations made by the Welsh Ministers under section 23 of the Act. As with fundamental provisions, they are automatically incorporated as terms of all occupation contracts to which they apply. And, as with fundamental provisions, the contract-holder and landlord may agree not to incorporate a supplementary provision or to incorporate the provision with modifications (provided the Regulation which sets out the provision does not prohibit this).
22. There is no requirement that modification or omission of a supplementary provision improves the position of the contract-holder; the only limit is that a change to a supplementary provision must not render the occupation contract incompatible with any relevant fundamental term of the contract.
23. Once a supplementary provision is incorporated into an occupation contract, it becomes a 'supplementary term'. These can be changed once the contract is made; the Act describes a change to a supplementary term as a 'variation'. As with fundamental terms, there are limits on the ability to change supplementary terms, set out in Chapter 2 in Part 5 and Chapter 3 in each of Parts 6 and 7.

What are the terms of an occupation contract?

Terms addressing key matters and additional terms

24. The key matters relating to a contract are set out in sections 26 and 27, and concern things such as the address of the home, the amount of rent and so on. The contract will contain terms which address the key matters.
25. The additional terms of a contract are terms agreed between the landlord and the contract-holder relating to any other matters.

Where are the terms of an occupation contract set out?

26. The Act, in section 31, requires the landlord to give the contract-holder a written statement of the occupation contract within two weeks of the date on which the contract-holder became entitled to live in the home (this date is referred to in the Act as the 'occupation date'). This means a contract can be formed and come into force before the contract-holder has been given the written statement. This reflects current housing and contract law, and is intended to facilitate the provision of housing as swiftly as possible. In practice, it is likely that the written statement will often be given before, or concurrently with, the occupation date.