

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Occupation contracts and Landlords

Chapter 3 - Fundamental Provisions of Occupation Contracts

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.