

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Occupation contracts and Landlords

Chapter 3 - Fundamental Provisions of Occupation Contracts

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.