

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Provisions Applying to All Occupation Contracts

Chapter 4 - Deposits and Deposit Schemes

Section 43 – Form of security

153. If this section is incorporated as a term of the contract without modification, where a contract-holder is required by the landlord to pay a deposit in relation to a dwelling, the landlord can only ask for this deposit in the form of money or a guarantee, for example, a deposit guarantee scheme provided by a local authority for those unable to afford a deposit.

Section 44 – Form of security: county court proceedings

154. Where a landlord requires a contract-holder to provide security in a form other than money or a guarantee, for example an item of jewellery, the contract-holder (or any person who has given the security for the contract-holder) may seek an order in the county court requiring the person who appears to be holding the security to return it.

Section 45 – Requirement to use deposit scheme

155. In accordance with the term of the contract that incorporates this section, a landlord who requires a deposit from a contract-holder must place any deposit received into an authorised deposit scheme (see Schedule 5). A landlord must, within 30 days of receiving the deposit, comply with the initial requirements of the scheme and provide the contract-holder with details of the scheme being used, their rights with regard to the deposit and confirmation that the landlord is complying with the initial requirements of that scheme. Protection of deposits paid by contract-holders is of great importance in practice, and in order to ensure that this protection extends to all contract-holders this section is a fundamental provision in relation to all occupation contracts which must be incorporated without modification.

Section 46 – Deposit schemes: further provision

156. This section introduces Schedule 5. It also highlights the connection between Chapter 4 and sections 177 and 198. In summary, a term of the contract which incorporates section 177 will prevent a landlord who has entered into a periodic standard contract from issuing a notice for possession (under the term of the contract which incorporates section 173) if the landlord is not complying with the requirements of section 43 or section 45. Section 198 makes the same provision in relation to fixed term standard contracts.

Schedule 5 - Deposit schemes: further provision

157. The Act makes provision about deposit scheme requirements. The provisions requiring the use of deposit schemes must be incorporated into all occupation contracts without modification. This means that all occupation contracts will include requirements about deposit schemes, similar to those that currently apply to Assured Shorthold Tenancies. The requirements will apply equally to private and community landlords. Schedule 5 sets out additional provisions relating to the protection of deposits.

Paragraph 1

158. **Paragraph 1** requires the Welsh Ministers to make arrangements for the availability of deposit schemes, and allows the Welsh Ministers to make payments etc. to scheme administrators. The paragraph also includes a power for the Welsh Ministers to make regulations, conferring powers and imposing duties on scheme administrators.

Paragraphs 2 and 3

159. **Paragraph 2** applies where an occupation contract is ongoing. If a landlord does not arrange for a deposit to be held in accordance with an authorised deposit scheme, or fails to comply with certain requirements (including the requirements of section 45(2)), the contract-holder, or a person who paid a deposit on his or her behalf, may apply to the court for a remedy. If the court is satisfied that the landlord has not complied with the requirements, or is not satisfied that the deposit is being held in accordance with an authorised deposit scheme, it must either order the deposit to be repaid or order it to be paid into a custodial deposit scheme (defined in the paragraph), if one is in existence. The court must also order the landlord to pay a sum of money to the applicant, which can be up to three times the amount of the deposit. Paragraph 3 provides a similar right to apply to the court for a remedy in situations where the occupation contract has ended, but the landlord did not comply with certain requirements relating to deposits

Paragraph 4

160. Where the landlord and contract-holder enter into an occupation contract that immediately follows a previous contract (in relation to the same, or substantially the same, dwelling), paragraph 4 provides for the deposit paid in relation to the first contract to apply to the substitute contract, and any further substitute contracts. Therefore, if the landlord complied with the requirements in relation to the deposit with respect to the first contract, there is no requirement to re-protect a deposit.

Section 47 - Deposit schemes: interpretation

161. This section sets out definitions of terms used in the provisions about deposit schemes in the Act.