

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Provisions Applying to All Occupation Contracts

Chapter 7 - Anti-Social Behaviour and Other Prohibited Conduct

180. The Act includes a fundamental provision relating to ‘prohibited conduct’. To ensure universal application, this provision in section 55 must be incorporated without modification as a fundamental term of all occupation contracts. Breach of a term of the contract is a ground for the landlord to seek possession and, if section 159 is incorporated as a term of the contract without modification, the landlord may make a possession claim to the court immediately after giving a possession notice to the contract-holder in reliance on a breach of a term of the contract which incorporates section 55. The court may not make an order for possession unless it considers it reasonable to do so.

Section 55 - Anti-social behaviour and other prohibited conduct

181. In accordance with the term of the contract that incorporates section 55, the contract-holder must not engage, or threaten to engage, in behaviour capable of causing nuisance or annoyance to another person with a right to live in the dwelling or in the locality, or to a person engaged in lawful activity in the dwelling or in the locality. The contract-holder must also not behave in such a way towards the landlord, or a person acting on the landlord’s behalf, in relation to the landlord’s housing management functions.
182. The contract-holder must also not use, or threaten to use, the dwelling, common parts (defined in Section 252) or any part of the building in which the dwelling is located for criminal purposes.
183. It would also be a breach of a term of a contract incorporating section 55 if the contract-holder allowed, incited or encouraged another person living in the dwelling or visiting the dwelling to behave as described above. Furthermore, the contract-holder must not allow, incite or encourage any person to use, or threaten to use, the dwelling for criminal purposes. For the purposes of any term of the contract that incorporates this section, a contract-holder will be in breach of contract if they fail to take action to prevent another person who is living in or visiting the dwelling from behaving in the manner described.

Schedule 7 - Prohibited conduct standard contracts

Paragraph 1

184. Where a community landlord or registered charity has entered into a secure contract, and the contract-holder has breached the fundamental term incorporating section 55 (anti-social behaviour and other prohibited conduct), the landlord may, under section 116, apply to the court for an order ending the secure contract and creating a periodic standard contract in its place.

185. **Paragraph 1** sets out the procedure on an application for an order under section 116. A landlord applying for such an order must give the contract-holder notice, setting out the information specified in paragraph 1(2), unless the court considers it reasonable to dispense with a notice. Paragraph 1(2) also sets the time limits within which an application may be made. Paragraph 1(3) provides that proceedings may be brought on the day the notice is given. Paragraph 1(4) enables the landlord to make a possession claim in the same proceedings.

Paragraph 2

186. Where a periodic standard contract is imposed by order of the court, the terms of the contract are as agreed by the landlord and contract-holder (subject to the requirements regarding incorporation of fundamental and supplementary terms). Where no agreement of terms is reached, then all fundamental and supplementary terms applying to periodic standard contracts will be incorporated without modification and any other terms incompatible with those terms will cease to have effect. Any other terms of the secure contract will apply, subject to those fundamental and supplementary terms. Any rent arrears (or overpayments) under the secure contract become payable under (or are credited to) the periodic standard contract.
187. Where a prohibited standard contract is imposed by a court order, there is no requirement for the landlord to provide the contract-holder with an address to which documents can be sent under any term of the contract which incorporates section 39(1). The address of the landlord will not have altered as a consequence of the change to a prohibited conduct standard contract.

Paragraph 3

188. **Paragraph 3** makes provision for calculating the probation period applying to prohibited conduct standard contracts. A probation period is the period for which an occupation contract remains a periodic standard contract as a result of a court order under section 116. The period is 12 months from the occupation date of the prohibited conduct standard contract, as set out in the order. This is subject to a landlord being able to apply for an extension of the probation period to 18 months under paragraph 4. The landlord may also end the probation period early by giving a notice under paragraph 3(2). The paragraph also makes provision dealing with situations where possession notices are given by the landlord but possession claims are neither brought nor concluded prior to the expiry of the probation period.

Paragraph 4

189. This paragraph enables a landlord to extend the probation period to 18 months. This may be relevant where, for example, there is continuing concern about the conduct of a contract-holder. In such a situation a landlord must notify the contract-holder, at least eight weeks before the probation period is due to end that the landlord wishes to extend the period. A contract-holder has a right to ask for a review of this decision to extend under paragraph 5. Paragraph 4 also sets out what information the notice provided to the contract-holder must contain. The Welsh Ministers may by regulations amend the length of the notice period.

Paragraphs 5 and 6

190. **Paragraph 5(1)** confers a right on a contract-holder to request a review by the landlord of a decision to give a notice of extension under paragraph 4. Paragraph 5(2) sets out the time limit within which the contract-holder must request the review. The landlord must inform the contract-holder of the outcome of this review before the 12 month probation period has ended. If the review confirms the decision to extend, the landlord must provide the contract-holder with a notice including the information set out in paragraph 5(6).

*These notes refer to the Renting Homes (Wales) Act 2016
(c.1) which received Royal Assent on 18 January 2016*

191. Where the landlord has confirmed their decision to give a notice of extension, the contract-holder may apply to the county court for a review of the decision. Paragraph 6 sets out the time limit for making an application. The court, in considering this review, may confirm or quash the decision.

Paragraph 7

192. A contract-holder who is at least six months into the probation period may apply to the court to end the probation period. The probation period can only be ended if the court is satisfied of the matters set out in sub-paragraph (3).

Paragraph 8

193. At the end of the probation period, a prohibited conduct standard contract is replaced with a secure contract. This paragraph sets out the terms that are to apply to the contract in default of agreement by the landlord and contract-holder, subject to incorporation of fundamental and supplementary terms.
194. Where a secure contract arises following a prohibited conduct standard contract there is no requirement for the landlord to provide the contract-holder with an address to which documents can be sent under any term of the contract which incorporates section 39(1). The address of the landlord will not have altered as a consequence of the change from a prohibited conduct standard contract to a secure contract.

Section 56 – Power to amend section 55

195. This allows the Welsh Ministers to amend section 55 by making regulations.