

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Provisions Applying Only to Secure Contracts

Chapter 2 - Variation of Contracts

278. A variation of a contract is a change to the terms of the contract which is made after the contract comes into force. A ‘variation’ is defined in section 247, and includes the removal or addition of terms as well as the amendment of existing terms. Any change to the identity of the landlord or the contract-holder is not a variation (this is dealt with under section 40).

Section 103 – Variation

279. Where a term of a secure contract incorporates this section without modification it will provide that the contract may only be varied in accordance with terms that incorporate sections 104 to 108 or as a consequence of legislation made by Parliament or the National Assembly for Wales. This section is a fundamental provision, and section 103(1)(b) and (2) are fundamental provisions which must be incorporated as terms of secure contracts without modification. This is to ensure that variations of a secure contract do not undermine the operation of the fundamental provisions in the Act, and of supplementary provisions made under the Act.

Section 104 - Variation of rent and Section 105 – Variation of other consideration

280. Both of these sections are fundamental provisions, to be incorporated as fundamental terms of a secure contract if either rent or other consideration is payable (though they can be left out or modified in accordance with section 20). Terms that incorporate these sections without modification will set out how the terms of the contract as to rent or other consideration (which are terms relating to key matters) may be varied. The contract-holder under a secure contract must be given two months’ notice of any change in the amount of rent or other consideration payable. The provisions allow for annual variation.

Section 106 - Variation of fundamental terms

281. If this section is incorporated as a term of a secure contract without modification, fundamental terms in the secure contract may be varied if the landlord and contract-holder agree. Exceptions to this will be set out in the term of the contract that incorporates section 108. Section 108(2) lists certain fundamental provisions that can never be varied (these correspond to the fundamental provisions listed in section 20 which must be incorporated as terms of all secure contract without modification (such as section 55, dealing with prohibited conduct)). Any permitted variation of a fundamental term must also improve the position of the contract-holder.

Section 107 – Variation of supplementary and additional terms

282. If this section is incorporated as a term of a secure contract without modification, supplementary and additional terms of the contract can be varied, either by the landlord and contract-holder agreeing to do so, or by the landlord giving the contract-holder notice that such a term is to be varied. But this is subject to the restrictions on variation that will be set out in the term of the contract that incorporates section 108(4) and (5). Where the variation is by notice, the landlord must give the contract-holder a preliminary notice before the variation is to take place, providing information on the proposed variation and providing a reasonable opportunity for the contract-holder to comment. Having done so, the landlord may then issue a further notice informing the contract-holder of the variation that is to take place and when it will take effect.

Section 108 – Limitation on variation

283. The purpose of this section (together with section 103) is to ensure that the parties to a contract cannot, at any time during the life of the contract, vary the contract so as to subvert the provisions of this Act that deal with the incorporation and modification of fundamental provisions (see section 20 and 21). The paragraphs that follow summarise the effect of section 108 in greater detail but, generally, no variation will be permitted during the life of the contract that would result in the contract including terms that would not have been permitted under section 20 or 21 had they been included at the outset, or not including terms that would have been required to be included at the outset under section 20 or 21.
284. A fundamental term of a contract that incorporates this section will limit how terms of a secure contract can be varied. Fundamental terms incorporating subsections (1) and (2) will prohibit certain fundamental terms from being varied under any circumstances (unless they are varied as a result of legislation).
285. A fundamental term of a contract that incorporates subsection (3) will provide that a variation of any other fundamental term will have no effect unless, as a result of the variation, the fundamental provision which the term incorporated would still be incorporated without modification, or, in the contract-holder's opinion, the non-incorporation or incorporation with modification improves his or her position. This means that, if a term of the contract does not incorporate one of the fundamental provisions listed in subsection (2), it can be modified or left out under certain circumstances. But unless the contract-holder is of the opinion that the modification (or removal) improves his or her position, only very limited changes are likely to be permissible.
286. Similarly, a variation will be of no effect if it would mean that the fundamental term would be incompatible with any of the fundamental terms that cannot be varied (that is, ones that incorporate the fundamental provisions listed in subsection (2)).
287. Fundamental terms of a contract that incorporate subsections (4) and (5) will limit the way terms can be varied, so that they cannot conflict with any fundamental terms (unless the variation results from legislation).
288. To ensure that the ability to vary terms cannot be altered, this section is itself a fundamental provision which must be incorporated into occupation contracts without modification.

Section 109 – Written statement of variation

289. Where this section is incorporated without modification, if a variation has been made in accordance with the contract, or as a result of legislation, the landlord must either provide a written statement of the terms varied or provide a written statement of the whole occupation contract with the varied terms included. But this obligation won't apply if the landlord has already provided a notice of variation (under terms of the

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

contract that incorporate sections 104, 105(2) to (4) or 107(1)(b) and (2) to (6)). The written statement must be provided within 14 days of the date on which the contract was varied, and the landlord cannot charge a fee for providing it.

Section 110 – Failure to provide written statement etc.

290. A landlord who fails to provide a written statement in accordance with a term of the contract that incorporates section 109 is liable to pay the contract-holder compensation under section 87. This section also provides that interest accrues on the compensation if the landlord fails to provide the statement.