

# RENTING HOMES (WALES) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5 - Provisions Applying Only to Secure Contracts**

##### *Chapter 1*

##### *Section 102 – Overview of Part*

277. Sections 103 to 110 set out provisions relating 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 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.

## ***Chapter 3 - Joint Contract-Holders: Withdrawal***

### ***Section 111 – Withdrawal***

291. Where this section is incorporated as a term of a secure contract without modification, if there is more than one contract-holder under the occupation contract, any of those contract-holders may cease to be a party to the contract without bringing the contract to an end.
292. In those circumstances, a contract-holder who intends to leave the secure contract must provide the landlord with a 'withdrawal notice', stating the date on which they intend to cease being a party to the contract. They must also provide the other joint contract-holders with a written warning of their intention to leave the contract and a copy of the withdrawal notice at the same time as they give the notice to the landlord. As additional protection, the landlord must also provide the other contract-holders with a written warning and a copy of the notice.
293. Under a term of the contract that incorporates this provision without modification if, instead of providing a withdrawal notice under this section, a joint contract-holder gives a notice under a term of the contract that incorporates section 163 (contract-holder's notice to end contract), that notice has the same effect as a withdrawal notice.

### ***Section 112 - Withdrawal: power to prescribe time limits***

294. The section places a duty on the Welsh Ministers to prescribe, for the purpose of section 111, a minimum notice period for withdrawing from a joint occupation contract.

## ***Chapter 4 - Dealing***

295. Chapter 4 sets out specific provisions relating to dealing under secure contracts, specifically the ability to take in a lodger and to transfer the contract to a potential successor.

### ***Section 113 – Lodgers***

296. If this section is incorporated as a term of a secure contract without modification, a contract-holder under a secure contract may take in a lodger without obtaining the landlord's permission. 'Lodger' is defined in section 244.

### ***Section 114 and 115 - Transfer to potential successor***

297. If this section is incorporated as a term of a secure contract without modification, a contract-holder under the secure contract may, with the landlord's consent, transfer the

occupation contract to a potential successor or, where there is more than one potential successor, to those successors who wish to be included in the transfer. If there is only one contract-holder, a potential successor is a person who would be qualified to succeed to the contract under section 74 if the contract-holder died (see note above). If there are joint contract-holders, a potential successor is a person who would be qualified to succeed to the contract under section 74 if a joint contract-holder died and, at the time of death, he or she was the only contract-holder.

298. Under section 115, what is reasonable for the landlord to take into account when considering whether to grant consent to a transfer that is requested under a term of the contract that incorporates section 114 is to be determined in accordance with Schedule 6 (and see in particular paragraph 11). Paragraph 12 of Schedule 6 enables the landlord to make it a condition of consent that, if the landlord considers that the probable effect of giving consent is to lengthen substantially the period during which the occupation contract is likely to continue in force, then the potential successor is to be treated as a priority successor or as a reserve successor in relation to the occupation contract.

## ***Chapter 5 - Prohibited Conduct Standard Contracts***

### ***Section 116 - Order imposing periodic standard contract because of prohibited conduct and Section 117 - Conversion to secure contract***

299. This section applies to a secure contract with a community landlord or registered charity, in circumstances where a contract-holder has breached the term incorporating section 55 (anti-social behaviour and other prohibited conduct).
300. Rather than pursue eviction, this section enables the landlord to apply to a court to seek an order to end the secure contract and impose in its place a 'prohibited conduct standard contract', which is a type of periodic standard contract. The court may only make such an order where it is satisfied that the breach occurred, it would otherwise have made an order for possession because of the breach, that the landlord will provide support to the contract-holder in order to prevent further prohibited conduct, and it considers it reasonable to make the order. The Welsh Ministers may issue guidance as to what might be included in a support programme.
301. A prohibited conduct standard contract will last for 12 months, referred to as the 'probation period'. The probation period can be extended to 18 months (see Schedule 7).
302. At the end of the probationary period a prohibited conduct standard contract ends and is replaced by a secure contract, except where paragraph 3(9) of Schedule 7 applies. Paragraph 3(9) applies if a private landlord that is not a registered charity becomes the landlord before the end of the probation period. In those circumstances, the probation period will end, and the contract will continue as a standard contract (because of section 17(3)).
303. **Schedule 7** makes further provisions relating to prohibited conduct standard contracts. The schedule sets out the procedure a landlord must follow to make an application for an order to the court, and explains how the terms of the prohibited conduct standard contract are determined. It also makes provisions regarding the probation period and how it can be extended. A contract-holder can ask the landlord to review the decision to extend the probation period, and can apply for a further review by the county court (if the landlord decides to confirm the decision to give the extension or fails to give a notice of the outcome of the review). A contract-holder may also, after six months, apply to the court for an order to end the probation period early.
304. The provisions in Schedule 7 about working out the probation period, about extending the probation period and about reviews and appeals are very similar to those in Schedule 4 (which deal with introductory standard contracts). See the notes on those provisions in Schedule 4 above.

***Chapter 6 - Provisions Applying Only to Secure Contracts With Community Landlords***

***Section 118 - Transfer to another secure contract-holder and Section 119 - Transfer to another secure contract-holder: landlord's consent***

305. If this section is incorporated as a term of a secure contract without modification, a contract-holder who has a contract with a community landlord may, with the landlord's consent, transfer their contract to another contract-holder of a community landlord who also has a secure contract.
306. Under section 119, what is reasonable for the landlord to take into account when considering whether to grant consent is to be determined in accordance with Schedule 6 (and see in particular paragraph 13). Paragraphs 14 of Schedule 6 enable the landlord to make it a condition of consent that, if the transfer is part of a wider series of transfers, it will only be granted if all the other transfers in that series take place. The landlord may also make it a condition that, if the person to whom the contract is being transferred is a priority or reserve successor in relation to his or her existing contract (see notes on sections 74 to 77 above), he or she will be treated as a successor of that kind under the contract transferred to him or her.