

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 - Provisions Applying Only to Periodic Standard Contracts

Chapter 3 - Variation of Contracts

Section 127 - Limitation on variation

317. The purpose of section 127, together with section 122, is to ensure that the parties to a periodic standard 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 127 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.
318. A fundamental term of a contract that incorporates this section will limit how terms of periodic standard contracts can be varied (in the same way as a term incorporating section 108 limits how terms of secure contracts 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).
319. 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.
320. 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)).
321. 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).
322. To ensure that the restriction on varying terms cannot be altered, this section is itself a fundamental provision which must be incorporated into occupation contracts without modification.