

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9 - Termination Etc. of Occupation Contracts

Chapter 10 – Possession Claims: Powers of Court in Relation to Discretionary Grounds

(This Chapter Applies to All Occupation Contracts)

Section 209 – Breach of contract ground

449. Where a landlord makes a possession claim on the ground of breach of contract the court may only make a possession order if it considers it reasonable to do so. The court is able to make a possession order even if the contract-holder was no longer in breach of the contract before the landlord made the possession claim.

450. This section also introduces Schedule 10.

Schedule 10 - Orders for Possession on discretionary grounds etc.: reasonableness

451. **Schedule 10** sets out the circumstances that the court must consider (so far as the court thinks they are relevant) in relation to making a possession order on the ground of breach of contract. The court has discretion as to whether to make the order (in contrast to the ‘absolute grounds’, where, broadly speaking, the court must make the order sought if the ground is made out). This Schedule also applies where the court is considering whether to make an order on an estate management ground (see section 210), and where the court is considering whether to adjourn proceedings or postpone the giving up of possession under a possession order (see section 211).

452. **Paragraphs 4 to 13** set out the various circumstances. In summary, these are:

- Circumstances as regards the contract-holder;
- Circumstances as regards the landlord;
- Circumstances as regards other persons;
- Whether the landlord has offered or undertakes to offer a new occupation contract;
- Circumstances which are relevant to a possession claim on ground of breach of contract;
- Circumstances which are relevant to a possession claim concerning section 55 (prohibited conduct);
- Circumstances which are relevant to a possession claim on estate management Ground G of the estate management grounds (accommodation not required by reserve successor); and

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

- Circumstances which are relevant to a possession claim on estate management Ground H (departing joint contract-holder).

453. Paragraph 14 sets out a circumstance to which a court must not have regard (subject to any other duty to have regard to that circumstance); that is, the likelihood of assistance being provided to the contract-holder in the event of him or her becoming homeless.

Section 210 – Estate management grounds

454. Where a landlord makes a possession claim under an estate management ground (see section 160), the court may only make an order if it considers it reasonable to do so (see Schedule 10, addressed above) and is satisfied that the landlord will make suitable alternative accommodation available to the contract-holder (see Schedule 11).

455. Where a landlord makes a possession claim on Ground B (redevelopment), and the redevelopment scheme is subject to conditions, the court must be satisfied that such conditions have been, or will be, met before it can make the order. Any costs awarded for reasonable expenses to the contract-holder under section 160(4) should be agreed between the landlord and the contract-holder, but can be determined by the court and recovered from the landlord as a civil debt. A civil debt is a debt which can be enforced by the court.

456. This section also (along with section 222) introduces Schedule 11, which sets out the matters to be considered in determining whether alternative accommodation is suitable.

Schedule 11 - Suitable alternative accommodation

457. This Schedule applies in relation to possession orders under an estate management ground. It also applies in relation to an order made under section 222 (appeal following possession for abandonment), which provides the court with a power to order a landlord to provide suitable alternative accommodation.

458. Schedule 11 makes provision about determining whether, in any specific case, suitable alternative accommodation will be available. In particular, paragraph 4 sets out a number of matters which the court must consider.

Section 211 – Powers to adjourn proceedings and postpone giving up of possession

459. The court may adjourn possession proceedings made on the ground in section 157 (breach of contract) or on an estate management ground (see section 160) for such period or periods as it considers reasonable. Where the court makes a possession order under section 209 (breach of contract) or section 210 (estate management grounds), it may suspend the giving up of possession for such period or periods as it thinks fit.

460. Where under this section the court has adjourned proceedings or postponed the giving up of possession, it must impose conditions on the contract-holder in relation to any rent arrears and the continued payment of any rent until the proceedings are concluded, unless it considers that to do so would cause exceptional hardship to the contract-holder or be unreasonable in any other way.

461. The court may impose any other conditions that it thinks appropriate and can discharge the order for possession against the contract-holder if it considers that the required conditions have been met. The circumstances set out in Schedule 10 (addressed above) must be considered by the court, so far as it thinks them relevant, when making a decision on whether to adjourn proceedings or postpone the giving up of possession.