Renting Homes (Wales) Act 2016

2016 anaw 1

PART 5

PROVISIONS APPLYING ONLY TO SECURE CONTRACTS

VALID FROM 01/12/2022

CHAPTER 1

OVERVIEW

102 Overview of Part

(1) Chapters 1 to 5 of this Part apply only to secure contracts, and address—
- (a) variation of secure contracts,
- (b) withdrawal of joint contract-holders,
- (c) dealing (that is, taking a lodger and transferring the contract), and
- (d) the imposition of prohibited conduct standard contracts (where the landlord is a community landlord or registered charity).

(2) Chapter 6 contains a fundamental provision about transfer of a secure contract to a person who is a contract-holder under another secure contract; this fundamental provision is applicable to secure contracts under which the landlord is a community landlord.

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CHAPTER 2

VARIATION OF CONTRACTS

103 Variation

(1) A secure contract may not be varied except—
  (a) in accordance with sections 104 to 107, or
  (b) by or as a result of an enactment.

(2) A variation of a secure contract (other than by or as a result of any enactment) must be in accordance with section 108.

(3) This section is a fundamental provision which is incorporated as a term of all secure contracts; section 20 provides that subsections (1)(b) and (2) of this section—
  (a) must be incorporated, and
  (b) must not be incorporated with modifications.

104 Variation of rent

(1) The landlord may vary the rent payable under a secure contract by giving the contract-holder a notice setting out a new rent to take effect on the date specified in the notice.

(2) The period between the day on which the notice is given to the contract-holder and the specified date may not be less than two months.

(3) Subject to that—
  (a) the first notice may specify any date, and
  (b) subsequent notices must specify a date which is not less than one year after the last date on which a new rent took effect.

(4) This section is a fundamental provision which is incorporated as a term of all secure contracts under which rent is payable.

105 Variation of other consideration

(1) Where consideration other than rent is payable under a secure contract, the amount of consideration may be varied—
  (a) by agreement between the landlord and the contract-holder, or
  (b) by the landlord in accordance with subsections (2) to (4).

(2) The landlord may give the contract-holder a notice setting out a new amount of consideration to take effect on the date specified in the notice.

(3) The period between the day on which the notice is given to the contract-holder and the specified date may not be less than two months.

(4) Subject to that—

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(a) the first notice may specify any date, and
(b) subsequent notices must specify a date which is not less than one year after the last date on which a new amount of consideration took effect.

(5) This section is a fundamental provision which is incorporated as a term of all secure contracts under which consideration other than rent is payable.

106 Variation of fundamental terms

(1) A fundamental term of a secure contract may be varied by agreement between the landlord and the contract-holder (subject to section 108).

(2) This section is a fundamental provision which is incorporated as a term of all secure contracts.

107 Variation of supplementary and additional terms

(1) A supplementary or additional term of a secure contract may be varied (subject to section 108)—
(a) by agreement between the landlord and the contract-holder, or
(b) by the landlord giving a notice of variation to the contract-holder.

(2) Before giving a notice of variation the landlord must give the contract-holder a preliminary notice—
(a) informing the contract-holder that the landlord intends to give a notice of variation,
(b) specifying the proposed variation and informing the contract-holder of its nature and effect, and
(c) inviting the contract-holder to comment on the proposed variation within the time specified in the notice.

(3) The specified time must give the contract-holder a reasonable opportunity to comment.

(4) The notice of variation must specify the variation effected by it and the date on which the variation takes effect.

(5) The period between the day on which the notice of variation is given to the contract-holder and the date on which the variation takes effect may not be less than one month.

(6) When giving a notice of variation the landlord must also provide the contract-holder with such information as the landlord considers necessary to inform the contract-holder of the nature and effect of the variation.

(7) This section is a fundamental provision which is incorporated as a term of all secure contracts.

108 Limitation on variation

(1) A fundamental term of a secure contract incorporating any of the fundamental provisions to which subsection (2) applies may not be varied (except by or as a result of an enactment).

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(2) This subsection applies to the following fundamental provisions—
- (a) section 103(1)(b) and (2) and this section,
- (b) section 45 (requirement to use deposit scheme),
- (c) section 52 (joint contract-holder ceasing to be a party to the occupation contract),
- (d) section 55 (anti-social behaviour and other prohibited conduct),
- (e) section 148 (permissible termination),
- (f) section 149 (possession claims),
- (g) section 155 (death of sole contract-holder), and
- (h) section 158 (securing contract by use of false statement).

(3) A variation of any other fundamental term (other than by or as a result of an enactment) is of no effect—
- (a) unless as a result of the variation—
  - (i) the fundamental provision which the term incorporates would be incorporated without modification, or
  - (ii) the fundamental provision which the term incorporates would not be incorporated or would be incorporated with modification, but [F1]... the effect of this would be that the position of the contract-holder is improved;
- (b) if the variation (regardless of whether it is within paragraph (a)) would render the fundamental term incompatible with a fundamental term which incorporates a fundamental provision to which subsection (2) applies.

(4) A variation of a term of a secure contract is of no effect if it would render any term of the contract incompatible with a fundamental term (unless that fundamental term is also varied in accordance with this section in a way that would avoid the incompatibility).

(5) Subsection (4) does not apply to a variation made by or as a result of an enactment.

(6) This section is a fundamental provision which is incorporated as a term of all secure contracts; section 20 provides that this section—
- (a) must be incorporated, and
- (b) must not be incorporated with modifications.

Textual Amendments

F1 Words in s. 108(3)(a)(ii) omitted (7.6.2021) by virtue of Renting Homes (Amendment) (Wales) Act 2021 (asc 3), s. 19(3), **Sch. 5 para. 2(2)**

109 Written statement of variation

(1) If a secure contract is varied in accordance with the contract or by or as a result of an enactment the landlord must, before the end of the relevant period, give the contract-holder—
- (a) a written statement of the term or terms varied, or
- (b) a written statement of the occupation contract as varied,

unless the landlord has given notice of the variation in accordance with section 104, 105(2) to (4) or 107(1)(b) and (2) to (6).

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(2) The relevant period is the period of 14 days starting with the day on which the contract is varied.

(3) The landlord may not charge a fee for providing a written statement under subsection (1).

(4) This section is a fundamental provision which is incorporated as a term of all secure contracts.

110 Failure to provide written statement etc.

(1) If the landlord fails to comply with a requirement under section 109 the landlord is liable to pay the contract-holder compensation under section 87.

(2) The compensation is payable in respect of the relevant date and every day after the relevant date until—

(a) the day on which the landlord gives the contract-holder a written statement of the term or terms varied, or of the contract as varied, or

(b) if earlier, the last day of the period of two months starting with the relevant date.

(3) Interest on the compensation is payable if the landlord fails to give the contract-holder a written statement on or before the day referred to in subsection (2)(b).

(4) The interest starts to run on the day referred to in subsection (2)(b) at the rate prevailing under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 (c. 20) at the end of that day.

(5) The relevant date is the day on which the contract was varied.

(6) Subsections (1) to (5) do not apply if the landlord's failure to comply with the requirement is attributable to an act or omission of the contract-holder.

(7) If under section 109 the landlord gives the contract-holder a written statement of the contract as varied, sections 36 and 37 (incomplete and incorrect statements) apply to the statement as if **[**[F2], in subsection (3) of both of those sections, for the words from "starting" to the end there were substituted " starting with the day on which the contract was varied "**]** .

Textual Amendments

F2 Words in s. 110(7) substituted (7.6.2021) by Renting Homes (Amendment) (Wales) Act 2021 (asc 3), s. 19(3), **Sch. 5 para. 4(a)**

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CHAPTER 3

JOINT CONTRACT-HOLDERS: WITHDRAWAL

VALID FROM 01/12/2022

111 Withdrawal

(1) A joint contract-holder under a secure contract may withdraw from the contract by giving a notice (a "withdrawal notice") to the landlord.

(2) The withdrawal notice must specify the date on which the joint contract-holder intends to cease to be a party to the contract (the "withdrawal date").

(3) The joint contract-holder must give a written warning to the other joint contract-holders when he or she gives the withdrawal notice to the landlord; and a copy of the withdrawal notice must be attached to the warning.

(4) The landlord must give a written warning to the other joint contract-holders as soon as reasonably practicable after the landlord receives the withdrawal notice; and a copy of the withdrawal notice must be attached to the warning.

(5) The joint contract-holder ceases to be a party to the contract on the withdrawal date.

(6) A notice given to the landlord by one or more (but not all) of the joint contract-holders that purports to be a notice under section 163 (contract-holder's notice to end contract) is to be treated as a withdrawal notice, and the date specified in the notice is to be treated as the withdrawal date.

(7) Subsection (3) does not apply to a notice which is treated as a withdrawal notice because of subsection (6).

(8) This section is a fundamental provision which is incorporated as a term of all secure contracts.

112 Withdrawal: power to prescribe time limits

The Welsh Ministers must prescribe supplementary provisions specifying a minimum time period between the date on which a notice under section 111 is given to the landlord, and the date specified in the notice.

Commencement Information

I1 S. 112 in force at 5.8.2016 for specified purposes by S.I. 2016/813, art. 2(a), **Sch. Pt. 1**

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CHAPTER 4

DEALING

Lodgers

113 Lodgers

(1) The contract-holder under a secure contract may allow persons to live in the dwelling as lodgers.

(2) This section is a fundamental provision which is incorporated as a term of all secure contracts.

Transfers

114 Transfer to potential successor

(1) The contract-holder under a secure contract may transfer the contract as described in this section, but only if the landlord consents.

(2) The contract-holder may transfer the contract to—
  (a) a potential successor, or
  (b) if there are two or more potential successors, all of the potential successors who wish to be included in the transfer.

(3) If there is a sole contract-holder a potential successor is a person who, under section 74, would be qualified to succeed the contract-holder if the contract-holder died immediately before the transfer.

(4) If there are joint contract-holders a potential successor is a person who, under section 74, would be qualified to succeed a joint contract-holder if—
  (a) the joint contract-holder died immediately before the transfer, and
  (b) when the joint contract-holder died he or she was the sole contract-holder.

(5) This section is a fundamental provision which is incorporated as a term of all secure contracts.

115 Transfer to a potential successor: landlord's consent

Where a landlord refuses consent or consents subject to conditions to a transfer described in section 114, what is reasonable for the purposes of section 84 (landlord's consent) is to be determined having regard to Schedule 6.

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CHAPTER 5

PROHIBITED CONDUCT STANDARD CONTRACTS

116 Order imposing periodic standard contract because of prohibited conduct

(1) If the landlord under a secure contract is a community landlord or a registered charity, the landlord may apply to the court for an order under this section on the ground that the contract-holder is in breach of section 55 (anti-social behaviour and other prohibited conduct).

(2) The effect of an order under this section is—
- (a) to end the secure contract from a date specified in the order, and
- (b) if the contract-holder remains in occupation after the specified date, to create a periodic standard contract whose occupation date is the date specified in the order (and which is a periodic standard contract until the end of the probationary period).

(3) The court may make an order under this section only if it is satisfied that—
- (a) the contract-holder is in breach of section 55,
- (b) it would have made an order for possession on the ground in section 157 (breach of contract) in reliance only on that breach,
- (c) the landlord will make available to the contract-holder a programme of social support the aim of which is the prevention of prohibited conduct, and
- (d) it is reasonable to make the order.

(4) The Welsh Ministers may issue guidance as to the activities and services (including assistance, advice and counselling services) that may be included in a programme of social support for the purposes of subsection (3).

(5) Schedule 7 makes provision about probation periods, the procedure for obtaining an order under this section, and about the terms of a periodic standard contract created under this section.

(6) In this Act "prohibited conduct standard contract" means a contract which is a periodic standard contract created because of an order under this section, and in relation to which the probation period has not yet ended.

Commencement Information

I2 S. 116(4) in force at 5.8.2016 for specified purposes by S.I. 2016/813, art. 2(b), **Sch. Pt. 2**

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117 Conversion to secure contract

(1) A periodic standard contract which arose because of an order under section 116 and which subsists at the end of the probation period—
- (a) ends at the end of the probation period, and
- (b) is replaced with a secure contract that has an occupation date falling immediately after that period ends.

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(2) But subsection (1) does not apply if the probation period ends because of paragraph 3(9) of Schedule 7.

(3) Schedule 7 makes provision about the terms of a secure contract which arises at the end of a probation period.

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CHAPTER 6

PROVISIONS APPLYING ONLY TO SECURE CONTRACTS WITH COMMUNITY LANDLORDS

118 Transfer to another secure contract-holder

(1) The contract-holder under a secure contract under which the landlord is a community landlord may transfer the contract as described in this section, but only if the landlord consents.

(2) The contract-holder may transfer the contract to a person who—

(a) before the transfer is a contract-holder under a secure contract under which the landlord is a community landlord, and

(b) immediately before the transfer will cease to be the contract-holder under the contract mentioned in paragraph (a).

(3) This section is a fundamental provision which is incorporated as a term of all secure contracts under which the landlord is a community landlord.

119 Transfer to another secure contract-holder: landlord's consent

Where a landlord refuses consent or consents subject to conditions to a transfer described in section 118, what is reasonable for the purposes of section 84 (landlord's consent) is to be determined having regard to Schedule 6.

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