

# **RENTING HOMES (AMENDMENT) (WALES) ACT 2021**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 1 – Landlord’s notice under periodic standard contract: minimum notice period***

17. The notice period applicable to a section 173 notice is set out in section 174 of the 2016 Act. Section 1 of the Act provides for the minimum notice period for a section 173 notice to be increased from two months to six months.
18. **Section 1** also inserts new section 174A into the 2016 Act. It provides that, in respect of certain periodic standard contracts, the minimum notice period for a section 173 notice remains 2 months. These contracts are listed in new Schedule 8A to the 2016 Act, (inserted by Schedule 1 to the Act).

#### ***Section 2 – Landlord’s break clause under fixed term standard contract: minimum notice period***

19. This section amends the minimum notice period applicable to a landlord’s break clause from two months to six months, to be consistent with the notice period in respect of periodic standard contracts under section 174.
20. This section also inserts new section 195A into the 2016 Act. It provides that, for certain fixed term standard contracts, the minimum period of notice to be specified in a notice under a landlord’s break clause remains 2 months. These contracts are listed in new Schedule 8A to the 2016 Act (inserted by Schedule 1 to the Act).

#### ***Section 3 – Standard contracts with minimum notice period of two months***

21. **Section 3** introduces Schedule 1 to the Act, which inserts new Schedule 8A into the 2016 Act (discussed above).

#### ***Schedule 1 – New Schedule 8A to the 2016 Act***

22. New Schedule 8A lists those standard occupation contracts to which not less than two months’ notice can be given under a section 173 notice (see section 1 of this Act) or landlord’s break clause (see section 2 of this Act), rather than six months. These are descriptions of contracts under which it is considered reasonable for a landlord to be able to obtain possession within a shorter timeframe than the six month notice period applying generally to a section 173 notice and a landlord’s break clause. These contract descriptions include: prohibited conduct standard contracts (which can be imposed in response to a breach of section 55 of the 2016 Act (anti-social behaviour and other prohibited conduct); accommodation for students in higher education, where their landlord is a higher education institution; a supported standard contract (in relation to supported accommodation – see section 143 of the 2016 Act); temporary

accommodation for homeless persons, and service occupancies (where the contract-holder is required to occupy the dwelling under his or her contract of employment).

23. Schedule 8A may be amended by regulations by virtue of paragraph 13 of that Schedule. This will allow for other descriptions of contracts to be added to the Schedule. Regulations made under paragraph 13 of Schedule 8A to the 2016 Act are subject to the affirmative procedure (see the amendment to section 256 of the 2016 Act in Schedule 6 to the Act).

***Section 4 – Landlord’s notice under periodic standard contract: when notice may be given***

24. Section 175 of the 2016 Act imposes a restriction on when a landlord may give a section 173 notice to end a periodic standard contract.
25. If the contract is not a “substitute occupation contract”, the landlord cannot give a section 173 notice within the first four months of occupation starting with the “occupation date” of the contract. If the contract is a substitute occupation contract, the landlord cannot give a section 173 notice within the first four months of occupation starting with the occupation date of the “original contract”. For the meaning of “substitute occupation contract”, “original contract” and “occupation date” see sections 175(3) and 245 of the 2016 Act.
26. [Section 4](#) of the Act amends section 175 to the 2016 Act so that these periods are increased from four months to six months.

***Section 5 – Landlord’s break clause under fixed term standard contract: when notice may be given***

27. Section 196(1) of the 2016 Act states that a landlord cannot give notice to end a fixed term standard contract under a landlord’s break clause during the first four months of occupation.
28. [Section 5\(1\)\(a\)](#) of the Act amends section 196(1) of the 2016 Act so that the four month restriction is increased to 18 months.
29. [Section 5\(1\)\(b\)](#) of the Act removes section 196(2) and (3) from the 2016 Act. These provided that if the contract was a substitute occupation contract, the restriction imposed by section 196 applied from the occupation date of the original contract.
30. The amendment means that whether or not the contract is a substitute occupation contract is no longer relevant. The restriction imposed by section 196 will apply from the occupation date of each new fixed term standard contract agreed between the landlord and contract-holder.

***Section 6 – Restrictions on giving notice under section 173 or 186 or under a landlord’s break clause: breaches of statutory obligations***

31. [Section 6\(2\)](#), (3) and (4) of the Act inserts new sections 176, 186A and 197 into the 2016 Act. These sections each introduce new Schedule 9A to the 2016 Act (which is inserted by Schedule 2 to the Act).
32. New Schedule 9A to the 2016 Act contains certain restrictions on the giving of a notice under section 173, section 186 and a landlord’s break clause. These relate to breaches of statutory obligations.
33. [Section 6\(5\)](#) of the Act amends the 2019 Act. It inserts a new section 20 into the 2019 Act, which refers to new Schedule 9A to the 2016 Act. It also removes Schedule 3 to the 2019 Act from the 2019 Act itself. This is because Schedule 3 to the 2019 Act made amendments to the 2016 Act that are now replicated in new Schedule 9A or are no longer relevant to the 2016 Act.

34. **Section 6(6)** of the Act introduces Schedule 2 to the Act, which inserts new Schedule 9A into the 2016 Act.

***Schedule 2 – New Schedule 9A to the 2016 Act***

35. **Schedule 2** to the Act inserts new Schedule 9A into the 2016 Act. Schedule 9A lists certain restrictions on the giving of a notice under section 173, section 186 and under a landlord’s break clause where there has been a breach of certain statutory requirements.
36. The Welsh Ministers can amend Schedule 9A by regulations. The affirmative procedure applies to any such regulations (see the amendment to section 256 of the 2016 Act in Schedule 6 to the Act).

***Section 7 – Restrictions on giving further landlord’s notices under periodic standard contract***

37. **Section 7** inserts a new section 177 into the 2016 Act. The previous version of section 177 of the 2016 Act imposed a restriction on the giving of a section 173 notice where there had been a failure to comply with the security and deposit requirements of the 2016 Act. Provision about this is now made in Schedule 9A to the 2016 Act.
38. New section 177(1), (2) and (3) apply when a landlord:
- a. has given the contract-holder a notice under section 173 of the 2016 Act (“the first section 173 notice”);
  - b. has then withdrawn the first section 173 notice; and
  - c. wants to give the contract-holder a further section 173 notice.
39. Apart from in the situation described below, the landlord cannot give the contract-holder a further section 173 notice for a period of six months. This period starts with the day on which the first section 173 notice is withdrawn. This provision is intended to prevent a landlord from giving and withdrawing a series of section 173 notices.
40. However, under section 177(3), the landlord is able to give one further section 173 notice to the contract-holder if it is given during the period of 28 days starting with the day on which the first section 173 notice was given. This provision is aimed at accommodating landlords that may have made a mistake with the first section 173 notice.
41. Section 180(3) of the 2016 Act makes further provision about the withdrawal of a section 173 notice.
42. New section 177(4) and (5) apply when a landlord has given the contract-holder a section 173 notice but the landlord has not made a possession claim based on that section 173 notice within the period for making the claim under the 2016 Act.
43. Section 179 of the 2016 Act sets out the period during which a landlord can make a claim for possession of the dwelling after giving the contract-holder a section 173 notice.
44. Under new section 177(4) and (5), if the landlord does not make the possession claim within this period, the landlord cannot give the contract-holder another section 173 notice for a period of six months. This six month period starts with the last day that the landlord could have made the possession claim under section 179(1)(b) of the 2016 Act.

***Section 8 – Withdrawal of landlord’s notice under section 173 and under a landlord’s break clause***

45. **Section 8(2)** amends section 180(3) of the 2016 Act, which makes provision about when a notice under section 173 ceases to have effect if it is withdrawn by the landlord.

*These notes refer to the Renting Homes (Amendment) (Wales)  
Act 2021 (c.3) which received Royal Assent on 7 April 2021*

Section 180(3) only applies if the landlord withdraws the section 173 notice before the contract has ended.

46. In order to withdraw a section 173 notice, the landlord must give the contract holder a notice to that effect, i.e. a notice stating that the section 173 notice is withdrawn.
47. Under the amendments to section 180(3) of the 2016 Act by section 8(2) of the Act, whether the section 173 notice ceases to have effect will depend on when the notice of withdrawal is given and whether the contract-holder objects to the section 173 notice being withdrawn.
48. If the landlord withdraws the section 173 notice within 28 days of the day on which the section 173 notice was given, it is irrelevant whether the contract-holder objects to it being withdrawn.
49. If the landlord withdraws the section 173 notice after the period of 28 days from the day on which the section 173 notice was given, the section 173 notice will only cease to have effect if the contract-holder does not object to it being withdrawn. This objection must be in writing and must be made within a reasonable period of the notice of withdrawal being given to the contract-holder.
50. **Section 8(3)** amends section 201(3) of the 2016 Act, which makes provision about when a notice given under a landlord's break clause ceases to have effect if it is withdrawn by the landlord. The amendments made to section 201(3) are equivalent to and have the same effect as the amendments to section 180(3) described above.

***Section 9 – Restriction on giving notice under section 173 and under a landlord's break clause following retaliatory possession claim***

51. **Section 9(2)** inserts new section 177A into the 2016 Act. The previous version of section 177A of the 2016 Act imposed a restriction on the giving of a section 173 notice when the landlord was in breach of certain provisions of the 2019 Act. Provision about this is now made in Schedule 9A to the 2016 Act.
52. The new section 177A provides for a further restriction on the giving of a notice under section 173.
53. It applies where a landlord makes a possession claim on the ground that they have given the contract-holder a section 173 notice (see section 178 of the 2016 Act) and the Court refuses to make a possession order because it thinks the claim is a "retaliatory claim"(see section 217 of the Act). Section 177A provides that the landlord cannot give the contract-holder another section 173 notice for a period of 6 months from the day on which the Court refused to make the order for possession.
54. **Section 9(3)** inserts new section 198 into the 2016 Act. The previous section 198 of the 2016 Act imposed a restriction on the giving of a notice under a landlord's break clause where the landlord had failed to comply with the security and deposit requirements contained in the 2016 Act. Provision about this is now made in Schedule 9A to the 2016 Act.
55. The new section 198 imposes a further restriction on the giving of a notice under a landlord's break clause, identical to that imposed by new section 177A in relation to section 173 notices (discussed above).

***Section 10 – Notice in connection with end of term of fixed term standard contracts restricted to certain contracts***

56. This section amends section 186 of the 2016 Act so that the ability to end fixed term standard contracts by the giving of a notice under section 186 is limited to those types of contracts listed in new Schedule 9B to the 2016 Act.

57. **Section 10(3)** introduces Schedule 3 to the Act, which inserts new Schedule 9B into the 2016 Act.

***Schedule 3 – New Schedule 9B to the 2016 Act***

58. New Schedule 9B lists those fixed term standard contracts that can be ended by giving notice under section 186 of the 2016 Act. These are descriptions of contracts under which it is considered reasonable for a landlord to have greater certainty over the ability to regain possession, in comparison to fixed term contracts generally. These contract descriptions include: a supported standard contract (in relation to supported accommodation - see section 143 of the 2016 Act); temporary accommodation for homeless persons; and service occupancies (where the contract-holder is required to occupy the dwelling under his or her contract of employment).
59. Schedule 9B may be amended by regulations by virtue of paragraph 11 of that Schedule. Any regulations made under that paragraph are subject to the affirmative procedure (see the amendment to section 256 of the 2016 Act in Schedule 6 to the Act).

***Section 11 – Landlord’s break clause restricted to certain fixed term standard contracts***

60. This section amends section 194 of the 2016 Act so that a landlord’s break clause may only be incorporated in a fixed term standard contract for a term of two years or more, or a fixed term standard contract of a description listed in new Schedule 9C to the 2016 Act.
61. New Schedule 9C to the 2016 Act is inserted by Schedule 4 to the Act. Section 11(2) of the Act introduces Schedule 4 to the Act.

***Schedule 4 – New Schedule 9C to the 2016 Act***

62. New Schedule 9C lists those fixed term standard contracts that can contain a landlord’s break clause whether or not they are made for a term of two years or more. These are descriptions of fixed term standard contracts under which it is considered reasonable for a landlord to be able to give notice under a break clause in the first two years of the contract. The contract descriptions include: a supported standard contract (in relation to supported accommodation - see section 143 of the 2016 Act); temporary accommodation for homeless persons; and service occupancies (where the contract-holder is required to occupy the dwelling under his or her contract of employment).
63. Schedule 9C may be amended by regulations by virtue of paragraph 11 of that Schedule. Any regulations made under that paragraph are subject to the affirmative resolution procedure (see the amendment to section 256 of the 2016 Act in Schedule 6 to the Act).

***Section 12 – Landlord’s request to vary periodic standard contract terms: removal of additional notice procedure***

64. This section removes section 126 from the 2016 Act and makes consequential amendments to sections 125 and 173 of the 2016 Act.
65. Section 126 of the 2016 Act sets out a procedure for the landlord to vary the terms of a periodic standard contract (other than in relation to the amount of rent or other consideration) by notice. Subject to certain requirements, section 126 enabled the landlord to make a possession claim as if they had given the contract-holder a section 173 notice if the contract-holder did not consent to the variation proposed by the landlord.
66. As a result of this amendment, the terms of a periodic standard contract (other than in relation to rent or other consideration) can only be varied by agreement between the landlord and the contract-holder. (See sections 123 and 124 of the 2016 Act for the provisions on variation of rent or other consideration in a periodic standard contract).

***Section 13 – Power to restrict right to exclude contract-holder from dwelling for specified periods***

67. This section amends sections 121 and 133 of the 2016 Act.
68. Section 121 of the 2016 Act states that a periodic standard contract can provide that the contract-holder is not entitled to occupy the dwelling as a home for specified periods. Section 133 of the 2016 Act contains identical provision in relation to fixed term standard contracts.
69. **Section 13** of the Act inserts a new subsection (3) into each of sections 121 and 133 of the 2016 Act. New subsection (3), in both sections, provides the Welsh Ministers with a regulation making power to amend the 2016 Act for the purposes listed in paragraphs (a) to (e) of the inserted subsection (3). These relate to how sections 121 and 133 of the 2016 Act apply, and in particular, regulations under these new powers may be used to restrict the right to include in an occupation contract provision about the temporary exclusion of the contract-holder from the dwelling.
70. Regulations under these powers are subject to the affirmative procedure (see the amendment to section 256 of the 2016 Act in Schedule 6 to the Act).

***Section 14 – Miscellaneous amendments to the 2016 Act***

71. **Section 14** introduces Schedule 5 to the Act, which makes various miscellaneous amendments to the 2016 Act.

***Schedule 5 – Miscellaneous amendments to the 2016 Act***

72. The following amendments are included in Schedule 5:
  - the test to be applied when considering the incorporation and modification of fundamental terms is amended. The question of whether a change relating to a fundamental term is permissible is no longer expressly related to ‘the contract-holder’s opinion’;
  - references to “the relevant date” in sections 110, 129 and 137 are amended to ensure the provisions work correctly with sections 36 and 37;
  - provisions to ensure that secure tenancies which are housing association tenancies can become occupation contracts;
  - to add a regulation making power to the 2016 Act to allow the Welsh Ministers to make provision about tenancies and licences that are abolished by section 239 of the 2016 Act, to make provision about tenancies and licences that are not and cannot be occupation contracts, and to allow the Welsh Ministers to make provision in relation to the end of the term of a long tenancy;
  - the word ‘wholly’ is omitted from the definition of “dwelling” in the 2016 Act, to make it consistent with other housing legislation applying in relation to dwellings in Wales or dwellings in England;
  - the power to make consequential and other amendments in respect of the 2016 Act is broadened to include legislation made at any time after the 2016 Act received Royal Assent;
  - an amendment to clarify when an occupation contract of student accommodation made with or adopted by a community landlord can be a standard contract; and
  - the Schedule also makes minor amendments to the Welsh text of the 2016 Act.

***Section 15 – Service charges permitted by the Renting Homes (Fees etc.) (Wales) Act 2019 etc.***

73. This section makes various amendments to the 2019 Act that relate to service charges under certain standard occupation contracts. It also makes amendments to the Renting Homes (Fees etc.) (Wales) Act 2019 (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019 (S.I. 2019/1151) (“the transitional regulations”).
74. The 2019 Act makes it a criminal offence for a landlord or letting agent to require a prohibited payment under or in connection with a standard occupation contract. A payment is not a prohibited payment if it is a permitted payment within Schedule 1 to the 2019 Act (see Part 2 and Schedule 1 to the 2019 Act).
75. The provisions of the 2019 Act apply to standard occupation contracts. The transitional regulations apply these requirements to assured shorthold tenancies, pending the implementation of the 2016 Act. On the day to be appointed by the Welsh Ministers, most assured shorthold tenancies will convert into standard occupation contracts (see sections 239 to 241 and Schedule 12 to the 2016 Act).
76. [Section 15\(2\)](#) of the Act inserts new paragraph 10A into Schedule 1 to the 2019 Act. This amendment provides that the payment of a service charge is a permitted payment for the purposes of the 2019 Act if it is required under a standard occupation contract and the landlord is a community landlord, or the standard occupation contract is a supported standard contract (within the meaning of section 143 of the 2016 Act).
77. However, a service charge required by a community landlord under a standard occupation contract for accommodation that is not social accommodation (within the meaning of paragraph 15 of Schedule 3 to the 2016 Act) will continue to be a prohibited payment under the 2019 Act.
78. [Section 15\(3\)](#) of the Act makes amendments to the transitional regulations so that the change also applies in relation to assured shorthold tenancies. This is achieved by modifying the way in which new paragraph 10A is read in relation to assured shorthold tenancies.
79. The effect of the amendments are that the payment of a service charge is a permitted payment for the purposes of the 2019 Act if it is required under an assured shorthold tenancy and the landlord is a community landlord, or the assured shorthold tenancy relates to supported accommodation (within the meaning given by sub-paragraphs (3A) and (3B) of the modified new paragraph 10A).
80. However, a service charge required under an assured shorthold tenancy where the landlord is a community landlord is not a permitted payment if the allocation rules (within the meaning of paragraph 15 of Schedule 3 to the 2016 Act) did not apply to the making of the tenancy.
81. [Section 15\(4\)](#) of the Act states that the amendments made by section 15(1), (2) and (3) of the Act are treated as if they came into force on 1 September 2019. This is the date on which the 2019 Act came into force. There are two exceptions.
82. Under the transitional regulations, the 2019 Act is modified so that a notice under section 21 of the Housing Act 1988, in relation to an assured shorthold tenancy, cannot be given at a time when a prohibited payment has been made and not refunded.
83. [Section 15\(4\)\(a\)](#) of the Act provides that any such notice given in breach of this restriction before the coming into force of section 15 of the Act continues to be treated as having been given in breach of the restriction.
84. Under section 22(1) of the 2019 Act, it is possible to obtain an order from the Court for the recovery of a prohibited payment. Section 15(4)(b) of the Act provides that if such an order was made before the coming into force of section 15 of the Act, it continues to have effect.

85. **Section 15(5)** and **(6)** of the Act imposes a restriction on the giving of a notice under section 21 of the Housing Act 1988. Such a notice cannot be given for a period of six months if, during the period from 1 September 2019 to the coming into force of section 15 of the Act:
- (a) a landlord under an assured shorthold tenancy has required the payment of a service charge, and
  - (b) as a result of the amendments made by section 15(1), (2) and (3) of the Act being treated as if they came into force on 1 September 2019, the payment required by the landlord is a permitted payment under the 2019 Act.
86. The six month restriction applies from the day on which section 15 of the Act comes into force, which is the day after the day on which the Act received Royal Assent.

### ***Section 16 – Fee for further copy of written statement to be a permitted payment***

87. Under section 31(5) of the 2016 Act, a landlord can charge a reasonable fee for providing a further copy of the written statement of the occupation contract. Section 16 of the Act inserts new paragraph 10B into Schedule 1 to the 2019 Act so that the payment of this fee is a permitted payment under the 2019 Act.

### ***Sections 17 to 20 and Schedule 6 – General***

88. **Sections 17 to 20** deal with interpretation, minor and consequential amendments, commencement and the short title of the Act. Sections 18 and 19, and Schedule 6, are considered below.

### ***Section 18 – Minor and consequential amendments***

89. **Section 18** introduces Schedule 6 to the Act, which makes minor and consequential amendments to the 2016 Act and 2019 Act.

### ***Schedule 6 – Minor and consequential amendments***

90. **Schedule 6** provides for amendments which are consequential on the changes being made by the Act, or which make minor amendments to the 2016 Act; in the case of the Renting Homes (Fees etc.) (Wales) Act 2019, the amendments relate to the implementation of the 2016 Act. The amendments to the 2019 Act are commenced by order by the Welsh Ministers.

### ***Section 19 – Coming into force***

91. This section sets out how the provisions of this Act come into force. Most of the provisions of this Act come into force two months after the day on which the Act receives Royal Assent; the interpretation, commencement and short title provisions come into force on the day after the Act receives Royal Assent. The commencement of section 15 and paragraph 28 of Schedule 6 are discussed above.