

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 - Provisions Applying Only to Fixed Term Standard Contracts

Chapter 1

Section 132 – Overview of Part

329. Sections 133 to 138 deal with matters relating to fixed term standard contracts.

Chapter 2 – Exclusion for Specified Periods

Section 133 – Exclusion of contract-holder from dwelling for specified periods

330. A fixed term standard contract may specify periods when the contract-holder cannot occupy the dwelling as a home. This will be particularly useful in relation to certain kinds of contract-holder and certain kinds of landlord. For example, in relation to contract-holders who are students, as student accommodation is often used for alternative purposes during vacation periods.

Chapter 3 - Variation of Contracts

Section 134 and 135 – Variation and Limitation on variation

331. The purpose of these sections is to ensure that the parties to a fixed term 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 the sections 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.

332. Where a term of a fixed term standard contract incorporates section 134 without modification, it will provide that the contract may only be varied by agreement between the landlord and the contract-holder or as a consequence of legislation made by the National Assembly for Wales or Parliament. Again, the approach is similar to that for secure contracts and periodic standard contracts (see sections 103 and 122). Any variations must be made in accordance with the term of the contract that incorporates section 135. Section 134 is a fundamental provision, and section 134(1)(b) and (2) are fundamental provisions which must be incorporated without modification.

Section 135 - Limitation on variation

333. A fundamental term of a contract that incorporates this section will limit how terms of fixed term standard contracts can be varied (in the same way as terms that incorporate section 108 and 127 limit how secure and periodic standard contracts can be varied).
334. 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).
335. 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.
336. 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)).
337. 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).
338. 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.

Section 136 – Written statement of variation

339. 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. This 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 137 – Failure to provide written statement etc.

340. A landlord who fails to provide a written statement in accordance with a term of the contract that incorporates section 136 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 4 - Joint Contract-Holders: Withdrawal

Section 138 – Withdrawal of joint contract-holder using contract-holder's break clause

341. A fixed term standard contract can include a contract-holder's break clause, which enables a contract-holder to end the contract before the end of the fixed term by giving notice (see section 189). This section provides that a contract which contains a contract-holder's break clause may enable the notice given by a joint contract-holder under the break clause to be treated as a withdrawal notice. However, where this is the case, the contract must also include terms equivalent to subsections (4) and (5) of sections 111 and section 130. These sections make provision, which is effectively identical, about

the withdrawal of joint contract-holders from secure contracts and periodic standard contracts; the subsections in question concern the duty of the landlord to inform the other joint contract-holders about the giving of a withdrawal notice, and the moment when the joint contract-holder in question ceases to be a party to the contract.

Chapter 5 - Dealing: Transfers

Section 139 – Transfer on death of sole contract-holder

342. A fixed term standard contract may include a term which provides that, in the event of the death of the contract-holder, the contract may be transferred to another person as part of the administration of the estate of the deceased contract-holder. If this term is included, the right of succession under section 73 will not apply (so that the contract passes on as part of the administration of the estate, rather than under the succession provisions in Chapter 8 of Part 3); and section 155, which provides that the contract ends with the death of a sole contract-holder, is not incorporated as a term of the contract.

Section 140 – Forced transfers

343. A fixed term standard contract may include a term allowing a joint contract-holder to require the other joint contract-holder(s) to join in a transfer of the contract. If it does so, this section provides that a joint contract-holder who imposes such a requirement may apply for a court order to enforce that requirement.

Section 141 – Joint contract-holder's interest

344. Where a fixed term standard contract contains a term that allows a joint contract-holder to transfer their rights and obligations under the contract to another person, the contract must also provide that if the contract-holder fails to give notice of the transfer to the other joint contract-holders, the transfer cannot be made. The contract must also provide that the person to whom the rights and obligations are transferred may only occupy the dwelling with the consent of the other joint contract-holders.

Section 142 - Transfer on death of joint contract-holder

345. This section applies where a fixed term standard contract contains a term which provides that, in the event of the death of a joint contract-holder, his or her rights and obligations under the contract may be transferred to another person as part of the administration of his or her estate. In common with section 141, if the contract contains such a term, the contract must also provide that if the contract-holder fails to give notice to the other joint contract-holders that such a transfer will be made on his or her death, the transfer cannot be made. The contract must also provide that the person to whom the rights and obligations are transferred may only occupy the dwelling with the consent of the other joint contract-holders.