

Renting Homes (Wales) Act 2016

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A brief summary of the Act:

- Based on Law Commission's 2006 'Renting Homes' report
- Amended by the Renting Homes (Amendment) (Wales) Act 2021
- Single legal framework for social and private renting
- Enables 'single social tenancy' for Wales
- Clarity on rights and responsibilities through written contracts
- Model contracts freely available to all
- Secure Contract: high level of security protected by law; replaces Secure and Assured Tenancies; can also be used by private landlords.
- Standard Contract: lower level of security under law; greater security can be agreed through fixed terms; replaces Assured Shorthold, Introductory and Demoted Tenancies
- A legal basis for supported housing

Key features of the 2016 Act

- Fitness fit for human habitation obligation on landlords
- Addresses retaliatory eviction
- More flexible arrangements for joint contracts
- Increased notice period for a rent increase
- No mandatory ground for eviction for serious rent arrears in secure contract
- Enhanced succession rights
- Simplified procedure to repossess abandoned dwellings
- Creates a tenure specific to supported accommodation

Key features of the 2016 Act

- Section 173 notice period set at six months
- Restriction on issuing in first six months
- Six-month restriction on a repeat section 173 notice and six-month restriction on issuing after retaliatory eviction
- Remove ability to end a fixed term standard contract
- Restrict use of break clauses

Key Concepts – “Occupation Contracts”

Chapter 1 of Part 2 of the Act (including Schedule 2 to the Act)

- People who rent homes in Wales do so under a *tenancy* or *licence*.
- Under the Act, this will remain the case - but regardless of whether occupier is a tenant or licensee, they will (in most cases) rent their home under an **occupation contract** (and Act refers to them as “contract-holders”).
- Two kinds of occupation contract:
 - Secure contract (which is periodic);
 - Standard contract (which can be periodic or fixed term, as parties wish).

Key Concepts – Landlords

Chapter 2 of Part 2

- The Act provides for two types of landlord -
 - **Community landlords**
 - **Private landlords**
- “Community landlord” is defined in section 9 -
 - Local authorities for areas in Wales (defined in section 243)
 - Registered social landlords providing housing in Wales (e.g. Housing Associations)

i.e. providers of social housing.
- “Private landlord” is defined in section 10: any landlord-
 - who is a landlord of a dwelling which is in Wales, and
 - who is not a community landlord.

Key Concepts – Landlords and Contracts

- As a general rule, type of landlord dictates what kind of contract the occupier occupies under.

- Default positions -

Community landlord  Secure contract
(see sections 11(1) and 12(1))

Private landlord  Standard contract
(see section 17)

- Variations are possible...
 - Introductory Standard Contracts, Prohibited Conduct Standard Contracts, non-social letting

Key Concepts – Written Statement

Chapter 2 of Part 3

- The Act requires every landlord to issue a written statement of contract to the contract-holder, including a new contract-holder in a joint contract, within 14 days of the day on which the contract-holder is entitled to begin to live in the dwelling – the “occupation date” (section 31).
- This means that the contract (tenancy or licence) can be agreed and become effective before the written statement is given.
- Ensures that contract-holders are given an accurate and complete document setting out their rights and obligations under the contract.
- Sections 34 to 38 deal with remedies where written statement is inaccurate or incomplete etc. There are financial remedies: see sections 87 and 88 (compensation).

What are the terms of the contract?

- Act provides for 4 kinds of term-
 - “Fundamental terms”;
 - “Supplementary terms”;
 - Terms relating to “key matters”;
 - “Additional terms”.
- What the final terms of the contract are varies depending on whether contract is:
 - A secure contract;
 - A periodic standard contract;
 - A fixed term standard contract.
- Terms of contract can also vary depending on what is agreed between landlord and contract-holder, but nature of term impacts on the right to vary.
- Under section 29, the Welsh Ministers may set out, in regulations, model written statement of contracts www.gov.wales/rentinghomes

Fitness for Human Habitation

- A landlord must ensure the property is fit for human habitation at the outset of and during the occupation contract.
- The exact details of the requirements for fitness for human habitation set out in regulations (www.gov.wales/rentinghomes)

Termination: all contracts

The landlord can apply to the court for an order for possession (make a “possession claim”) if-

- You have **breached your contract** (sections 157 to 159) – the court *may* make an order for possession only if it thinks it reasonable (see section 205, and as to “reasonableness”, see Schedule 10) – *discretionary ground*;
- One of the “**estate management grounds**” applies – these are a range of grounds enabling landlords to use their estate, or housing stock, properly. (Sections 160 to 162 and Schedule 8). The court *may* make an order for possession only if it thinks it reasonable, and if it is satisfied that suitable alternative accommodation is available (see section 210, and as to alternative accommodation, see Schedule 11) – *discretionary ground*.

Termination: secure contracts

- If you have a secure contract, **you may end the contract by giving notice to the landlord** (section 163).
- If you do not leave the dwelling on the date specified in the notice, the landlord can make a possession claim to the court for an order for possession.
- If the court is satisfied the ground is made out, it *must* make an order for possession (subject to any human rights defence) (section 212) – *absolute ground*.
- *But, as a secure contract-holder, the landlord has no further rights to evict you.*

Termination: periodic standard contracts

- As with secure contracts, **you may end the contract by giving notice to the landlord** (section 168).
- The **landlord may end the contract for any reason by giving you notice** (section 173):
 - You must be given at least six months' notice (section 174), or two months if contract type listed in Schedule 8A;
 - Under section 175, the landlord may not serve a section 173 notice during first six months (unless contract is listed in Schedule 9);
 - You can't be served a 'no fault' notice in circumstances listed in Schedule 9A.
- If the landlord makes a claim to the court and the court is satisfied the ground is made out, it *must* make an order for possession (subject to any human rights defence) (section 215) – *absolute ground*.
- But, “retaliatory evictions”...

Retaliatory evictions

Retaliatory evictions (section 217) - applies in relation to the following possession grounds:

- landlords' "no fault" notices under section 173 (periodic standard contracts), and
 - Landlords' break clauses (fixed term standard contracts: see section 194).
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- Turns "absolute ground" into "discretionary ground".
 - Applies where court is satisfied that landlord is trying to avoid obligations to keep dwelling fit for human habitation and in repair (Part 4).
 - Restriction on issuing a further 'no fault' notice for six months after a retaliatory possession claim.

Termination: periodic standard contracts 2

- Finally, a landlord may end the contract on the ground that you are in “**serious rent arrears**” (section 181).
- If the court is satisfied the ground is made out, it *must* make an order for possession (subject to any human rights defence) (section 216) – *absolute ground*.

Termination: fixed term standard contracts

- A fixed term standard contract cannot be ended by notice unless the contract is of a type listed in Schedule 9B, e.g. service occupancy (if contract-holder does not leave at end of fixed term, a periodic standard contract arises, which can be terminated under section 173).
- If the contract has a “contract-holder’s break clause”, then you can end the contract by giving notice (sections 189 to 193).
- If the contract has a “landlord’s break clause”, then your landlord can end the contract by giving notice (sections 194 to 201). A landlord’s break clause cannot be included in a fixed term contract of less than two years (unless contract is listed in Schedule 9C).
- Serious rent arrears (section 187) – virtually identical to provision about periodic standard contracts.

Abandonment

Chapter 13 of Part 9

- Section 220 gives landlords the right to recover property which has been abandoned without recourse to the court.
- The landlord can “give” notice to the contract-holder which effectively requires him or her to contact the landlord within four weeks to confirm that he or she has not abandoned the dwelling.
- Meanwhile, the landlord must make “inquiries” as to whether the property has been abandoned.
- At the end of the process, the landlord can recover possession.
- If, within six months of recovery of possession, the contract-holder wishes to contest this, he or she can apply to the court under section 222 (e.g. because there was a good reason for the failure to respond to the notice).

Joint contracts

- The Act will provide for new flexibility around joint contracts.
- Currently, the ending of a tenancy for one tenant will end the whole joint tenancy.
- Under the Act this will no longer bring a tenancy to an end.
- This new flexibility will allow joint contact-holders to leave a contract or be added to an existing occupation contract.

Model Contracts (Model Written Statements)

- Essential that landlords have easy access to contracts that comply with the law
- Welsh Government has prescribed model contracts for use by landlords. These include all relevant fundamental and supplementary terms www.gov.wales/rentinghomes
- Landlords will be able to produce their own versions – if they wish

Implementation

- Intending to implement on 15th July 2022
- Model written statements of contract available to help prepare
- Written statements for new contracts from 15th July must be given within 14 days
- Existing tenancies and licences automatically convert to the appropriate new contract
- Written statements of converted contracts to be issued by 15th January 2023
- Continued engagement with stakeholders to minimise administrative burden
- Guidance for landlords and tenants to assist in the change

www.gov.wales/rentinghomes



Thank you – any questions?

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Questions:

- Do WG intend to issue any more model contracts/written statements (e.g. introductory, prohibited and supported standard contracts)
- What prescribed forms and notices they intend to issue
- What amendments are they considering or planning to make to Schedules 2/3/8A/9/9B/12
- For our existing tenants, will their converted contracts have to incorporate all of the terms from their current contracts which aren't superseded by Fundamental Terms (or no longer relevant because they refer to legislation which has been repealed or replaced)?

Questions:

- What about existing terms that are for information only, or which don't really add anything. Can we omit them, or do we have to include absolutely everything?
- Do the converted contracts have to incorporate the existing terms as currently drafted, or do we have scope to alter the wording?
- Being as this is legislation and not the council wishing to change tenancy agreements, would this need approval from the Executive Board?

Questions:

- Do all existing tenants have to be issued with the new contract by 15th July or could new tenants be issued with the new contracts on this date and existing tenants be issued within a certain timescale?
- What is the timeframe for serving notice of change to tenancy?
- We will be entering the pre-election period on 17th March – this would impact on our ability to consult and inform?
- WG comms packs is due out w/c 14th February. Will this contain easy read versions of the contracts etc?

Questions:

Rent setting and charging

- In respect of increasing rent, if a Local Authority sets its default rent increase at 1st April each year, what is the impact if due to the charging cycle, the rent increase does not appear on accounts until the first available Monday after the increase becomes effective.
- The timing of WG's announcement regarding permitted rent increases was made on 29th Dec 2021. In order to ensure we have sufficient time for the necessary political reporting process, we need to know further in advance for future years. Does WG plan to bring forward the rent increase announcement? Ideally we would need to know by mid-late October.

Questions:

Homelessness/supported housing

- If a provider uses the power to temporarily exclude a contract holder from supported housing for 48 hours – is there a statutory duty (or otherwise an expectation) for the Council's Homelessness Service to provide temporary accommodation for the period of exclusion? And will Housing Benefit/UC housing costs be payable on 2 forms of accommodation if that is the case?

Communications

- Can WG provide a copy of the detailed communications plan (once it is available) ie with planned dates, so we can ensure that our communications with tenants and other stakeholders tie in with WG national campaign.

Questions:

Succession

- With regard to the new succession right for carers - A carer is defined as providing or intending to provide a 'substantial amount of care for another person on a regular basis' where there's no employment/contract to provide the care. Is there a definition of "substantial amount" or is that down to landlord discretion?

Questions:

- As the model contract does not mention garden condition or terms of owning pets, can these be incorporated from our current tenancy agreement? If so, would this make the contract 'not favourable' to the contract holder and, therefore, could reject the additional terms? How would agreement be confirmed, by the contract holder signing the agreement?
- Does the Act exclude residential properties (such as caretakers houses, leisure facilities, educational premises or other property owned by the local authority) from needing new occupation contracts?

Questions:

Fitness for Human Habitation

- Who decides if a property is not FFHH and that rent is not payable? Who arbitrates in a dispute between a community landlord and contract holder?
- Under s95 a landlord's obligations to keep a dwelling fit for human habitation will not apply if the landlord can't comply at 'reasonable expense'. Is there, or will there be, a definition of reasonable expense?

Questions:

- Please can you confirm if a procedure/process will be published explaining how contract holders can withhold their rent if they believe their property not to be FFHH? I.e. What will be the process for determining properties and unfit for human habitation? How will this be monitored and how will this be enforced
- Is there going to be a recommendation about the type of carbon monoxide alarm that need to be fitted in a property? (i.e. battery or electrically wired) Will this be the same for community and private landlords?
- Do they have to be fitted in communal areas too?

Questions:

- Please can you confirm under the FFHH a smoke alarm is required on every floor and, if so, does this mean houses and flats?
- What will be the WG's role in monitoring compliance with RH? Will there be a suite of KPIs and what sort of frequency?

Questions:

Electrical testing:

- Is the 7 day period for providing a copy of the test cert to the tenant from the date of issue (rather than the date of the test)? Is it 7 working days or 7 calendar days?
- Will the copy of the test cert need to be a paper copy or can it be an electronic copy? Do we require proof of sending / delivery?
- If a recommended future test period is less than 5 years (e.g. 2 or 3 years) for an individual property, it is assumed this period will be the next determined cycle and if missed a property becomes unfit for human habitation.
- How will failure to gain entry be treated? It is assumed a property will become classed as unfit for human habitation? Will we receive more powers of entry?
- Can a tenant declining entry and triggering an unfit for human habitation classification be entitled to withhold rent?

Questions:

Temporary exclusions from supported housing

- where a RSL is the landlord but the licence agreement is between the support provider and the service user, under the RH Act, can the RSL designate an employee of the support provider to be able to carry out/agree any exclusions or does it have to be a member of staff from the landlord themselves?

The regs say

- 1.1 The landlord, or a person designated by the landlord can temporarily exclude a supported housing contract holder for up to 48 hours at a time