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## **Practice and Precedents Editor's Notes**

### ***All change for residential tenancies in Wales***

The Renting Homes (Wales) Act 2016 is due to come into force on 15 July 2022. It is a substantial piece of legislation running to some 258 sections with 12 schedules and will provide an entirely new statutory code governing the granting, terms and ending of residential tenancies. As a result, housing law in Wales is now set to diverge significantly from the law in England and the assured tenancies and secure tenancies regimes will no longer apply in Wales. These Practice and Precedents Editor's Notes consider some of the main provisions of the Act.

Under the Act there are two types of landlord. These are community landlords (primarily local authorities and registered social landlords), and private landlords (all other landlords). Tenants and licensees are called 'contract-holders' and they will have an 'occupation contract'. There are two types of occupation contract:

- Secure contracts which will be used by community landlords; and
- Standard contracts which will be the default contract for the private rented sector, but can be used by local authorities and registered social landlords in certain circumstances (e.g. a 'Supported standard contract' within supported accommodation).

#### **The terms of an occupation contract**

There are four types of terms that can feature in occupation contracts:

- Key matters;
- Fundamental terms;
- Supplementary terms; and
- Additional terms.

'Key matters' set out the essentials of the contract. All occupation contracts must include:

- the address of the property;
- the occupation date;
- the rent; and
- the rental period.

In addition, all standard contracts must also include:

- whether the contract is periodic or for a fixed term;
- if it is for a fixed term, the term; and
- any periods during which the contract-holder is not entitled to occupy the dwelling as a home (this would presumably cover holiday lets or similar arrangements).

'Fundamental terms' are set out in the Act and cover the most important aspects of the contract, including the possession procedures and the landlord's obligations regarding repair. They are

automatically incorporated as terms of occupation contracts. Some of these terms can be modified by the parties, but only where they improve the contract-holder's position.

Further terms, called 'supplemental terms', are set out in regulations.<sup>1</sup> These deal with the more practical, day to day matters applying to occupation contracts, such as the requirement for a contract-holder to notify the landlord if the property is going to be empty for four weeks or more. The landlord and contract-holder are free to agree to leave out or modify supplementary terms, provided that by doing so they do not undermine the fundamental terms of the contract.

Finally, 'additional terms' can be included by negotiation between the parties. These will address any other specifically agreed matters, for example a term which relates to the keeping of pets. Any additional terms must be fair, as required by the Consumer Rights Act 2015. An additional term that is incompatible with the key matters, fundamental or supplemental terms is of no effect.

### **Written statements**

A written statement of the occupation contract must be given to the contract-holder. This will replace the current tenancy or licence agreement and must contain all the terms of the contract. For new rentals, the written statement must be issued within 14 days of occupation under the contract. Existing tenancy agreements will 'convert' to the relevant occupation contract on 15 July 2022, and landlords have a maximum of six months to issue a written statement of the converted occupation contract to their contract-holders. The written statement can be issued in hardcopy or, if the contract-holder agrees, electronically.

If there is a change in the identity of the contract-holder, such as after an assignment, the landlord must give the new contract-holder a written statement within 14 days of the change or (if later) the landlord becoming aware of the change.

The written statement must set out matters including:

- The parties' names;
- Key matters;
- Fundamental terms;
- Supplementary terms; and
- Additional terms.

The written statement must also contain prescribed explanatory information about the written statement.<sup>2</sup> The purpose of this explanatory information is to give the contract-holder an overview of their contract.

If the landlord fails to supply a written statement, the contract-holder can apply to the court for a determination of the terms of the contract. The court may apply the fundamental and supplementary provisions set out in the Act without any modification. In addition, the landlord is liable to pay the contract-holder compensation of up to two months' rent for failing to issue the written statement of the contract. Interest will be payable on this sum in certain

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<sup>1</sup> See Renting Homes (Supplementary Provisions) (Wales) Regulations 2022 (SI 2022/23).

<sup>2</sup> See Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022 (SI 2022/22).

circumstances. Compensation will also be payable if the written statement is incomplete or incorrect.

### **Model written statements**

A number of model written statements of occupation contracts have been published.<sup>3</sup> These can be used to create secure contracts, periodic standard contracts and fixed term standard contracts. These can be downloaded from the Welsh Government website and used as the basis for creating a new occupation contract. The intention is that the use of these model contracts should help to minimise problems and misunderstandings. However, if an occupation contract issued by the landlord is either incomplete or incorrect, and the matter cannot be resolved between the parties, the contract-holder can apply to the court for a declaration on the content of the contract. The court may also order the landlord to pay compensation.

### **The secure contract**

The secure contract is based on the secure tenancy under the Housing Act 1985 issued by public sector landlords. Secure contracts are intended to provide a higher degree of security of tenure than standard contracts and apply to ‘community landlords’, i.e. local authorities and registered social landlords (as well as a number of other authorities). Private landlords will be able to use a secure contract if they choose to do so. They can be terminated by a minimum of four weeks’ notice by the contract-holder.

### **The standard contract**

The standard contract is based on the assured shorthold tenancy. It can be either periodic or fixed term. On expiry, fixed-term standard contracts will become periodic contracts or the parties can enter into a new occupation contract.

### **Provision of information about the landlord**

Within 14 days of the occupation date, the landlord must provide the contract-holder with an address where any documents for the landlord can be sent. There are prescribed forms for this.<sup>4</sup> This requirement will also apply where there is a change to the identity of the landlord or the address provided. The landlord is liable to pay the contract-holder compensation of up to two months’ rent for failing to provide the information. Interest will also be applied to this sum in certain circumstances.

### **Exclusion of certain lettings and licences**

A number of tenancies are excluded from the regime. These include:

- tenancies to which Landlord and Tenant Act 1954, Part II applies;
- tenancies subject to Rent Act 1977 or Rent (Agriculture) Act 1976;
- tenancies of agricultural holdings and farm business tenancies;
- armed forces accommodation;
- long tenancies (broadly) of more than 21 years; and

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<sup>3</sup> See Renting Homes (Model Written Statement of Contract) (Wales) Regulations 2022 (SI 2022/28).

<sup>4</sup> See Renting Homes (Prescribed Forms) (Wales) Regulations 2022 (SI 2022/244).

- tenancies where all occupiers with whom they are made are under the age of 18.

A tenancy where no rent is payable under the tenancy, or where a person other than the tenant occupies the premises, will not be an occupation contract unless the landlord gives notice that it is to be one.

In addition, certain types of lettings are excluded unless the landlord gives notice that the relevant tenancy or licence is to be an occupation contract. These are:

- holiday lets;
- accommodation in a care home (as defined);
- a tenancy or licence provided as a temporary expedient in relation to a trespasser; and
- accommodation that is shared with the landlord, including as a lodger.

Community landlords will have to enter into secure contracts except in certain cases, where standard contracts may be offered. The main exclusions include:

- an occupation contract that relates to supported accommodation where the landlord is providing support services to an occupier in a variety of situations, which include, for example, where the occupier is controlling or overcoming addiction or is seeking employment;
- introductory occupation which is designed to allow community landlords to ascertain whether the contract-holder can sustain a secure contract. They are a type of periodic standard contract, which unless extended will run for a period of 12 months before becoming a secure contract;
- accommodation provided for asylum seekers;
- accommodation for homeless persons;
- certain types of service occupancy;
- student accommodation;
- certain types of temporary accommodation;
- accommodation which is not social accommodation, e.g. where it is let to a key worker; and
- property that is intended for transfer to a housing association and the occupation is granted under those terms.

Community landlords will also be required to use standard contracts in other circumstances, for example, where a holder of a secure contract engages in prohibited conduct, and a community landlord or registered charity obtains a court order imposing a 'prohibited conduct standard contract', usually for a period of 12 months. Tenancies and licences relating to supported accommodation provided for, broadly, up to six months will not be issued as occupation contracts.

## **Termination**

At the outset of an occupation contract, there is a form of cooling-off period so that at any time before occupying the property, the contract-holder may give notice to the landlord that they wish to end the contract. The contract will then terminate, provided no written contract has been issued by the landlord.

Termination of an occupation contract can occur by a number of methods which include:

- by mutual agreement;
- by repudiatory breach by landlord;
- on the death of the sole contract-holder without a successor unless a family property order has effect;
- on the death of the landlord where the occupation agreement is a licence; and
- by the contract-holder of a secure contract or a periodic standard contract on giving not less than four weeks' notice to the landlord.

### **Claims for possession by the landlord**

There are six grounds on which the landlord can seek possession:

- breach of the occupation contract by the contract-holder;
- on estate management grounds;
- where the contract-holder has given notice;
- by a landlord's notice to terminate a periodic standard contract;
- by a landlord's notice to terminate a fixed-term standard contract; and
- where there are serious rent arrears.

### **Breach of the occupation contract by the contract-holder**

If the contract-holder breaches the occupation contract, the landlord is entitled to apply for possession. This right applies to all types of occupation contract.

The landlord must give a possession notice specifying the ground of possession. The form of notice is prescribed.<sup>5</sup>

If the breach is due to anti-social behaviour or other prohibited conduct, the landlord can make a possession claim on or after the date of giving the possession notice. If the breach is of any term of the contract other than anti-social behaviour or other prohibited conduct, the landlord can make a possession claim after the period of one month from giving the possession notice.

The landlord cannot make a possession claim after the end of the period of six months starting with the date it gives the contract-holder the possession notice.

The court has a discretionary power to order possession for a breach of the contract and will only do so if it is reasonable. The Act sets out the matters the court will take into account, amongst others, when considering reasonableness. The court also has the power to adjourn possession proceedings, or postpone possession if it considers it reasonable to do so.

### **Possession on estate management grounds**

The landlord may terminate the occupation contract on one or more of the estate management grounds.

The estate management grounds are as follows:

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<sup>5</sup> See Renting Homes (Prescribed Forms) (Wales) Regulations 2022 (SI 2022/244).

- Ground A: the landlord intends to carry out building works to the property.
- Ground B: the landlord intends to dispose of the property to a redevelopment scheme.
- Ground C: the landlord is a charity and the contract-holder's occupation would conflict with the objects of the charity.
- Ground D: the dwelling is adapted for persons with physical disabilities, is not being used by such a person and is needed to house a person with physical disabilities.
- Ground E: the dwelling is needed for people who are difficult to house. This ground is only available to landlords who are housing associations or housing trusts.
- Ground F: the dwelling is in a group of dwellings for people with special needs and is needed for a person with such needs.
- Ground G: under-occupation by reserve successors.
- Ground H: under-occupation by joint contract-holders.
- Ground I: other estate management reasons.

The court will only order possession on one of the estate management grounds if it is satisfied that there is suitable alternative accommodation for the contract-holder. The Act sets out what constitutes suitable alternative accommodation. In some cases, the landlord must also pay the contract-holder a sum equivalent to the reasonable costs of moving.

The landlord must give the contract-holder a possession notice specifying the grounds. The form of notice is prescribed.<sup>6</sup>

The landlord cannot issue proceedings for possession before the period of one month or after the period of six months starting with the date of giving the possession notice.

The court has a discretionary power to order possession on an estate management ground and will only do so if it is reasonable. The Act sets out the matters the court will take into account, amongst others, when considering reasonableness. The court also has the power to adjourn possession proceedings, or postpone possession if it considers it reasonable to do so.

### **Contract-holder's notice to terminate a periodic standard contract**

A contract-holder may bring a periodic standard contract to an end by giving not less than four months' notice to the landlord. Such notice will cease to have effect if it is withdrawn and replaced with a second notice to terminate and the landlord does not object to the withdrawal.

If the contract-holder does not give up possession in accordance with a notice, the landlord can issue proceedings for possession on that ground. Before issuing proceedings for possession, the landlord must give a possession notice to the contract-holder. The form of notice is prescribed.<sup>7</sup> This notice must be given within two months of the date the contract-holder should have given up possession. The landlord can then issue possession proceedings on or after the date it gives the notice of possession, but not more than six months after they give the notice.

### **Landlord's notice to terminate a periodic standard contract**

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<sup>6</sup> See Renting Homes (Prescribed Forms) (Wales) Regulations 2022 (SI 2022/244).

<sup>7</sup> See Renting Homes (Prescribed Forms) (Wales) Regulations 2022 (SI 2022/244).

A landlord can give notice to terminate a periodic standard contract by giving not less than six months' notice. The form of notice is prescribed.<sup>8</sup> If the occupation contract is a converted contract that was an assured tenancy on the day before the Act came into force, the notice may not be given within the first four months of the occupation date of the contract.

A landlord is prohibited from serving a notice in the following situations:

- the notice cannot be given in the first six months of the occupation date of the contract;
- if the landlord has not given the contract-holder a written statement of the contract within 14 days of the date of occupation, the landlord must give the written statement and cannot serve the notice for a period of six months from the day the written statement is given to the contract-holder;
- if the landlord has not given the contract-holder written information about the landlord, they cannot serve a notice until they have done so;
- if the deposit has not been protected in accordance with the prescribed procedure, the landlord cannot serve a notice unless the deposit has been returned to the contract-holder with such deductions as may have been agreed, or an application has been made and determined by the County Court, withdrawn or settled by the parties; and
- the landlord cannot serve a notice at a time when either the landlord required a prohibited payment to be made, that payment has been made (to the landlord or another person) and has not been repaid, or a holding deposit was paid in relation to the contract and has not been repaid. To the extent that a payment has been applied towards rent or a security deposit under the contract, it is deemed to have been repaid.

The landlord may issue proceedings for possession on the ground they have served a notice to terminate and the contract-holder has failed to vacate the premises. The proceedings cannot be issued before the date specified for possession in the landlord's notice, and must be issued within two months of that date.

This is an absolute ground for possession so, if the landlord has followed the correct procedure, the court must order possession. However, the court will not order possession if the landlord is attempting a retaliatory eviction where the landlord is trying avoiding their maintenance obligations by serving an eviction notices on a tenant who has complained about the condition of the property.

### **Landlord's notice to terminate a fixed-term standard contract**

A landlord's notice to terminate a fixed-term standard contract must specify a termination date being not earlier than the last day of the term. The notice period must not be less than six months.<sup>9</sup> The form of notice is prescribed.<sup>10</sup> Proceedings cannot be issued before the end of the fixed-term standard contract.

A landlord is prohibited from serving a notice in the following situations:

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<sup>8</sup> See Renting Homes (Prescribed Forms) (Wales) Regulations 2022 (SI 2022/244).

<sup>9</sup> Unless the occupation contract is within Renting Homes (Wales) Act 2016 Sch.8A, in which case the period is two months.

<sup>10</sup> See Renting Homes (Prescribed Forms) (Wales) Regulations 2022 (SI 2022/244).



- if the landlord has not given the contract-holder a written statement of the contract within 14 days of the date of occupation, the landlord must give the written statement and cannot serve the notice for a period of six months from the day the written statement is given to the contract-holder;
- if the landlord has not given the contract-holder written information about the landlord, they cannot serve a notice until it has done so;
- if the landlord required security from the contract-holder in a form not permitted by s.43 of the Act, the landlord cannot serve a termination notice until that security has been returned;
- if the deposit has not been protected in accordance with the procedure set out in the legislation, the landlord cannot serve a notice unless the deposit has been returned to the contract-holder with such deductions as may have been agreed; or an application has been made and determined by the County Court, withdrawn or settled by the parties; and
- the landlord cannot serve a notice at a time when either the landlord required a prohibited payment to be made, that payment has been made (to the landlord or another person) and has not been repaid, or a holding deposit was paid in relation to the contract and has not been repaid. To the extent that a payment has been applied towards rent or a security deposit under the contract, it is deemed to have been repaid.

This ground for possession is an absolute ground. Therefore, if the court is satisfied the correct procedure has been followed it must order possession.

There are similar provisions in respect of a landlord's break notice. Landlord break clauses will only be able to be incorporated into a fixed term occupation contract if the contract has a fixed term of 2 years or more. A landlord will not be able to exercise a break clause within the first 18 months of occupation.

### **Serious rent arrears**

A landlord can terminate a standard contract if the contract-holder is in serious rent arrears.

A contract-holder will be in serious rent arrears if:

- at least eight weeks' rent is unpaid, if the rental period is a week, a fortnight or four weeks;
- at least two months' rent is unpaid, if the rental period is a month;
- at least a quarter's rent is unpaid for more than three months, if the rental period is a quarter;  
or
- at least 25% of the rent is unpaid for more than three months, if the rental period is a year.

The contract-holder must be in serious rent arrears on the day the landlord serves a notice, and on the day of the court hearing for possession.

Before issuing proceedings for possession due to serious rent arrears, the landlord must give the contract-holder a possession notice specifying that ground. The form of notice is prescribed.<sup>11</sup>

The landlord cannot issue the proceedings before the period of 14 days from the date of giving the possession notice, or after the period of six months from the date of giving the possession notice.

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<sup>11</sup> See Renting Homes (Prescribed Forms) (Wales) Regulations 2022 (SI 2022/244).

This is an absolute ground and so the court must order possession if it is satisfied that the correct procedure was followed and the contract-holder was in serious rent arrears on the date the landlord gave the possession notice and the date of the court hearing.

### **Abandonment**

Where it is clear that a property let under an occupation contract has been abandoned, the Act allows a landlord to repossess the property without recourse to the court, provided the landlord has carried out the necessary steps to ensure it is abandoned, which include following a notice procedure.

### **Succession**

A fixed-term contract can be transferred in accordance with the administration of the estate of the contract-holder if the occupation contract so provides, or because of the right of survivorship. The Act contains provisions for succession to the 'priority successor' (normally a spouse or a partner), otherwise it will pass to a 'reserve successor' ('resident family member' or 'carer'). Once it has passed to a reserve successor then it cannot pass on to a second successor. In the case of a carer or resident family member, a reserve successor must have lived in the property for at least 12 months.

### **Deposits**

There is a system to ensure that tenants' deposits are protected in much the same way as applies to assured shorthold tenancies, but this applies to all occupation contracts where a deposit is taken and to both private and community landlords.

A landlord must, within 30 days of receiving a deposit, place it into an authorised deposit scheme and provide the contract-holder with details of the scheme being used, their rights with regard to this deposit and confirmation that they are complying with the initial requirements of that scheme. The information a landlord must give to the contract-holder is prescribed by regulations.<sup>12</sup>

If the landlord does not comply with the requirements then, in the case of a periodic standard contract, the landlord cannot issue a notice for possession and, in the case of a fixed term standard contract containing a landlord's break notice, the landlord cannot exercise the break notice.

There are additional provisions relating to the protection of deposits. If the landlord fails to comply with the requirements for protecting deposits, the contract-holder may apply to the court for a remedy. The court can either order the deposit to be repaid or to be paid into a custodial deposit scheme. The court must also order the landlord to pay up to three times the amount of the deposit to the applicant. Also, where the landlord and contract-holder enter into a new occupation contract (in relation to the same, or substantially the same, dwelling) that immediately follows the previous contract, the deposit in relation to the first contract will apply to the second contract provided that the requirements in relation to the deposit were complied with by the landlord.

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<sup>12</sup> See Renting Homes (Deposit Schemes) (Required Information) (Wales) Regulations 2022 (SI 2022/250).

## **Joint contract-holders**

The Act broadly applies the common law to joint tenants contract-holders so that both are fully liable for the obligations under the contract. If one contract-holder wants to add another contract-holder, the landlord's consent must be obtained. In addition, if one contract-holder ceases to be liable under the contract (e.g. on death), then the remaining contract-holder takes over their liabilities and rights. However, under the Act one joint contract-holder can give notice to withdraw from an occupation contract without affecting the rights of the other under the contract.

## **Dealing**

The Act contains provisions restricting the rights of contract-holders to deal with the occupation contract so that, broadly, this cannot be done apart from in a way permitted by the contract or in accordance with a family property order. Family property orders include a court order to transfer a tenancy under the Family Law Act 1996.

'Dealing' includes creating a sub-tenancy or sub-licence, transferring the contract to another or taking out a mortgage on the dwelling. A contract-holder dealing outside the terms of their contract or family property order, or without the landlord's consent, will be acting in breach of contract, and the transaction will not be binding on the landlord.

If the occupation contract allows dealing subject to the landlord's consent, the landlord cannot withhold consent unreasonably or make consent subject to unreasonable conditions. The Act sets out a procedure and timeline for the landlord giving consent under an occupation contract. If this is not strictly adhered to, the landlord will be deemed to have given consent.

The procedure applies in relation to any term of an occupation contract that permits something to be done only with the landlord's consent. The landlord may not unreasonably refuse consent or impose an unreasonable condition.

The procedure is as follows:

- The landlord must request any additional information they require by the date 14 days after the day the request is made. The landlord may not ask for additional information after this period has expired.
- The landlord must either give or refuse consent within one month of the day the request for consent is made, or if additional information is requested, the day that information is received. If the landlord does not respond by the end of this period they are deemed to have given consent.
- If the landlord refuses consent or gives consent subject to conditions, the person who requested consent can ask for reasons for the refusal or conditions. If the landlord does not provide a written statement of their reason for refusal or for conditions within one month of this request, the landlord is deemed to have given consent without conditions.

The Act sets out specific matters that are relevant to considering reasonableness.

Section 19(1) of the Landlord and Tenant Act 1927 does not apply to an occupation contract.

## **Fitness for human habitation**

A landlord must make sure that the property is fit for human habitation on the occupation date and for the duration of the occupation contract. Regulations set out what must be considered when determining whether a property is fit for habitation, and they also impose obligations on the landlord to prevent any matters or circumstances that may cause a dwelling to be unfit for human habitation from arising.<sup>13</sup> The regulations also include obligations relating to smoke alarms, carbon monoxide alarms and electrical installations.

## **Repairs**

The landlord must keep the structure and exterior of the dwelling in repair as well as installations for the supply of water, gas or electricity, for sanitation and for space heating or for water heating. The Act provides that the standard of repair required is that which is reasonable having regard to the age and character of the dwelling and the period during which it is likely to be available for occupation. The landlord's obligation is limited to making the dwelling fit for human habitation at 'reasonable expense'. Guidance for landlords on what they must do to ensure their property is in good repair and fit for human habitation has been published by the Welsh Government.<sup>14</sup>

## **Notices**

Any notice, statement or other document required under the Act must be in writing.<sup>15</sup> It may be in electronic form if it has the certified signature of each person required to sign it and complies with any other conditions as may be prescribed.

Service of a notice, statement or other document may be made by delivering it to the person to be served. This includes by email if the recipient has indicated a willingness to receive notifications or documents electronically, the text is in legible form, and the text is capable of being used for subsequent reference. Alternatively, it may be left at or posted to the recipient's last known place of residence or business, or any place specified as a place where notices or documents may be served. Finally, if the recipient is the contract-holder, it may be left at the dwelling.

**Russell Hewitson**

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<sup>13</sup> See Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022 (SI 2022/6).

<sup>14</sup> Available at <https://gov.wales/fitness-homes-human-habitation-guidance-landlords> [Accessed 6 April 2022].

<sup>15</sup> See Renting Homes (Prescribed Forms) (Wales) Regulations 2022 (SI 2022/244) for prescribed forms.