



# DEDDF RHENTU CARTREFI (CYMRU) 2016

2016 dccc 1

Nodiadau Esboniadol

# RENTING HOMES (WALES) ACT 2016

2016 anaw 1

Explanatory Notes

**£25.50**



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## EXPLANATORY NOTES

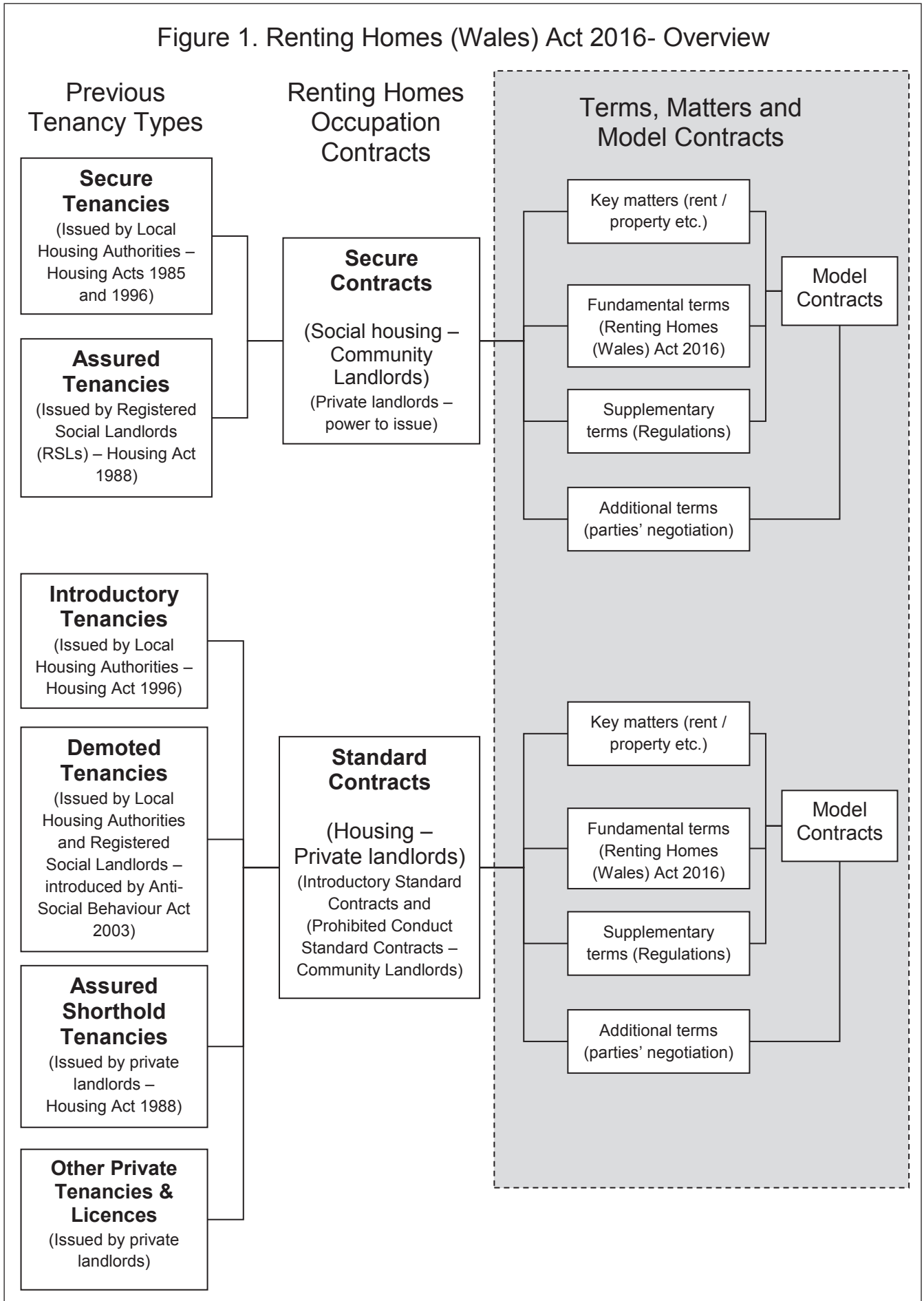
### INTRODUCTION

1. These Explanatory Notes are for the Renting Homes (Wales) Act 2016 which was passed by the National Assembly for Wales on 17 November 2015 and received Royal Assent on 18 January 2016. They have been prepared by the Education and Public Services Group of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.
2. The Act provides for most tenancies and licences conferring the right to occupy a dwelling as a home to be one of two kinds of 'occupation contract': a 'secure contract', which is periodic; or a 'standard contract', which can be periodic or of a fixed term. Most previously established statutory tenancies are abolished by the Act, being replaced by the appropriate kind of occupation contract. The Act also makes provision as to the terms of occupations contracts, and the setting out of those terms in a written statement of the contract.

#### *Tenancies and licences*

3. Generally, people who live in a home they do not own do so under a tenancy or licence. A tenancy is a contract between two or more persons (a tenant or tenants and a landlord) under which the tenant lives in the home. The tenant (and people who live with him or her) does not have to share the dwelling with anyone else, because the tenant has an interest in the land which is subject to the tenancy. Rent is payable by the tenant. A tenancy gives rights to, and imposes obligations on, both the tenant and the landlord.
4. A licence is also a contract between two or more persons (a licensee or licensees and a landlord). The licensee is allowed to live in the dwelling which is the subject of the licence. A key legal difference between a tenancy and licence is that a licensee does not have an interest in the relevant land, and in practice the main difference between a tenancy and a licence is that a licensee does not have the right to sole occupation of the home. So, for example, a lodger will usually be a licensee.
5. The Act will not change this; a person who rents a home in Wales will rent it under a tenancy or licence. But in many respects that distinction will be less important in practice, because the Act makes virtually no distinction between tenancies and licences.
6. The diagram below illustrates how occupation contracts relate to the various kinds of tenancies and licences in existence before they were abolished by the Act.

Figure 1. Renting Homes (Wales) Act 2016- Overview



7. In effect, the occupation contract, with all of its rights and obligations, will sit on top of the tenancy or licence with a view to helping the parties to the tenancy or licence to have clarity as to what their rights and obligations are, and what the other party's rights and obligations are, regardless of the legal basis for the occupation.
8. This means that, under the Act, the key questions for a tenant or licensee will be:
  - a. whether or not they live in their home under an occupation contract, and
  - b. if so, what kind of occupation contract they have with their landlord.

*Is a tenancy or licence an occupation contract?*

9. This question can be resolved by reference to section 7 of the Act, which describes the kinds of tenancies and licences that are occupation contracts, and to Schedule 2 to the Act, which sets out various exceptions to section 7. (See the commentary on section 7 and Schedule 2 in these Notes)

*If so, what kind of occupation contract is it?*

10. This question can be resolved by reference to Chapter 2 of Part 2 of the Act. The two main factors in answering this question are:
  - a. who the landlord is, and
  - b. what has been agreed between the tenant or licensee (referred to in the Act as the 'contract-holder') and the landlord.

11. As a general rule, though the Act does provide for exceptions, an occupation contract made with a 'community landlord' will be a 'secure contract'. 'Community landlord' is defined in section 9; the main kinds of community landlord are local authorities, housing associations and other kinds of registered social landlord, and private registered providers of social housing. A secure tenancy gives the strongest security of occupation (sometimes referred to as 'security of tenure') to the contract-holder.

12. Again as a general rule, subject to exceptions, an occupation contract made with a 'private landlord' will be a 'standard contract'. Any landlord who is not a community landlord is a private landlord for the purposes of the Act.

13. Secure contracts are 'periodic'; this means that they will roll from period to period (generally, from week to week or month to month). Standard contracts can be either periodic or made for a fixed term. Aside from differences relating to security of occupation, there are a range of differences between secure and standard contracts (and between periodic and fixed term standard contracts); these are set out throughout the Act, and are considered in the section-by-section commentary in these Notes.

*What are the terms of an occupation contract?*

*Fundamental provisions*

14. The Act establishes the concept of the 'fundamental provision'. A fundamental provision is a provision of the Act (generally a section in the Act) which automatically becomes a term of an occupation contract to which it applies.

15. For example, section 45 (which concerns schemes for looking after deposits paid by contract-holders to landlords) is a fundamental provision of *all* occupation contracts. In practice, this means that every occupation contract between a landlord and a contract-holder will contain a term which is, in substance, identical to section 45.
16. A fundamental provision, once it is incorporated into an occupation contract, is referred to in the Act as a 'fundamental term' of the contract. A fundamental term of the contract must closely reflect the wording and terminology used in the fundamental provision of the Act which it incorporates; section 33 sets out the limits of acceptable editorial changes.
17. Some fundamental provisions apply only to certain kinds of occupation contract; for example, section 113, which concerns the right to take on a lodger, applies only to secure contracts, and not to standard contracts. Schedule 1 to the Act sets out the fundamental provisions which apply to each kind of occupation contract.
18. Landlords and contract-holders can agree not to have a particular fundamental provision in their contract (in other words, they can choose not to *incorporate* that provision). Or, they can agree to make changes to a fundamental provision. The Act describes a change to a fundamental provision as a 'modification'.
19. However, there are limitations on the ability to agree to modify, or not to incorporate, a fundamental provision. Firstly, any change must ultimately improve the position of the contract-holder (regardless of whether it improves, or worsens, the landlord's position). Secondly the fundamental provisions set out in section 20(3) must be incorporated as fundamental terms of every occupation contract they apply to, without changes, regardless of whether the change would improve the contract-holder's position (section 45, mentioned above, is one such fundamental provision).
20. Fundamental terms of an occupation contract (that is, the terms of the contract which incorporate fundamental provisions) can be changed once the contract has been made; the Act describes a change to a fundamental term as a 'variation'. However, there are limits to this, and those limits vary between secure contracts (see Chapter 2 of Part 5), periodic standard contracts (see Chapter 3 of Part 6) and fixed term standard contracts (see Chapter 3 of Part 7).

*What are the terms of an occupation contract?*

*Supplementary provisions*

21. Supplementary provisions are provisions set out in Regulations made by the Welsh Ministers under section 23 of the Act. As with fundamental provisions, they are automatically incorporated as terms of all occupation contracts to which they apply. And, as with fundamental provisions, the contract-holder and landlord may agree not to incorporate a supplementary provision or to incorporate the provision with modifications (provided the Regulation which sets out the provision does not prohibit this).

22. There is no requirement that modification or omission of a supplementary provision improves the position of the contract-holder; the only limit is that a change to a supplementary provision must not render the occupation contract incompatible with any relevant fundamental term of the contract.
23. Once a supplementary provision is incorporated into an occupation contract, it becomes a 'supplementary term'. These can be changed once the contract is made; the Act describes a change to a supplementary term as a 'variation'. As with fundamental terms, there are limits on the ability to change supplementary terms, set out in Chapter 2 in Part 5 and Chapter 3 in each of Parts 6 and 7.

*What are the terms of an occupation contract?*

*Terms addressing key matters and additional terms*

24. The key matters relating to a contract are set out in sections 26 and 27, and concern things such as the address of the home, the amount of rent and so on. The contract will contain terms which address the key matters.
25. The additional terms of a contract are terms agreed between the landlord and the contract-holder relating to any other matters.

*Where are the terms of an occupation contract set out?*

26. The Act, in section 31, requires the landlord to give the contract-holder a written statement of the occupation contract within two weeks of the date on which the contract-holder became entitled to live in the home (this date is referred to in the Act as the 'occupation date'). This means a contract can be formed and come into force before the contract-holder has been given the written statement. This reflects current housing and contract law, and is intended to facilitate the provision of housing as swiftly as possible. In practice, it is likely that the written statement will often be given before, or concurrently with, the occupation date.

## **STRUCTURE OF THE ACT**

27. The Act has 11 Parts. Some Parts are relevant to all occupation contracts, and some are relevant only to specific kinds of contract. As sections 5 and 6 set out, the Act can be approached in the following way:
- a. Part 1 provides an overview of the Act, intended to assist with navigation;
  - b. Part 2 concerns the determination of whether a person has an occupation contract with his or her landlord, and if so, what kind of occupation contract it is;
  - c. Part 3 applies to all occupation contracts, so will be relevant to everyone who rents their home under an occupation contract (it deals with a wide range of rights and obligations of contract-holders and landlords);
  - d. Part 4 concerns the duties of landlords in relation to repair and maintenance of dwellings – Chapter 2, which contains those duties, applies to all occupation contracts except fixed term standard contracts for a term of seven years or more, so in practice the key provisions in Part 4 will apply to most occupation contracts;
  - e. Part 5 applies only to secure contracts (and, by extension, is not relevant to standard contracts) – it addresses a range of miscellaneous issues;
  - f. Part 6 applies only to periodic standard contracts (and, by extension, is not relevant to secure contracts and fixed term standard contracts) – it addresses a range of miscellaneous issues;
  - g. Part 7 applies only to fixed term standard contracts (and, by extension, is not relevant to secure contracts and periodic standard contracts) – it addresses a range of miscellaneous issues;
  - h. Part 8 applies only to supported standard contracts – these are standard contracts (either periodic or fixed term) which concern the provision of accommodation to people in need of particular kinds of help or assistance;
  - i. Part 9 concerns how occupation contracts can be brought to an end – various Chapters of this Part apply to all occupation contracts, but a number of Chapters apply only to certain kinds of contract (the table in section 147 provides an overview of Part 9);
  - j. finally, Parts 10 and 11 deal with a range of miscellaneous matters which are supplementary to the provision in the preceding Parts, or which concern the operation and interpretation of the Act.



## **COMMENTARY ON SECTIONS**

### **PART 1 - OVERVIEW OF ACT**

#### **Sections 1 to 6 – Introduction to, and overview of, Act**

28. Part 1 of the Act provides an introduction to, and overview of, the Act. Sections 1 to 4 introduce the key concepts in the Act (occupation contracts, community and private landlords, and fundamental and supplementary provisions). Sections 5 and 6 provide a guide to the structure, content and application of Parts 3 to 11 of the Act.
29. As section 1 suggests, the Act's primary purpose is to create a new system for the rental of homes which are situated in Wales. The new system is based on establishing two kinds of 'occupation contract' which will be the legal bases of most agreements between landlords and people who rent their home. It will abolish most of the various forms of tenancies in existence before it comes into force so that the majority of people who rent their home in Wales, whether under a tenancy or licence (discussed below), will have either a 'secure contract' or a 'standard contract' with their landlord.

#### **Schedule 1 - Overview of fundamental provisions incorporated as terms of occupation contracts**

30. Schedule 1 lists in tabular form the fundamental provisions that apply to each type of occupation contract. Part 1 deals with secure contracts, Part 2 with periodic standard contracts and Part 3 with fixed term standard contracts.

## **PART 2 - OCCUPATION CONTRACTS AND LANDLORDS**

### **CHAPTER 1 - OCCUPATION CONTRACTS**

#### **Section 7 – Tenancies and licences that are occupation contracts**

31. Section 7 sets out the basic proposition which underpins the Act, and which is considered above in relation to Part 1; most tenancies and licences under which people rent their homes will be occupation contracts.
32. The effect of subsections (1) to (3) is that a tenancy or licence is an occupation contract if it allows at least one individual over the age of 18 to occupy a dwelling as a home, and someone is paying rent (or 'other consideration'; for example, doing something equivalent to paying rent, such as providing a service to the landlord) in exchange for that individual's right to live in the dwelling.
33. Schedule 2 sets out a number of exceptions and qualifications to the basic proposition in section 7.

#### **Schedule 2 - Exceptions to section 7**

##### **Part 1 - tenancies and licences not within section 7 that are occupation contracts if notice is given**

###### **Paragraph 1**

34. A tenancy or licence which is made with a person ('person A'), but which allows a different person to live in the dwelling to which the tenancy or licence relates (such a person is described in paragraph 1 as a 'beneficiary'), is not an occupation contract under section 7.

35. The same is true of a tenancy or licence where no rent or other consideration (for example work undertaken by the contract-holder as a form of rent) is payable.
36. But under paragraph 1, such a tenancy or licence can be an occupation contract if the landlord wishes. If so, the landlord must give notice to the person with whom the tenancy or licence is made (which would be person A in relation to a tenancy or licence where the beneficiary will live in the dwelling) stating that the tenancy or licence is to be an occupation contract. That notice must be given before the tenancy or licence is made, or at the time it is made.

### **Paragraph 2**

37. Paragraph 2 applies to a tenancy or licence where a beneficiary lives in the dwelling, and the landlord has given notice under paragraph 1. It allows the landlord to specify in the notice that certain provisions of the Act (and provisions of regulations made under it) should be read as if they referred to the beneficiary. Paragraph 2 is necessary because the Act contains references to 'contract-holders' (including in 'fundamental provisions' which will become terms of the occupation contract). Similarly, regulations made under the Act will include references to 'contract-holders' (including in 'supplementary provisions', which will also become terms of the occupation contract).
38. Those provisions give rights to, and impose obligations on, the contract-holder, which in these circumstances will be person A. It may be necessary for those provisions to be treated in practice as applying to the beneficiary, to ensure the smooth day-to-day operation of the contract.

### **Part 2 - Tenancies and licences within section 7 that are not occupation contracts unless notice is given**

39. This Part addresses certain tenancies and licences which are within section 7, and which would therefore be occupation contracts were it not for paragraph 3. But if a tenancy or licence is mentioned in paragraph 3(2), it is not an occupation contract unless the landlord wants it to be (in which case, as under Part 1, the landlord must give the contract-holder notice that it is an occupation contract before the tenancy or licence is made, or at the time it is made).

### **Paragraph 3**

40. Paragraph 3(2) sets out the tenancies and licences which, although within section 7, are not occupation contracts unless notice is given by the landlord. They are tenancies and licences relating to the following-
- Holiday accommodation,
  - Accommodation in a care institution (see paragraph 4 of Schedule 2),
  - 'Temporary expedient' – that is, a tenancy or licence made as a temporary expedient with a person who was a trespasser when he or she entered the dwelling (see paragraph 5), and
  - Accommodation that is shared with the landlord - for example, where the landlord takes on a lodger (see paragraph 6).

### **Part 3 - Tenancies and licences that are never occupation contracts**

41. As with Part 2, this Part addresses certain tenancies and licences which are within section 7, and which would therefore be occupation contracts were it not for this Part. If a tenancy or licence is mentioned in paragraph 7, despite the fact that it is within section 7, it can never be an occupation contract.

#### **Paragraph 7**

42. A tenancy or licence is not an occupation contract if the tenant or licensee is under 18 years of age (or, where there is more than one tenant or licensees, all of them are under 18).
43. This paragraph also excludes various other tenancies from being occupation contracts. The following are excluded from being occupation contracts:
- a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies, which provides protection for business tenants when renewing or terminating their lease. These tenancies are not covered under this Act as they are not used for the purpose of renting a home.
  - a protected occupancy or a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976, which affords security of tenure for agricultural workers housed by their employers, and their successors.
  - a protected tenancy or a statutory tenancy within the meaning of the Rent Act 1977; tenants under this Act have defined rights concerning the amount of rent they can be charged and security of tenure.
  - a secure tenancy that is a housing association tenancy, within the meaning of section 86 of the Rent Act 1977; tenants of a housing association under this Act have defined rights concerning the amount of rent they can be charged and security of tenure.
  - a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986; land comprised in a contract for an agricultural tenancy.
  - a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995; landlords and tenants have the right to negotiate their own provisions on rent levels and decide whether or not they want to have rent reviews, land must be farmed throughout the life of the tenancy to qualify.
  - a long tenancy (see paragraph 8).
  - accommodation provided to a member of the armed forces, to a family member of a member of the armed forces or to a civilian subject to service discipline for the purposes of any of the armed forces (see paragraph 9 of Schedule 2).
  - a tenancy or licence which relates to 'direct access accommodation' (see paragraph 10).

### **Paragraph 8**

44. Long tenancies are excluded from being occupation contracts. This paragraph defines a long tenancy under the Act as being:
- a tenancy that is for a fixed term of more than 21 years (that is, at the outset the parties agreed that the tenancy would last for a specified period of time exceeding 21 years),
  - a tenancy for a term fixed by law because of a covenant or obligation for perpetual renewal (such as an option for the tenant to renew the tenancy upon expiry, for example to continually renew the tenancy every 5 years), or
  - a tenancy made under the 'right to buy' (Part 5 of the Housing Act 1985) or 'right to acquire' (section 17 of the Housing Act 1996).
45. But a tenancy that can be terminated by notice after a death is not a long tenancy (unless it is a shared ownership tenancy - see below).
46. A shared ownership tenancy is a tenancy that relates to a dwelling owned by a registered social landlord where the tenant has purchased a percentage of the property on a leasehold basis and pays rent on the un-owned share. Further shares of the un-owned part can be purchased until potentially the remaining un-owned portion is reduced to nil.

### **Paragraph 10**

47. Direct access accommodation is accommodation provided by a community landlord or a charity registered with the Charity Commission (under the Charities Act 2011), which is provided on a very short-term basis (24 hours or less) to people who satisfy criteria set by the landlord (which will generally require the person to have an immediate need for accommodation).

### **Part 4 - Tenancies and licences to which special rules apply: homelessness**

48. A local housing authority has a duty to those who are homeless and in need. This includes a duty to provide interim accommodation under section 66 of the Housing (Wales) Act 2014 ('the interim duty') and a duty to secure accommodation (on a longer term basis) under section 73 of that Act ('the full duty'). A local housing authority's interim duty requires it to secure accommodation for an applicant that it has reason to believe is homeless, eligible for help and in priority need.
49. An interim duty arises whilst the local authority carries out an assessment under section 60 of the Housing (Wales) Act 2014 to consider whether the applicant is actually owed a full duty.
50. Following this assessment the local authority will notify the applicant of the outcome. If this assessment shows the local authority owes a full duty to the applicant, they have a duty to provide suitable accommodation.

**Paragraph 11**

51. This paragraph provides that accommodation provided by a local housing authority in connection with its homelessness functions (other than accommodation provided in accordance with the full duty) is not provided under an occupation contract. Accommodation provided under the interim duty will not be provided by means of an occupation contract.

**Paragraph 12**

52. Paragraph 12 sets out the rules that apply where a local housing authority enters into arrangements with another landlord in discharging its homelessness functions.

**Part 5 - Tenancies and licences to which special rules apply: supported accommodation**

**Paragraph 13**

53. Tenancies and licences relating to supported accommodation which a landlord initially intends to provide for no more than six months are not occupation contracts. The landlords to whom this applies are community landlords and registered charities. Section 143(2) defines supported accommodation.
54. If a tenancy or licence relating to supported accommodation continues beyond six months it will automatically become an occupation contract which is a 'supported standard contract'; see section 143 and Part 8 of the Act generally. An exception to the automatic conversion to an occupation contract applies where the landlord extends the six month period by giving a notice under paragraph 15.
55. This means that an occupation contract will arise either immediately after the initial six-month period has ended (where there has been no extension) or (where there has been an extension) immediately after the date specified in the notice of extension. The period before the tenancy or licence becomes an occupation contract is referred to as the 'relevant period'.

**Paragraph 14**

56. This paragraph sets out the effect previous contracts relating to supported accommodation have on the calculation of the relevant period. Generally, if there have been previous contracts that relate to supported housing, the relevant period will be calculated from the start date of the first of those contracts.
57. For any previous contract to be treated in this way it must relate to supported accommodation, and either to the same dwelling as the current contract or to a dwelling within the same building or unit.

**Paragraph 15**

58. As referred to in the preceding paragraphs, a landlord may extend the period during which a person living in supported accommodation does not have an occupation contract.

59. Where a landlord wishes to continue to provide supported accommodation beyond the six month period, but does not wish for the accommodation to be provided under an occupation contract, the landlord may extend that period. If the landlord is not a local housing authority, the landlord must obtain the consent of the local housing authority (defined in section 243) in whose area the accommodation is situated. An extension can be granted for a period of up to three months at a time, but there can be more than one extension.
60. In order to extend the period, the landlord must give notice of an extension to the resident at least four weeks before the tenancy or licence would otherwise become an occupation contract (whether because an initial period is coming to end, or because a previous extension is in force but will soon be coming to an end).
61. The notice must provide all the details set out in paragraph 15(6) and (7) to the resident. This includes giving the reasons for the extension, informing the resident when the relevant period, as extended, will end, and informing the resident of his or her right to apply to the county court for a review of the decision to extend the period. The landlord is also required to consult with the resident before giving notice.
62. In considering whether to apply for an extension the landlord may consider the behaviour of the tenant or licensee and the behaviour of anyone appearing to the landlord to be living in the property.
63. The Welsh Ministers may make regulations setting out details of the procedure for obtaining consent from local housing authorities.

### **Paragraph 16**

64. A person given a notice of extension by the landlord may ask the county court to review the decision to give the notice (if the landlord is a local housing authority) or to review the decision of the local housing authority to consent to the giving of the notice (if the landlord is not a local housing authority).
65. The court may confirm or quash the decision to give (or to consent to) the notice. The court may also vary the extension period, but not beyond the maximum extension of three months.
66. If the court quashes the original notice, the landlord may issue a further notice of extension. Should the landlord issue this new notice within 14 days of the court's decision, it will be considered that the notice complies with the minimum 4 weeks' notice period set out in paragraph 15, even if in practice it does not. This does not affect the time limit within which the resident may seek a review so, in practice, a resident can apply to the county court again under paragraph 16 for a review of that further notice.
67. A review of decisions to extend the relevant period is carried out by the county court, albeit in accordance with the principles applied by the High Court in a judicial review application. The same is true of all reviews undertaken by the county court under the Act.



68. Paragraph 17 provides a power for the Welsh Ministers to amend Schedule 2. The schedule contains significant detail and many definitions which are likely to require updating over time.

### **Section 8 – Secure contracts and standard contracts**

69. This section sets out the two types of occupation contract established by the Act, *secure* and *standard* contracts. As noted above in the commentary on Part 1, a secure contract is a periodic contract that typically runs from week to week or month to month. Secure contracts are the default contract issued by community landlords under the Act. The exceptions to this are set out below.
70. A standard contract can be either a periodic or a fixed term contract. Standard contracts are the default contract issued by private landlords, that is, all landlords that are not community landlords. But private landlords can issue secure contracts if they so choose.
71. A periodic contract runs for the agreed rental period, typically from month to month or sometimes week to week. A fixed term contract is for a pre-agreed specified length of time, usually a number of months or years. The Act provides that fixed term standard contracts automatically become periodic contracts on expiry of the fixed term period.

## **CHAPTER 2 - NATURE OF CONTRACTS WHICH CAN BE MADE ETC. BY COMMUNITY LANDLORDS AND PRIVATE LANDLORDS**

### **Section 9 – Community landlords and Section 10 – Private landlords**

72. Section 9 sets out the persons who are community landlords under the Act. In addition to local authorities (defined in section 243) and registered social landlords (social housing providers such as housing associations registered under Part 1 of the Housing Act 1996), who provide the majority of social housing in Wales, the definition includes certain other providers, and potential providers, such as providers registered in England but which provide social housing in Wales.
73. The Welsh Ministers may amend the definition of community landlord. This is intended to ensure that the Act can reflect changes in the way social housing is provided.
74. Under section 10, a landlord who is not a community landlord, but who rents dwellings within Wales, is a private landlord for the purposes of the Act.

### **Section 11 – Contract made with community landlord**

75. Under the Act the default contract issued by a community landlord is the secure contract, except where the following exceptions apply:

- The occupation contract is within Schedule 3 (see below) and the landlord gives notice under section 13 that it is to be a standard contract.
- The contract is a prohibited conduct standard contract because of an order under section 116 (this is where a standard contract comes into force by order of the court as a result of prohibited conduct - see below).
- A fixed term standard contract has come to an end and the contract-holder remains in the property. In such a situation (in the absence of any new fixed term contract being made) the parties are treated as having made a periodic standard contract. This exception also applies if a new contract is made at the end of a fixed term, which allows the contract-holder to occupy the same dwelling from a date falling immediately after the fixed term contract ends (see section 184(6)).
- A trespasser is occupying the property as his or her home and makes payments which are accepted by the community landlord that owns the property (see section 238).

### **Schedule 3 - Occupation contracts made with or adopted by community landlords which may be standard contracts**

76. This Schedule lists a range of occupation contracts which arise in certain circumstances or which concern certain kinds of accommodation. Under sections 11(2) and 12(4), each such occupation contract may be a standard contract, regardless of the fact that it is made by, or adopted by (that is, taken over by) a community landlord. The relevant types of occupation contract are as follows:

- *Occupation contracts by notice* - An occupation contract that would not be an occupation contract unless notice of that fact had been given under paragraph 1 or 3 of Schedule 2 (see notes above). The relevant contracts are contracts that allow someone other than the contract-holder to occupy a dwelling, contracts where no rent is payable, contracts of holiday accommodation, contracts relating to care home accommodation, 'temporary expedients' and contracts relating to shared accommodation .
- *Supported accommodation* - An occupation contract for supported accommodation (a supported standard contract).
- *Introductory occupation* - An introductory standard contract. Generally, an introductory standard contract is a new contract which is made with a community landlord (or a contract adopted by a community landlord), where the landlord has given the contract-holder a notice under section 13 stating that it will be an introductory standard contract during the 'introductory period' (see section 16 and Schedule 4, and the first exception in sections 11 and 12). An introductory standard contract will not arise where the contract-holder previously held a secure contract with a community landlord, for example where a transfer of contracts has taken place between secure contract-holders.



- *Accommodation for asylum seekers or displaced persons* - Occupation contracts relating to accommodation for asylum seekers (asylum seekers are individuals awaiting the outcome of applications for asylum) or persons with temporary protection under the Immigration Rules (which is given to persons where there is a mass influx of displaced persons).
- *Accommodation for homeless persons* - An occupation contract made in connection with a local housing authority's homelessness functions under Part 2 of the Housing (Wales) Act 2014 and to which the rules set out in Part 4 of Schedule 2 apply (see notes above).
- *Service occupancy: general* - Occupation contracts where the contract-holder is employed by one of the employers listed in the paragraph (generally, the kind of employers that would be required to issue a secure contract), and the employee is required by a term of his or her employment contract to occupy the dwelling (for example school caretakers, sheltered accommodation wardens).
- *Service occupancies in relation to the police or fire and rescue services* - Occupation contracts provided in connection with working for the police or for a fire and rescue service.
- *Student accommodation* - An occupation contract relating to accommodation provided to a student studying a course designated by the Welsh Ministers, at a further education institution (an institution providing education beyond school leaving age, below the level of a degree) or at a higher education institution (an institution providing education at degree level or beyond).
- *Temporary accommodation: land acquired for development* - An occupation contract relating to accommodation which is being provided on a temporary basis on land which has been acquired for development.
- *Temporary accommodation: persons taking up employment* - An occupation contract relating to temporary accommodation provided to people who have moved to a local authority area where they were not previously resident to take up employment, whilst they seek permanent accommodation.
- *Temporary accommodation: short term arrangements* - An occupation contract which relates to a dwelling that has been let to the community landlord to be used as temporary housing accommodation, and the terms on which it has been let requires the community landlord to return the dwelling to the lessor at the end of a specified period, or when required by the lessor. The lessor must not himself be a community landlord.
- *Temporary accommodation: accommodation during works* - An occupation contract which relates to accommodation which is provided on a short term basis whilst work is carried out on the contract-holder's usual home. A standard contract can be offered in these circumstances if the temporary accommodation is provided by a different landlord and the contract-holder did not previously have a secure contract.
- *Accommodation which is not social accommodation* - An occupation contract where the contract-holder is a key worker or the making of the occupation contract was not subject to the normal 'allocation rules'. Allocation rules address how housing is allocated to those in need of accommodation. Whether a person is a key worker for these purposes will be determined in accordance with regulations made by the Welsh Ministers.

- *Dwellings intended for transfer* - An occupation contract relating to accommodation which has been acquired, built or developed by a community landlord, a registered social landlord (see section 1 of the Housing Act 1996) or a private registered provider of social housing (see section 80(3) of the Housing and Regeneration Act 2008) with the intention of transferring it to a fully mutual housing association or a co-operative housing association. A fully mutual housing association or co-operative housing association is a housing association where the residents are also members of the association and therefore direct its management (see section 1(2) of the Housing Associations Act 1985).

77. The Welsh Ministers may amend the Schedule by regulation.

### **Section 12 – Contract adopted by community landlord**

78. Where a community landlord becomes the landlord under an existing secure contract (for example where a local authority's housing stock is transferred to a housing association), that secure contract will continue. Where a community landlord becomes the landlord under an existing standard contract because of a transfer of the rights of the landlord under a sub-occupation contract (under sections 62 or 66) it will continue as a standard contract.

79. In all other circumstances, the contract will end when the community landlord becomes the landlord, and will be replaced with a secure contract, unless one of the following exclusions apply:

- The occupation contract is within Schedule 3 (see above) and the landlord gives notice under section 13 that it is to be a standard contract.
- The contract is a prohibited conduct standard contract because of an order under section 116 (where a standard contract is created by order of the court as a result of prohibited conduct - see below).
- The contract was a fixed term standard contract that has ended and become a periodic standard contract, or a new contract has been made at the end of a fixed term (see section 184(6)).
- A trespasser is occupying the property as his or her home and makes payments which are accepted by the community landlord that owns the property (see section 238).
- The contract is a fixed term standard contract for which a premium was paid (for example through buying a leasehold property with less than 21 years remaining before the lease expires) and the contract-holder has not elected (before the community landlord became the landlord) for the contract to remain a fixed term standard contract (see section 15).

### **Section 13 – Notice of standard contract**

80. Where a community landlord wishes to enter into a standard contract, or does not wish for an existing contract it is adopting to become a secure contract, and the contract is of a kind listed in Schedule 3, notice under this section must be given to the contract-holder (see section 11(2)(b) and section 12(4)(b)). The notice must inform the contract-holder of their right to ask a county court to review the landlord's decision to give the notice within 14 days (see section 14).

### **Section 14 – Review of notice**

81. This section applies where a community landlord has given a notice under section 13. The contract-holder, may ask for a review of the landlord's decision by the county court.
82. The court may confirm or quash the decision to give the notice. If the court quashes the original notice, the landlord may give a further notice. If it does so within 14 days of the court's decision, the notice has effect as though it had been given at the time the occupation contract was made or when the community landlord became the landlord, as the case may be. This does not affect the time limit within which the contract-holder may seek a review so, in practice, a contract-holder can apply to the county court again under section 14 for a review of that further notice.

### **Section 15 – Notice of right to decide to remain on fixed contract**

83. As set out in section 12, if a community landlord adopts a fixed term standard contract for which a premium was paid, it will become a secure contract unless the contract-holder elects for their contract to remain as a fixed term standard contract.
84. This section requires that a community landlord gives the contract-holder notice at least one month before it becomes the landlord informing them of their right to elect to remain on a fixed term standard contract.

### **Section 16 – Introductory standard contracts**

85. This section establishes the concept of an 'introductory standard contract'. A new occupation contract made with a community landlord (or a contract adopted by a community landlord) is an introductory standard contract if the landlord gives the contract-holder notice of that fact under section 13. This section provides that introductory standard contracts are periodic standard contracts during the introductory period (generally twelve months unless that period is extended; see Schedule 4). At the end of the introductory period the introductory standard contract ends and is replaced by a secure contract unless a private landlord becomes the landlord under the contract. If a private landlord becomes the landlord before the end of the introductory period, the introductory period will end, and the contract will continue as a standard contract (because of section 17(3)).
86. The introductory standard contract provides less security of occupation than a secure contract. Introductory standard contracts allow community landlords to ascertain, during the introductory period, whether a contract-holder can sustain a secure contract. In instances where the contract-holder has demonstrated that they will not be able to sustain a secure contract, if section 173 is incorporated as a term of the contract without modification, the landlord can seek to terminate the contract by notice, which means that an introductory standard contract can be terminated more swiftly than is possible under a secure contract.

#### **Schedule 4 - Introductory standard contracts**

87. This schedule sets out in more detail the arrangements under the Act that apply to introductory standard contracts. Introductory standard contracts are a type of periodic standard contract that can be issued by community landlords, in the first instance for an introductory period of 12 months, instead of issuing a secure contract.
88. A community landlord can also extend the introductory period to a total of 18 months by giving the contract-holder a notice of extension at least eight weeks before the introductory period with otherwise end. The contract-holder can request that the landlord reviews the landlord's decision to seek an extension. Furthermore if, after an internal review of the decision by the landlord, the landlord gives a notice informing the contract-holder that the landlord has decided to confirm the decision, or fails to give notice at all, the contract-holder can apply to the county court for a review of the decision to extend the introductory period.
89. The processes relating to extension, internal review and review by the county court set out in this schedule are very similar to those applying to prohibited conduct standard contracts (see Schedule 7).

#### **Paragraph 1**

90. This paragraph sets out what constitutes the introductory period during which an occupation contract granted by a community landlord is a periodic standard contract (because of the exception in paragraph 3 of Schedule 3)
91. Where a community landlord has sought to terminate the contract through making a possession claim, or given notice to the contract-holder of its intention to do so, but the claim has not concluded, the contract will remain a standard contract beyond the introductory period until:
- the notice is withdrawn,
  - the time for making the claim runs out without the claim being pursued,
  - the claim is determined in favour of the contract-holder, or
  - the contract ends without any of those events having happened.

#### **Paragraph 2**

92. This paragraph sets out how the date on which the introductory period starts is determined if the contract-holder was a party to an introductory standard contract which ended just as the right to occupy the dwelling under the new introductory standard contract began. In the case of joint contract-holders, the date is the earliest of the dates that would apply if each joint contract-holder was treated individually.

#### **Paragraph 3**

93. A landlord may extend the introductory period from 12 months to 18 months. In deciding whether to extend the introductory period, the landlord may consider the behaviour of the contract-holder(s) and the behaviour of any person who the landlord considers to be living in the dwelling.

94. A community landlord seeking an extension to the introductory period must notify the contract-holder at least eight weeks before the introductory period is due to end. The notice must:
- inform the contract-holder of the decision to extend and the reasons why the landlord is seeking the extension, and
  - inform the contract-holder that they have the right to request the community landlord to review its decision, and set out the time by which such a request must be made.
95. The Welsh Ministers may extend or shorten the period within which notice of extension must be given to the contract-holder in order for the notice to be valid.

#### **Paragraph 4**

96. If the contract-holder requests a review, the landlord must review its decision, following which it may confirm or reverse the decision to give the notice. The landlord must notify the contract-holder of the outcome of the review before the day on which introductory period would end if it was not extended.
97. The Welsh Ministers may by regulations set out the procedure to be followed for any review of the notice.

#### **Paragraph 5**

98. Where a review has taken place and the landlord gives the contract-holder notice confirming the original decision, or where the landlord fails to notify the contract-holder of the outcome, the contract-holder may apply to the county court for a review of the decision to give the notice of extension. An application must be made within 14 days of the date on which the landlord gives the contract-holder notice of its decision or 14 days from the date by which the landlord should have notified the contract-holder of the decision (that being the day on which the introductory period would have ended, if it hadn't been extended).
99. The court may confirm or quash the decision to give the notice of extension. If the court quashes the decision and the landlord gives the contract-holder a further notice of extension within 14 days of the court's decision, the notice is deemed to comply with the notice requirement in paragraph 3(2) (that is, it is taken to have been given at least eight weeks before the day on which the introductory period would have ended). This does not affect the time limit within which the contract-holder may seek a review so, in practice, the contract-holder's right to ask the landlord (within 14 days of receiving the notice) to review the decision to give the notice then applies again. If the contract-holder requests such a review, the landlord has to give the contract-holder notice of the outcome of the review before the end of the period of 14 days starting with the day on which the contract-holder asked for the review.



## **Paragraph 6**

100. Paragraph 6 explains how a written statement (which a landlord is required to give the contract-holder if a term of the contract incorporates section 31) can deal with the introductory standard contract and with the secure contract that may arise at the end of an introductory standard contract. If the landlord and the contract-holder have agreed before the end of the introductory period what the terms of the secure contract will be, the landlord may provide a written statement which sets out the terms of both the introductory standard contract and the secure contract which may arise at the end of the introductory period. The written statement can do this either by identifying the terms of the introductory standard contract that will not be terms of the secure contract (for instance, by marking up the written statement of the introductory standard contract) and setting out the terms that will only apply to the secure contract, or by separately setting out all the terms of the secure contract.
101. Where a landlord has provided a written statement of an introductory standard contract which addresses the secure contract, the statement is not taken to be incorrect merely because it addresses the secure contract. A landlord providing such a statement is treated as having complied with the requirement in section 31 to provide a written statement in relation to the secure contract.
102. Should the introductory period be extended by the landlord (meaning that the occupation date of the secure contract changes) the written statement will not be incorrect merely because it does not set out the new occupation date of the secure contract.

## **Paragraph 7**

103. If the landlord gives the contract-holder a written statement that addresses both the introductory standard contract and the secure contract which may arise at the end of the introductory period, the landlord and contract-holder may, prior to the occupation date of the secure contract, agree to vary the secure contract addressed in the written statement. However, this is subject to sub-paragraphs (2) to (5), which provide:
- that there are limits on the extent to which fundamental terms can be varied (see section 108(1) to (5),
  - that the landlord is required to give a written statement of a variation (and that compensation is payable if the landlord fails to comply) (see sections 109(1) to (3) and 110),
  - that the specific requirements for varying rent or other consideration set out in sections 104(1) to (3) or section 105(1)(b) and (2) to (4) apply, and
  - that the variation of rent or other consideration can take effect from the occupation date of the secure contract, or from a later date.
104. Section 20 provides for this paragraph to be a fundamental provision which is incorporated without modification as a term of all introductory standard contracts where the written statement is a 'relevant written statement' (that is, it addresses both the introductory standard contract and the secure contract that may follow).

### **Paragraph 8**

105. Paragraph 8 explains what the terms of a secure contract will be when an introductory standard contract ends and is replaced with a secure contract and the terms of the secure contract have not been addressed in the written statement in accordance with paragraph 6(2) (see note on paragraph 6 above). If the landlord and the contract-holder have agreed the terms of the secure contract, the terms of the contract are as agreed. If the landlord and contract-holder have not agreed the terms of the secure contract, paragraph 8(4) explains what the terms of the secure contract are to be.

### **Paragraph 9**

106. Where a secure contract arises following an introductory standard contract, and the contract incorporates section 39(1) without modification, there is no requirement under that term for the landlord to provide the contract-holder with an address to which documents can be sent. The address of the landlord will not have altered as a consequence of the change from an introductory standard contract to a secure contract.

### **Section 17 – Contract made with or adopted by private landlord**

107. An occupation contract made between a private landlord and a contract-holder will by default be a standard contract. But if a landlord has given notice to the contract-holder (before or when the contract is made) that the contract is a secure contract it will be a secure contract.
108. Where a private landlord becomes the landlord under an existing secure contract or an existing standard contract, the contract will remain, respectively, a secure or standard contract.

## **CHAPTER 3 - FUNDAMENTAL PROVISIONS OF OCCUPATION CONTRACTS**

109. In addition to property-specific information such as the amount of rent and the address (referred to as key matters in the Act), occupation contracts will comprise fundamental terms (terms which incorporate the fundamental provisions in the Act), supplementary terms (terms which will incorporate supplementary provisions set out in regulations to be made by the Welsh Ministers under the power in section 23 of the Act), and any additional terms agreed between the landlord and contract-holder.
110. Chapter 3 introduces the concept of fundamental provisions, which are provisions of the Act that are incorporated as fundamental terms of occupation contracts. Many fundamental provisions can be incorporated with modifications or not incorporated at all in an occupation contract, provided the landlord and the contract-holder agree, and the contract-holder is of the opinion that the position of the contract-holder is improved as a result. However, some fundamental provisions must always be incorporated without modifications, and these are listed in section 20(3).
111. Schedule 1 lists the fundamental provisions that apply to each type of occupation contract. Generally, these Explanatory Notes do not separately identify fundamental provisions, but do identify where fundamental provisions must be incorporated without modification into occupation contracts, or where they are otherwise worthy of further explanation.

## **Section 18 - Fundamental provisions and Section 19 - Fundamental terms and fundamental provisions: definitions**

112. Fundamental provisions are one of the key aspects of this Act and will be a key component of an occupation contract, where they will be reflected as fundamental terms. The Act specifies which fundamental provisions apply to which contracts. In some cases fundamental provisions are to be incorporated into all occupation contracts (for example the need to provide a written statement of the contract) and in other cases there are provisions which apply only to certain contracts.
113. Model written statements of contracts prescribed by the Welsh Ministers in the exercise of their power under section 29 will contain the fundamental and supplementary terms applying to each type of occupation contract, and these will reflect the relevant fundamental provisions in the Act, incorporated without modification.
114. In practice, the fundamental terms of the contract will very closely reflect the wording of the fundamental provisions of the Act, and section 33 sets out the limits of acceptable editorial changes.

## **Section 20 - Incorporation and modification of fundamental provisions**

115. This allows landlords and contract-holders to agree not to incorporate fundamental provisions into an occupation contract (with the exception of the fundamental provisions listed in subsection (3), which must always be incorporated without modification). However, this is subject to the test that, in the opinion of the contract-holder, non-incorporation of the term would improve his or her position. Landlords and contract-holders are also able, by agreement, to modify fundamental provisions, provided the contract-holder is of the opinion that the modification would improve his or her position. For example, the contract-holder may be of the opinion that his or her position would be improved by not incorporating the fundamental provision in section 173 (which allows the landlord to end the contract by giving notice), or by modifying the notice period required under section 174 to require the landlord to give more than the minimum two months' notice. If the landlord was in agreement, section 20 would allow those terms not to be incorporated, or to be incorporated with modifications.
116. The fundamental provisions set out in section 20(3) must be incorporated as fundamental terms of every occupation contract to which they apply, without any modification. An example of a fundamental provision that must be incorporated without modification is section 55, which is about prohibiting anti-social behaviour and other conduct. The reasons why these provisions are given this special status differ from provision to provision, and are explained in the notes on the sections themselves.
117. Under sections 34 and 35, if a written statement hasn't been provided or is incomplete, a contract-holder may apply to the court for a declaration of the terms of the contract. If that happens, and the contract-holder is not at fault, each fundamental and supplementary provision applicable to the contract will be treated as incorporated without modification, unless the contract-holder claims that it was not incorporated, or that it was incorporated with modifications.



## **Section 21 – Effect of non-incorporation and modification of fundamental provisions**

118. If a landlord and contract-holder agree to modify or not to incorporate a fundamental provision, section 21 provides for the automatic modification or non-incorporation of other fundamental and supplementary provisions that are capable of not being incorporated, or of being modified, in order to give effect to the agreement. For example, if the fundamental provision allowing for a possession claim to be made on the ground of serious rent arrears under a periodic standard contract (section 181) was not incorporated, the relevant fundamental provision restricting the use of that possession ground (in section 182) should also not be incorporated. This section ensures that that would happen.
119. Automatic modification and automatic non-incorporation are subject to the same constraints as an agreement to modify or not to incorporate; they must not result in the modification or non-incorporation of any of the fundamental provisions listed in section 20(3). This means that if, as a result of having agreed to modify or not to incorporate a fundamental provision, a fundamental provision listed in section 20(3) would not be incorporated or would be incorporated with modifications, the agreement not to incorporate the original provision or to incorporate that provision with modification (under subsection (1) or (2)) is of no effect.
120. The fundamental terms of an occupation contract can also be changed after the contract is made (and this is referred to in the Act as a ‘variation’). However, there are limits to this right and the limits vary between secure contracts (see Chapter 2 of Part 5), periodic standard contracts (see Chapter 2 of Part 6) and fixed term standard contracts (see Chapter 2 of Part 7). Each of those Chapters is discussed further below.

## **Section 22 – Powers in relation to fundamental provisions**

121. This enables the Welsh Ministers to make regulations which specify that any provision of an Act of Parliament or of a Measure or Act of the National Assembly for Wales (including any provision of this Act), or of subordinate legislation is, or is not, a fundamental provision. This will allow the Welsh Ministers to make certain existing provisions fundamental provisions, and to ensure that new rights and obligations in future legislation can become fundamental provisions.

## **CHAPTER 4 - SUPPLEMENTARY PROVISIONS OF OCCUPATION CONTRACTS**

122. Chapter 4 introduces the concept of supplementary provisions, which are provisions which will be set out in regulations, and will be incorporated as supplementary terms within occupation contracts. As with most fundamental provisions, supplementary provisions can be incorporated with modifications or not incorporated at all in an occupation contract. However, unlike with fundamental provisions, there is no restriction regarding the non-incorporation or modification of supplementary provisions having to improve the position of the contract-holder. Therefore, the modification or non-incorporation could have the effect of improving the position of either the landlord or the contract-holder.

### **Section 23 – Supplementary provisions**

123. This section provides for supplementary provisions to be set out in regulations made by the Welsh Ministers. Examples of supplementary provisions would include provisions relating to maintenance of a garden, or a requirement to pay council tax and utility bills.

### **Section 24 – Incorporation and modification of supplementary provisions**

124. The default position is that supplementary provisions are incorporated as supplementary terms of an occupation contract. But this section provides for landlords and contract-holders to agree that a supplementary provision is either not incorporated or incorporated with modifications. However, where not incorporating a supplementary provision or modifying a supplementary provision would render the related supplementary term incompatible with a fundamental term of the contract, the agreement not to incorporate the original supplementary provision or to incorporate it with modification has no effect. If a landlord fails to provide a written statement of the contract, or provides an incomplete statement, sections 34 and 36 allow the contract-holder to apply to the court for a declaration of the terms. If that happens, and the contract-holder is not at fault, each supplementary provision applicable to the contract will be treated as incorporated without modification, unless the contract-holder claims that it was not incorporated, or that it was incorporated with modifications.

### **Section 25 – Effect of non-incorporation and modification of supplementary provisions**

125. If a landlord and contract-holder agree to modify or not to incorporate a supplementary provision, section 25 provides for the automatic modification or non-incorporation of other supplementary provisions in order to give effect to the agreement.

## **CHAPTER 5 - KEY MATTERS AND ADDITIONAL TERMS OF OCCUPATION CONTRACTS**

### **Section 26 – Key matters of all occupation contracts**

126. This section sets out the key matters which must be included in all occupation contracts. These are:

- the address of the dwelling;
- the occupation date (the date from which the contract-holder is able to occupy the dwelling);
- the amount of rent or other consideration; and
- the rental periods (for example weekly or monthly). ‘Rental period’ is defined in Section 252.

### **Section 27 – Further key matters of standard contracts**

127. This section sets out the additional key matters which must be included in all standard contracts. These are:

- whether the contract is periodic or made for a fixed term;
- if it is made for a fixed term, the term for which it is made (how long does the contract run, when does it begin and when does it end);
- any periods during which the contract-holder is not entitled to occupy the dwelling as a home (for example, to allow student accommodation to be used for other purposes during vacations periods).

### **Section 28 – Additional terms**

128. This section defines 'additional terms' as any terms other than fundamental terms, supplementary terms and terms relating to key matters. Additional terms can be included in the contract to cover issues such as the keeping of pets. However, such terms cannot conflict with the terms relating to key matters, or with fundamental and supplementary terms.

## **CHAPTER 6 - MODEL CONTRACTS**

### **Section 29 – Model written statement of contract**

129. This section provides the Welsh Ministers with a power to issue 'model' written statements of occupation contracts (a landlord is required to provide a written statement of the contract because of section 31).

130. These written statements will include fundamental and supplementary terms which incorporate all of the fundamental and supplementary provisions relevant to each form of contract without modification. So, for example, there will be model written statements for secure, fixed term standard and periodic standard occupation contracts.

## **PART 3 - PROVISIONS APPLYING TO ALL OCCUPATION CONTRACTS**

### **CHAPTER 1**

#### **Section 30 – Overview of this Part**

131. This section provides an overview of Part 3, which sets out provisions that apply to all occupation contracts.

### **CHAPTER 2 - PROVISION OF INFORMATION**

132. The Act places a requirement on landlords to provide certain information to contract-holders. This includes a requirement for a written statement of the contract to be provided within 14 days of the date the contract-holder becomes entitled to occupy the dwelling. This chapter also sets out what the contract-holder can do to enforce the requirement to provide information, and also provides for compensation of up to two months' rent to be payable by the landlord for failing to provide a written statement of the contract.

### **Section 31 – Written statement**

133. If this section is incorporated as a term of the contract without modification, the landlord is required to provide a written statement of the occupation contract to the contract-holder within 14 days of the date the contract-holder becomes entitled to occupy the dwelling. This requirement is intended to ensure that all parties know precisely what their rights and obligations are under the contract. The landlord cannot charge a fee to the contract-holder for providing this statement.
134. Where the identity of the contract-holder, or one of the contract-holders under a joint contract, has changed, the landlord must provide a copy of the written statement of the contract to the new contract-holder within 14 days of the identity of the contract-holder changing. Where a landlord was unaware that the identity of the contract-holder had changed, a written statement of the contract must be provided within 14 days of the landlord becoming aware (or, in the case of joint landlords, within 14 days of any one of the landlords becoming aware) of the change of identity. The landlord cannot charge a fee to the contract-holder for providing this statement.
135. If a contract-holder requires a further copy of the written statement, the landlord may charge a reasonable fee for providing that further copy. The further copy must be provided within 14 days of the request being made or, if the landlord charges a fee, within 14 days of the contract-holder paying the fee.

### **Section 32 – Contents of written statement**

136. This section sets out the information to be included in the written statement of an occupation contract. The matters are the names of the landlord and contract-holder(s), the key matters (see sections 26 and 27), the fundamental terms (see Chapter 3) and the supplementary terms (see Chapter 4), together with any additional terms which have been agreed between the landlord and contract-holder.
137. Where the landlord and contract-holder have agreed not to incorporate a fundamental or supplementary provision there is a requirement for the statement to specifically identify those provisions.

### **Section 33 – Editorial changes**

138. This section allows for ‘editorial changes’ to be made to the wording of fundamental or supplementary terms, and gives examples of what these might be.

### **Section 34 – Failure to provide a written statement etc.**

139. Where a landlord has not provided the written statement within 14 days, and that is required by a term of the contract which incorporates section 31, the contract-holder may apply to the court for a declaration of the terms of the contract.

140. If an application is made to the court, the default position is that the relevant fundamental and supplementary provisions that apply to the contract are to be treated as incorporated without modification as terms of the contract. However, if the contract-holder claims that particular provisions were not incorporated or were incorporated with modifications, then the court will determine the position, unless the landlord's failure to issue the written statement is attributable to the contract-holder. The court may either issue a statement of the contract or order the landlord to give the contract-holder a written statement.

### **Section 35 - Failure to provide statement: compensation**

141. This section provides for compensation to be payable by the landlord to the contract-holder where the landlord has failed to provide a written statement of the contract, unless the failure is attributable to the contract-holder. The time period within which a written statement must be given to the contract-holder will be set out in any term of the contract that incorporates section 31.
142. The compensation is payable in accordance with section 87 and is equivalent to a day's rent for each day that the written statement is not provided, up to a maximum of two month's rent, until the statement has been provided. Interest will be added to the compensation amount if the landlord fails to provide the statement within the two month period. If the contract-holder believes the failure to provide the written statement was intentional, section 87 also enables the contract-holder to apply to the court for the compensation amount to be increased. Section 87 enables the court to increase the amount of compensation up to a maximum of double the original amount. Section 88 enables the contract-holder to set off any compensation he or she is owed against rent.

### **Section 36 - Incomplete statement**

143. This section provides that where an incomplete written statement of the contract has been provided, the contract-holder may apply to the court for a declaration of the terms of the contract. The contract-holder may not do so before the end of a 14 day period starting on whichever of the following is the relevant date:
- the occupation date (if the written statement was provided in accordance with a term of the contract that incorporates section 31(1)),
  - the day the landlord provided the written statement (if the written statement was provided in accordance with a term of the contract that incorporates section 31(2)), or
  - if the landlord provided a further written statement (in accordance with a term of the contract that incorporates section 31(6)), either the day the contract-holder requested the further written statement or the day the contract-holder paid any fee for the further written statement (if a fee was required).

144. Where the court concludes that the landlord deliberately provided an incomplete statement (for example, the landlord omitted the repairing obligation term in an attempt to avoid that obligation), it can order the landlord to pay compensation of up to two-months' rent to the contract-holder under Section 87, plus interest. Section 87 also enables the contract-holder to apply to have the amount of compensation increased up to a maximum of double the original amount. Section 88 enables the contract-holder to set off any compensation he or she is owed against rent.

### **Section 37 – Incorrect statement: contract-holder's application to court**

145. This section deals with the circumstance where the landlord has provided an incorrect written statement of the contract, for instance, where the contract-holder believes that the terms have been incorrectly set out, or terms have been included which were not agreed. The contract-holder may apply to the court seeking a declaration as to the terms of the contract. If the court decides the provision of an incorrect written statement was deliberate, it can order a landlord to pay compensation of up to two month's rent, plus interest. Under Section 87, the contract-holder may apply to the court for the compensation amount to be increased. Section 88 enables the contract-holder to set off any compensation he or she is owed against rent.
146. The written statement will not be incorrect just because it doesn't set out a term that has been varied in accordance with the contract if either a written statement or a written notice of the variation has been provided separately by the landlord. However, where a landlord is required to provide a written statement under a term of the contract which incorporates section 31(2) (because the identity of the contract-holder has changed), or a further written statement under a term of the contract which incorporates sections 31(4) to (6), any previously varied terms must be reflected within this written statement.

### **Section 38 – Incorrect statement: landlord's application to court for declaration that contract is a standard contract**

147. Where a community landlord has provided a notice to a contract-holder under section 13 (notice of standard contract) but has mistakenly provided a written statement of a secure contract, the landlord may apply to the court to have this rectified.

### **Section 39 – Provision by landlord of information about the landlord and Section 40 - Compensation for breach of section 39**

148. If these sections are incorporated as terms of the contract without modification, within 14 days of the occupation date, a landlord is required to provide the contract-holder with an address to which any documents for the landlord can be sent (this may be an agent, if the landlord uses one). If there is a change in the identity of the landlord, the new landlord must notify the contract-holder of the change, along with an address to which the contract-holder may send documents to the new landlord, within 14 days of the new landlord becoming the landlord. Where there is a change in the address to which documents for the landlord can be sent, the landlord must notify the contract-holder of the new address within 14 days.



149. Where a landlord fails to provide this information to the contract-holder within the required time, they are liable to pay the contract-holder compensation equivalent to a day's rent for each day that the information is not provided (up to a maximum of two months' rent) until the information has been provided. Interest will begin to be added to that amount if the landlord fails to provide the statement within the two month period.

**Section 41 – Form of notices etc.**

150. If this section is incorporated as a term of a contract without modification, any notices or other documents which relate to the contract must be in writing (for example a request by a contract-holder to be permitted to add another person to the contract, or a notice from the landlord informing the contract-holder that the landlord's identity has changed). Sections 236 and 237 deal with notices in greater detail.

**CHAPTER 3 - WHEN CONTRACT BECOMES ENFORCEABLE**

**Section 42 – When terms of occupation contract become enforceable**

151. This section sets out the time at which an occupation contract becomes enforceable against the contract-holder. A landlord is not able to enforce any term of an occupation-contract before the landlord gives the written statement of the contract or, if earlier, the date on which the contract-holder is entitled to occupy the dwelling.
152. Where there has been a change in the identity of the contract-holder, no term of the occupation contract is enforceable against the new contract-holder before the landlord gives the written statement to the new contract-holder, or the new contract-holder becomes entitled to occupy the dwelling.

**CHAPTER 4 - DEPOSITS AND DEPOSIT SCHEMES**

**Section 43 – Form of security**

153. If this section is incorporated as a term of the contract without modification, where a contract-holder is required by the landlord to pay a deposit in relation to a dwelling, the landlord can only ask for this deposit in the form of money or a guarantee, for example, a deposit guarantee scheme provided by a local authority for those unable to afford a deposit.

**Section 44 – Form of security: county court proceedings**

154. Where a landlord requires a contract-holder to provide security in a form other than money or a guarantee, for example an item of jewellery, the contract-holder (or any person who has given the security for the contract-holder) may seek an order in the county court requiring the person who appears to be holding the security to return it.

### **Section 45 – Requirement to use deposit scheme**

155. In accordance with the term of the contract that incorporates this section, a landlord who requires a deposit from a contract-holder must place any deposit received into an authorised deposit scheme (see Schedule 5). A landlord must, within 30 days of receiving the deposit, comply with the initial requirements of the scheme and provide the contract-holder with details of the scheme being used, their rights with regard to the deposit and confirmation that the landlord is complying with the initial requirements of that scheme. Protection of deposits paid by contract-holders is of great importance in practice, and in order to ensure that this protection extends to all contract-holders this section is a fundamental provision in relation to all occupation contracts which must be incorporated without modification.

### **Section 46 – Deposit schemes: further provision**

156. This section introduces Schedule 5. It also highlights the connection between Chapter 4 and sections 177 and 198. In summary, a term of the contract which incorporates section 177 will prevent a landlord who has entered into a periodic standard contract from issuing a notice for possession (under the term of the contract which incorporates section 173) if the landlord is not complying with the requirements of section 43 or section 45. Section 198 makes the same provision in relation to fixed term standard contracts.

### **Schedule 5 - Deposit schemes: further provision**

157. The Act makes provision about deposit scheme requirements. The provisions requiring the use of deposit schemes must be incorporated into all occupation contracts without modification. This means that all occupation contracts will include requirements about deposit schemes, similar to those that currently apply to Assured Shorthold Tenancies. The requirements will apply equally to private and community landlords. Schedule 5 sets out additional provisions relating to the protection of deposits.

### **Paragraph 1**

158. Paragraph 1 requires the Welsh Ministers to make arrangements for the availability of deposit schemes, and allows the Welsh Ministers to make payments etc. to scheme administrators. The paragraph also includes a power for the Welsh Ministers to make regulations, conferring powers and imposing duties on scheme administrators.



### **Paragraphs 2 and 3**

159. Paragraph 2 applies where an occupation contract is ongoing. If a landlord does not arrange for a deposit to be held in accordance with an authorised deposit scheme, or fails to comply with certain requirements (including the requirements of section 45(2)), the contract-holder, or a person who paid a deposit on his or her behalf, may apply to the court for a remedy. If the court is satisfied that the landlord has not complied with the requirements, or is not satisfied that the deposit is being held in accordance with an authorised deposit scheme, it must either order the deposit to be repaid or order it to be paid into a custodial deposit scheme (defined in the paragraph), if one is in existence. The court must also order the landlord to pay a sum of money to the applicant, which can be up to three times the amount of the deposit. Paragraph 3 provides a similar right to apply to the court for a remedy in situations where the occupation contract has ended, but the landlord did not comply with certain requirements relating to deposits

### **Paragraph 4**

160. Where the landlord and contract-holder enter into an occupation contract that immediately follows a previous contract (in relation to the same, or substantially the same, dwelling), paragraph 4 provides for the deposit paid in relation to the first contract to apply to the substitute contract, and any further substitute contracts. Therefore, if the landlord complied with the requirements in relation to the deposit with respect to the first contract, there is no requirement to re-protect a deposit.

### **Section 47 - Deposit schemes: interpretation**

161. This section sets out definitions of terms used in the provisions about deposit schemes in the Act.

## **CHAPTER 5 - JOINT CONTRACT-HOLDERS AND JOINT LANDLORDS**

### **Section 48 - Joint contract-holders: joint liability etc.**

162. Two or more persons who agree to rent a dwelling together are referred to as joint contract-holders in the Act. Where there are joint contract-holders under an occupation contract, this section provides (amongst other general provisions about how the Act operates in relation to joint contract-holders) that each joint contract-holder is fully liable in respect of the contract-holders' obligations under the occupation contract.

### **Section 49 - Adding a joint contract-holder**

163. If this section is incorporated as a term of the contract without modification, where a contract-holder under an occupation contract wishes to add another person as contract-holder to the contract, the contract-holder can do so with the consent of the landlord. A person added to the contract as a joint contract-holder becomes entitled to the same rights and subject to the same obligations as the original contract-holder(s).

### **Section 50 - Adding a joint contract-holder: landlord's consent**

164. A landlord is able to refuse a contract-holder's request to add a new contract-holder to the contract (made under a term of the contract that incorporates section 49 without modification), provided their reasons for refusing are reasonable. Alternatively, a landlord can consent subject to conditions (provided the conditions are reasonable). Section 84 sets out how requests for consent are to be made and dealt with.
165. Under section 50, what is reasonable for the landlord to take into account when considering whether to grant consent is to be determined in accordance with Schedule 6 (and see in particular paragraph 9).
166. Schedule 6 sets out certain circumstances that must be considered, if relevant. For example a relevant circumstance might be whether the person the contract-holder wishes to add as a joint contract-holder has been a contract-holder previously and, if so, whether they complied with the occupation contract to which they were a party.
167. Paragraph 10 of Schedule 6 enables the landlord to make it a condition of consent that, if the landlord considers that the probable effect of giving consent is to lengthen substantially the period during which the occupation contract is likely to continue in force, the joint contract-holder is to be treated as a priority successor or as a reserve successor in relation to the occupation contract (see notes on sections 74 to 77 for an explanation of what a 'priority successor' and 'reserve successor' is).

### **Schedule 6 - Reasonableness of withholding consent etc.**

#### **Part 1 – Introductory**

168. Schedule 6 sets out circumstances which must be taken into account, so far as are relevant, for the purpose of determining whether a landlord has acted reasonably in refusing consent or imposing a condition on the grant of consent in various circumstances. The schedule applies only to consents under the following sections:
- Section 49 - Adding a joint contract-holder;
  - Section 57 - Permissible forms of dealing (for example, consenting to creating a tenancy or licence, to a transfer of the contract, or to a mortgage, if the contract permits that);
  - Section 114 - transfer of secure contract to a potential successor;
  - Section 118 - Transfer of secure contract with a community landlord to another secure contract-holder.
169. Part 2 sets out circumstances that may be relevant to all of the above consents. Part 3 sets out circumstances that may be relevant to particular transactions.

## **Part 2 – Circumstances which may be relevant to reasonableness generally**

170. The general circumstances are:

- the status of the contract (whether any party has taken steps to end the contract);
- the dwelling (e.g., the size and suitability of the dwelling for the transaction being proposed);
- the circumstances of the contract-holder and other occupiers; and
- the circumstances of the landlord.

## **Part 3 - Circumstances which may be relevant to reasonableness in relation to particular transactions**

171. Paragraphs 9 and 10 set out relevant circumstances in relation to granting consent to add another person to a contract under a term of the contract which incorporates section 49 (see note on section 50 above).

172. Paragraph 11 sets out relevant circumstances in relation to granting consent to a transfer of a contract to a potential successor, such as a spouse or a child, under a term of the contract which incorporates section 114.

173. If the landlord considers that granting such consent is likely to substantially extend the length of the contract, then paragraph 12 provides that it would be reasonable for the landlord to make it a condition of consent that the potential successor is treated as being a priority or reserve successor (see sections 74 to 77).

174. Paragraph 13 sets out relevant circumstances in relation to granting consent to a transfer of a secure contract (under a term of the contract which incorporates section 118), to another secure contract-holder of a community landlord. Paragraph 14 provides that it is reasonable for the landlord to impose a condition that, if the transfer is part of a chain of transfers, the transfer may only proceed if all the other transfers in the chain take place. It is also reasonable for the landlord to impose a condition that, if the person to whom the contract is being transferred is a priority or reserve successor under his or her current contract, he or she will be retain the same succession status under the transferred contract.

## **Section 51 - Adding a joint contract-holder: formalities**

175. The addition of a joint contract-holder under an occupation contract can only take place if a document has been signed (or executed) by all of the parties to the agreement. The document also needs to be signed (or executed) by the landlord, if landlord's consent is required. However, sections 84(6) (8) and (10) set out circumstances under which a landlord will be taken to have consented to a request from a contract-holder if they have not responded within one month. If consent is taken to have been given in any of those circumstances, there is no need for the document to be signed (or executed) by the landlord.

**Section 52 - Joint contract-holder ceasing to be a party to the occupation contract**

176. This section deals with the situation where a joint contract-holder dies or otherwise ceases to be a party to the contract. A term of a contract which incorporates this section will provide that, in such cases, the remaining joint contract-holder(s) are entitled to the same rights, and are bound by the same terms, as they were previously. For example, the remaining joint contract-holders remain jointly and severally liable in respect of the rent. However, a joint contract-holder who leaves a contract remains liable for anything which occurred during their time as a contract-holder, such as a failure to pay rent.

177. Section 20 provides that this section must be incorporated without modification as a term of all occupation contracts.

**Section 53 - Joint landlords**

178. Where there are joint landlords, each of them is fully responsible for the performance of the obligations owed to the contract-holder under the contract.

**CHAPTER 6 - RIGHT TO OCCUPY WITHOUT INTERFERENCE**

**Section 54 - Right to occupy without interference from landlord**

179. Where a term of the contract incorporates this provision without modification, a landlord must not interfere with the contract-holder's right to occupy the dwelling. This is also known as the contract-holder's right to 'quiet enjoyment' of the property. This does not prevent the landlord carrying out any repairs. It means a landlord must not act in a way that affects the contract-holder's right to live in their home without interference from the landlord on a day-to-day basis.

**CHAPTER 7 - ANTI-SOCIAL BEHAVIOUR AND OTHER PROHIBITED CONDUCT**

180. The Act includes a fundamental provision relating to 'prohibited conduct'. To ensure universal application, this provision in section 55 must be incorporated without modification as a fundamental term of all occupation contracts. Breach of a term of the contract is a ground for the landlord to seek possession and, if section 159 is incorporated as a term of the contract without modification, the landlord may make a possession claim to the court immediately after giving a possession notice to the contract-holder in reliance on a breach of a term of the contract which incorporates section 55. The court may not make an order for possession unless it considers it reasonable to do so.

**Section 55 - Anti-social behaviour and other prohibited conduct**

181. In accordance with the term of the contract that incorporates section 55, the contract-holder must not engage, or threaten to engage, in behaviour capable of causing nuisance or annoyance to another person with a right to live in the dwelling or in the locality, or to a person engaged in lawful activity in the dwelling or in the locality. The contract-holder must also not behave in such a way towards the landlord, or a person acting on the landlord's behalf, in relation to the landlord's housing management functions.

182. The contract-holder must also not use, or threaten to use, the dwelling, common parts (defined in Section 252) or any part of the building in which the dwelling is located for criminal purposes.
183. It would also be a breach of a term of a contract incorporating section 55 if the contract-holder allowed, incited or encouraged another person living in the dwelling or visiting the dwelling to behave as described above. Furthermore, the contract-holder must not allow, incite or encourage any person to use, or threaten to use, the dwelling for criminal purposes. For the purposes of any term of the contract that incorporates this section, a contract-holder will be in breach of contract if they fail to take action to prevent another person who is living in or visiting the dwelling from behaving in the manner described.

## **Schedule 7 - Prohibited conduct standard contracts**

### **Paragraph 1**

184. Where a community landlord or registered charity has entered into a secure contract, and the contract-holder has breached the fundamental term incorporating section 55 (anti-social behaviour and other prohibited conduct), the landlord may, under section 116, apply to the court for an order ending the secure contract and creating a periodic standard contract in its place.
185. Paragraph 1 sets out the procedure on an application for an order under section 116. A landlord applying for such an order must give the contract-holder notice, setting out the information specified in paragraph 1(2), unless the court considers it reasonable to dispense with a notice. Paragraph 1(2) also sets the time limits within which an application may be made. Paragraph 1(3) provides that proceedings may be brought on the day the notice is given. Paragraph 1(4) enables the landlord to make a possession claim in the same proceedings.

### **Paragraph 2**

186. Where a periodic standard contract is imposed by order of the court, the terms of the contract are as agreed by the landlord and contract-holder (subject to the requirements regarding incorporation of fundamental and supplementary terms). Where no agreement of terms is reached, then all fundamental and supplementary terms applying to periodic standard contracts will be incorporated without modification and any other terms incompatible with those terms will cease to have effect. Any other terms of the secure contract will apply, subject to those fundamental and supplementary terms. Any rent arrears (or overpayments) under the secure contract become payable under (or are credited to) the periodic standard contract.
187. Where a prohibited standard contract is imposed by a court order, there is no requirement for the landlord to provide the contract-holder with an address to which documents can be sent under any term of the contract which incorporates section 39(1). The address of the landlord will not have altered as a consequence of the change to a prohibited conduct standard contract.

### **Paragraph 3**

188. Paragraph 3 makes provision for calculating the probation period applying to prohibited conduct standard contracts. A probation period is the period for which an occupation contract remains a periodic standard contract as a result of a court order under section 116. The period is 12 months from the occupation date of the prohibited conduct standard contract, as set out in the order. This is subject to a landlord being able to apply for an extension of the probation period to 18 months under paragraph 4. The landlord may also end the probation period early by giving a notice under paragraph 3(2). The paragraph also makes provision dealing with situations where possession notices are given by the landlord but possession claims are neither brought nor concluded prior to the expiry of the probation period.

### **Paragraph 4**

189. This paragraph enables a landlord to extend the probation period to 18 months. This may be relevant where, for example, there is continuing concern about the conduct of a contract-holder. In such a situation a landlord must notify the contract-holder, at least eight weeks before the probation period is due to end that the landlord wishes to extend the period. A contract-holder has a right to ask for a review of this decision to extend under paragraph 5. Paragraph 4 also sets out what information the notice provided to the contract-holder must contain. The Welsh Ministers may by regulations amend the length of the notice period.

### **Paragraphs 5 and 6**

190. Paragraph 5(1) confers a right on a contract-holder to request a review by the landlord of a decision to give a notice of extension under paragraph 4. Paragraph 5(2) sets out the time limit within which the contract-holder must request the review. The landlord must inform the contract-holder of the outcome of this review before the 12 month probation period has ended. If the review confirms the decision to extend, the landlord must provide the contract-holder with a notice including the information set out in paragraph 5(6).

191. Where the landlord has confirmed their decision to give a notice of extension, the contract-holder may apply to the county court for a review of the decision. Paragraph 6 sets out the time limit for making an application. The court, in considering this review, may confirm or quash the decision.

### **Paragraph 7**

192. A contract-holder who is at least six months into the probation period may apply to the court to end the probation period. The probation period can only be ended if the court is satisfied of the matters set out in sub-paragraph (3).

### **Paragraph 8**

193. At the end of the probation period, a prohibited conduct standard contract is replaced with a secure contract. This paragraph sets out the terms that are to apply to the contract in default of agreement by the landlord and contract-holder, subject to incorporation of fundamental and supplementary terms.



194. Where a secure contract arises following a prohibited conduct standard contract there is no requirement for the landlord to provide the contract-holder with an address to which documents can be sent under any term of the contract which incorporates section 39(1). The address of the landlord will not have altered as a consequence of the change from a prohibited conduct standard contract to a secure contract.

**Section 56 – Power to amend section 55**

195. This allows the Welsh Ministers to amend section 55 by making regulations.

**CHAPTER 8 - DEALING**

**Section 57 – Permissible forms of dealing and Section 58 - Dealing and landlord’s consent**

196. If a term of the contract incorporates this section without modification, a contract-holder may not ‘deal’ with their occupation contract in any way which is not permitted by the contract itself or by a family property order. Family property orders are defined in section 251, and include an order to transfer a tenancy made by the court under the Family Law Act 1996.
197. For these purposes, ‘dealing’ includes creating a sub-tenancy or sub-licence, transferring the contract to another or taking out a mortgage on the dwelling.
198. A contract-holder dealing with the occupation contract outside of the terms of their contract or of a family property order, or without the landlord’s consent, will be in breach of contract.
199. Where an occupation contract contains provision which allows for dealing subject to the landlord’s consent, then, as set out in section 84, the landlord cannot withhold consent unreasonably or consent subject to unreasonable conditions. Furthermore, Schedule 6 sets out specific matters that are relevant to considering reasonableness in relation to a consent relating to dealing.

**Sections 59 - Sub-occupation contracts: interpretation**

200. In most rental situations there is only a landlord and a contract-holder. However, on occasions a contract-holder may wish to sub-let the dwelling to another person. This would create a ‘sub-occupation contract’ between the contract-holder and that person, who is known as the ‘sub-holder’ under the Act. In this scenario the contract-holder is the landlord of the sub-holder. The contract-holder’s landlord is known as the ‘head landlord’ and the head landlord’s contract with the contract-holder known as the ‘head contract’.
201. There is no right under the Act for the contract-holder to enter into a sub-occupation contract with another person, but the head landlord may however agree to sub-occupation. This will generally be addressed as an additional term of the ‘head contract’ between the head landlord and the contact-holder.

**Section 60 - Sub-occupation contract never takes effect as transfer**

202. This section establishes that, where a contract-holder enters into a sub-occupation contract and the term of the sub-occupation contract ends at the same time as the head contract, this is not treated as a transfer of the original contract, but as a sub-occupation contract.

**Section 61 - Failure to comply with conditions imposed by head landlord**

203. Where any conditions imposed by the head landlord on a contract-holder in relation to sub-letting are not notified to a prospective sub-holder in advance of contracting, the contract-holder is to be treated as having committed a repudiatory breach of the sub-occupation contract. This will enable the sub-holder to end the sub-occupation contract immediately. Alternatively, the sub-holder may make an application to the court for a declaration as to whether a head landlord's condition is correctly included in the sub-holder's written statement of contract.

204. Where the head landlord has given conditional consent to a sub-occupation contract, but the conditions have not been complied with, the sub-occupation contract is still valid. However, the head landlord may treat it as a periodic standard contract. Those terms of the contract which do not conflict with the fundamental and supplemental terms of a periodic standard contract will continue to have effect, but any terms that conflict with the fundamental or supplementary provisions will cease to have effect.

205. Where the head landlord chooses to treat the sub-occupation contract as a periodic standard contract, notice of this decision must be given to the contract-holder after the sub-occupation contract is made, but no later than two months after the day the head contract ends.

**Section 62 - End of head contract**

206. Where the head contract ends, for example due to the contract-holder giving notice under section 168, the sub-occupation contract continues as an occupation contract. The head landlord becomes the landlord and the sub-holder becomes the contract-holder. In these circumstances, if the head landlord (who is now the landlord) gave notice under section 61(7) that they were treating the sub-occupation contract as a periodic standard contract, there is a requirement at this point to give the contract-holder (who was previously the sub-holder) a written statement of the contract (if the contract incorporates section 31 (written statements)). The landlord must give the contract-holder the written statement within 14 days of the occupation date. For these purposes, the occupation date is to be treated as either the date the head contract ended (if the notice mentioned in section 61(7) was given before the end of the head contract) or the date notice under section 61(7) was given (if the notice was given on or after the day on which the head contract ended).

207. However, the sub-occupation contract does not continue if the head contract is a fixed term standard contract, and it has ended at the end of the fixed term.



### **Section 63 - End of head contract: further provision**

208. Section 62 does not affect the right of the head landlord under section 61(6) to treat the sub-occupation contract as a periodic standard contract. Furthermore, the head landlord and sub-holder are not liable to one another for any breach of the sub-occupation contract, but may be liable for any continuing breach once the head contract ends.

### **Section 64 - Possession claim against contract-holder where there is a sub-holder**

209. There may be circumstances when the head landlord wishes to end the head contract, for example because the contract-holder has stopped paying rent to the head landlord. This section requires the landlord to give to the sub-holder a notice of the landlord's intention to make a possession claim against the contract-holder.

### **Section 65 - Extended possession order against sub-holder**

210. When making a possession claim against the contract-holder, the head landlord may also apply to the court for an 'extended possession order' against the sub-holder, providing the notice requirements in subsection (3) have been met, or the court considers it reasonable to allow the application to go ahead even if those requirements have not been met. The court may only consider the application for an extended possession order against the sub-holder where it has decided to make a possession order against the contract-holder. Furthermore, the court may only make an extended possession order if it would have made a possession order had the contract-holder made a possession claim against the sub-holder.

### **Section 66 - Exclusion of contract-holder after abandoning contracts**

211. Where the sub-holder believes the contract-holder no longer wishes to be a party to the head contract, the sub-holder may act to end the head contract. The effect of this will be to transfer the contract-holder's rights and obligations (as landlord under the sub-occupation contract) to the head landlord. The parties to the occupation contract will then be the head landlord and the (former) sub-holder. Such a scenario may occur where the contract-holder has disappeared.

212. To end the head contract, the sub-holder must serve the contract-holder with a notice stating that he or she no longer considers the contract-holder to be a party to the head contract and sub-occupation contract. This notice must be copied to the head landlord. The notice must inform the contract-holder that he or she has a four-week 'warning period' during which he or she must confirm that he or she is still a party to the contracts. The sub-holder must, during this warning period, conduct investigations in order to be satisfied that the contract-holder has abandoned the contracts.

213. After the four week period, if the sub-holder is satisfied abandonment of the contracts has taken place, he or she may apply to the court to have the rights and responsibilities of the contract-holder (as landlord) transferred to the head landlord. The court may not make the order if the head landlord asserts that the court would have made a possession order against the sub-holder, had the contract-holder brought such a claim, and the court is satisfied this is the case.

**Section 67 - Excluded contract-holder's remedies**

214. This section provides a remedy to a contract-holder where the court makes an order excluding him or her from the contract under Section 66. The contract-holder may, within six months of the date of the order, apply for a declaration that the head contract continues. The grounds for making the application are set out in subsection (3). They include inadequate investigations by the sub-holder and that the failure to respond to the sub-holder's notice was reasonable. The court may rescind its previous order and declare that the head contract continues, and make any further order it thinks fit.

**Section 68 - Power to vary periods of time relating to exclusion after abandonment of contracts**

215. This section confers on the Welsh Ministers power by regulations to amend the required warning period under section 66 and the appeal period under section 67.

**Section 69 - Form of transfer and Section 70 - Effect of authorised transfer**

216. The Act makes provision about the transfer of an occupation contract from a contract-holder to another person, and about the effect of authorised and unauthorised transfers. A transfer might be desirable, for example, where an elderly contract-holder wishes to transfer his or her secure contract on to a family member before entering residential care. Generally, an occupation contract can only be transferred in a way that is permitted by the contract (see section 57 which, if incorporated as a term of a contract without modification, provides that an occupation contract can only be transferred in a way permitted by the contract, or in accordance with a family property order).
217. Section 69 sets out who must sign (or execute) a transfer in order for it to be valid, and applies to transfers of all occupation contracts apart from transfers of fixed term standard contracts on death (see section 139 and 142).
218. Section 70 says that, if a contract is transferred in accordance with the contract, and the requirements about signing it (in section 69) have been complied with, the rights and obligations under the contract will transfer on the agreed transfer date. The transfer does not remove any rights or obligations of the former contract-holder that accrued before the transfer date, for example in relation to any rent arrears. These provisions also apply to joint contract-holders under an occupation contract.

### **Section 71 – Effect of unauthorised transfer**

219. Generally, a landlord may seek possession against a contract-holder who transfers an occupation contract other than in accordance with the contract, but this section provides an exception to this. Where there is an unauthorised transfer and the landlord accepts payments from the person to whom the contract is transferred for two months, knowing that the transfer was not in accordance with the contract (or where the landlord should have known that), the transfer will become binding on the landlord immediately after that period. Where there are joint landlords and any one of them accepts payment from the person as mentioned in this section, the transfer is binding on all joint landlords. Where a transfer becomes binding on the landlord in this way, the rights and obligations will be transferred immediately after the end of the two month period in the way described in section 70, just as if there had been an authorised transfer.
220. This does not apply where the landlord takes steps to end the contract or brings eviction proceedings within two months of the date on which the landlord started accepting payments.

### **Section 72 – Deeds and covenants**

221. Subsection (2) disapplies section 52 of the Law of Property Act 1925 (conveyances of land or interests in land to be made by deed). The effect of this is that the transfer of an occupation contract does not need to be entered into by means of a deed.
222. Subsection (3) provides that the Landlord and Tenant (Covenants) Act 1995 does not apply to certain transfers that relate to occupation contracts (including transfers that would have been treated as an assignment under section 28(6)(b) of the 1995 Act). Amongst other things, the 1995 Act makes provision about how the rights and obligations of landlords and tenants are transferred when there is a transfer of a tenancy (including provision about outgoing tenants or landlords being released from obligations, and incoming tenants and landlords becoming liable). This Act makes separate provisions about those matters, so the 1995 Act is disapplied.

### **Section 73 – Succession on death**

223. If a sole contract-holder dies and there is a person who survives the contract-holder who is qualified to replace, or to ‘succeed’ the contract-holder, then that surviving person will ‘succeed to the occupation contract’, that is, the surviving person will become the contract-holder under the contract in place of the contract-holder who has died. This principle applies to all occupation contracts apart from:
- a. contracts where there is a surviving joint contract-holder, and
  - b. fixed term standard contracts that contain a provision allowing the contract to be transferred by will or intestacy (see section 139).
224. Section 78 deals with instances where there is more than one possible successor.

### **Sections 74 to 76 – Persons qualified to succeed**

225. A person can be qualified to succeed to an occupation contract as either a priority successor or a reserve successor. This will mean that in practice there may, in the fullness of time, be two successions to an occupation contract (but no more). That is because,
- Where a person has succeeded as a priority successor then, in the event of his or her death, there can be one more succession (by a reserve successor).
  - But if a person has succeeded to the contract as a reserve successor (and this includes anyone who succeeded to the contract after the death of a person who was a priority successor), then no further succession is possible.
226. A priority successor is the spouse or civil partner (or those living together as spouse or civil partner) of the contract-holder, who occupied the dwelling as their only or principal home at the time of the contract-holder's death.
227. A reserve successor is a family member who occupied the dwelling as their only or principal home at the time of the contract-holder's death. A family member is defined, in section 250, as being:
- a. the spouse or civil partner of the contract-holder, or someone living with the contract-holder as a spouse or civil partner;
  - b. the contract-holder's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece (see section 250).
228. A person who is related to the contract-holder in one of the ways mentioned in paragraph (b) above must also meet the basic residence condition in order to be a reserve successor, which is that throughout the 12 months preceding the contract-holder's death the person lived in the dwelling that is subject to the occupation contract, or lived with the contract-holder. Such a requirement does not apply to a spouse or civil partner (or those living together as spouse or civil partner) succeeding as a reserve successor.
229. Where the contract-holder who has died was a priority successor in relation to the current occupation contract, then a person who is a member of the original contract-holder's family will be a reserve successor. If the person is related to the original contract-holder in one of the ways mentioned in paragraph 227(b) above, for the purposes of calculating a 12 month period of living with the contract-holder, any periods living with the original contract-holder will be taken into account.
230. There are two classes of person unable to succeed to a contract. First, anyone under 18 years of age (because they cannot be a party to an occupation contract).
231. Secondly, those who occupied the dwelling (or part of it) under a sub-occupation contract at any time during the 12 month period before the contract-holder died. But where a sub-occupation contract has ended before the contract-holder's death, and the sub-holder was the contract-holder's spouse or civil partner, that person can still succeed to the contract (despite being a former sub-holder).

### **Section 77 – Reserve successor: carer**

232. A carer is entitled to succeed as a reserve successor if he or she occupied the dwelling as his or her only or principal home at the time the contract-holder died. To qualify as a carer who is a reserve successor, a person must have been providing a substantial amount of care (or intending to provide a substantial amount of care) for the contract-holder, or a member of the contract-holder's family who was living with the contract-holder when the care was provided, at any time in the period of 12 months ending with the contract-holder's death. For the purposes of working out whether care has been provided in a period of 12 months, if the contract-holder who has died was a priority successor in relation to the contract, any time spent caring for the original contract-holder can be taken into account.
233. The carer must also have occupied the dwelling or lived with the contract-holder (or, if the contract-holder was a priority successor, lived with the original contract-holder) throughout the period of 12 months ending with the contract-holder's death, and must have no other dwelling they are entitled to occupy as a home at the time of the contract-holder's death. A carer employed to provide care, or providing care under a contract, does not meet the conditions for being a 'carer' for these purposes, and does not qualify as a reserve successor under the Act on that basis.

### **Section 78 – More than one qualified successor**

234. This section explains what happens where more than one person is qualified to succeed:
- If there is one priority successor amongst those qualified to succeed, that person will succeed.
  - If there is more than one priority successor amongst those qualified to succeed, the priority successors may decide between themselves who the contract-holder will be. If they cannot decide, or they fail to notify the landlord within a reasonable time, the landlord selects the successor.
  - If all the persons qualified to succeed are reserve successors, they may decide between themselves who the contract-holder will be. If they cannot decide, or they fail to notify the landlord within a reasonable time, the landlord selects the successor.
235. Any decision made by the landlord with regard to the succession can be appealed to the court by any other person qualified to succeed within 4 weeks of the day they were notified of the landlord's decision.

### **Section 79 – Effect of succession**

236. This section makes provision for when a successor becomes the contract-holder.
237. In a situation where there is only one person qualified to succeed, or where there is more than one person qualified to succeed, but only one of those persons is a priority successor, the successor becomes the contract-holder either when the landlord is notified of the death of the former contract-holder, or one month after the death, whichever is earlier.

238. In a situation where there is more than one person qualified to succeed, and either two or more of those persons are priority successors, or all of those persons are reserve successors, the successor becomes the contract-holder either on the date on which the persons qualified to succeed decide who will take over the contract or, if the landlord makes the selection (where agreement cannot be reached between the potential successors), on the date the landlord makes that selection.
239. In a situation where a successor has appealed against the landlord's appointment of a successor, the successor becomes the contract-holder on the date the court determines the appeal.
240. But if either of those things happen before the landlord is notified of the death (or, if the landlord is not notified of the death within one month of the contract-holder dying, before the end of that one month period), the person does not succeed to the contract until the landlord is notified of the death, or until one month after the death (whichever is earlier). In reality, an appeal situation may result in an extended period before a person qualified to succeed becomes a contract-holder.
241. In situations where no contract-holder has been appointed because a decision has not yet been reached about who the successor is to be (either because the successors haven't reached a decision, because the landlord hasn't chosen a successor, or because the court hasn't determined an appeal), and individuals with a succession right are living in the property, they are not treated as trespassers, but rather as joint contract-holders.

**Section 80 - Substitute succession on early termination and Section 81- Effect of substitute succession**

242. Section 78(2) provides that, in a situation where there are several persons qualified to succeed to a contract, but there is only one priority successor, that person will automatically succeed. If that individual gives notice, within 6 months of the death of the former contract-holder, that he or she intends to end the contract (and the contract could have been brought to an end in that way), this section says that, if there was more than one person qualified to succeed to the original contract, the contract does not end. In those circumstances, if there was only one other person qualified to succeed to the contract, the contract passes to that remaining successor.
243. If there is more than one remaining successor, the succession will be determined in accordance with the provisions in section 78(4). Section 81 makes provision for working out when a person succeeds to an occupation contract in these circumstances, and also about the status of any individuals who are qualified to succeed to the contract that are living in the dwelling during any period before a successor is chosen. Those provisions are similar to the provisions in section 79.



## **Section 82 – Notice of rights under section 80**

244. Where a priority successor decides to leave the contract within 6 months, and has given notice or reached an agreement with the landlord, the landlord must give notice of that fact to any potential successors whose address is known to the landlord, and to the occupiers of the dwelling. That notice must be given within 14 days of the current contract-holder giving the landlord notice (or of an agreement being reached). This notice must contain information about the effect of section 80 (substitute succession).
245. This section applies equally where there are joint landlords. If any one of the joint landlords is aware of any potential successor, the requirement under this section to notify that person will arise.

## **Section 83 – Succession interpretation**

246. This section makes provision for the interpretation of terms used in the sections dealing with succession for the purposes of the Act more widely. It includes provision to clarify that where a person succeeds to a fixed term standard contract, and at the end of that contract a periodic standard contract arises, the person will continue to be treated as a successor in relation to that periodic contract (in the same way that he or she was a successor in relation to the preceding fixed term contract).
247. This section also makes similar provision where a contract is ended on the basis of abandonment (see section 220), but the court decides there was no abandonment and the contract-holder must be given suitable alternative accommodation. This means that if the contract-holder was a priority or reserve successor in relation to the original contract they will also be a priority or reserve successor in relation to any occupation contract that arises as a result of an order under section 222.
248. The section also makes provision maintaining the status of priority and reserve successors in the following circumstances:
- where there has been a transfer of a contract in accordance with a family property order,
  - where being treated as a priority or reserve successor was a condition of consent to a transaction, and
  - where a contract-holder under a secure contract becomes a contract-holder under another secure contract, either with the same landlord as under the original contract or in respect of the same dwelling.

## **CHAPTER 9 - LANDLORD'S CONSENT**

### **Section 84 – Landlord's consent: reasonableness**

249. Any request from a contract-holder to do something which requires the landlord's consent must be in writing. A landlord can agree the request (and can agree subject to any reasonable conditions if they wish) or refuse it, although a refusal must not be unreasonable. The landlord has 14 days from the request to ask for further information before making a decision. Any request for further information must not be unreasonable.

250. In deciding whether it is reasonable to withhold consent to the adding of a joint contract holder (see sections 49 and 50), to various forms of 'dealing' with the contract (see section 57 and 58), to a transfer of a secure contract to a potential successor (see sections 114 and 115) or to a transfer of a secure contract to another secure contract-holder (see sections 118 and 119), the circumstances set out in Schedule 6 will also be relevant.
251. Where a landlord does not give or refuse consent within the relevant period (which is the period of one month from the date of the request, or in the event of a landlord requesting more information, one month from the date that information is provided), the landlord is treated as having given unconditional consent. Similarly, if the landlord consents subject to conditions, and the landlord does not give the contract-holder written notice of the conditions at the same time as the consent is given, the landlord is treated as having consented without conditions.
252. Where consent has been refused, or granted subject to certain conditions, a contract-holder may request a written explanation from the landlord of the reasons for the decision. If the explanation is not given within one month of the date that the person requests the explanation, the landlord is treated as having given unconditional consent.

### **Section 85 - Application to court relating to consent**

253. This section confers a right on a person who requests consent to apply to the court on the grounds that the landlord has unreasonably refused consent or attached unreasonable conditions to any consent given. The court may overturn a landlord's refusal to consent, or may declare that the landlord is treated as having consented without any conditions, or without any conditions it deems unreasonable, or it may ask the landlord to reconsider the request.

### **Section 86 - Landlord's consent: timing**

254. This section relates to the timing of consent. In circumstances where a contract-holder requires the landlord's consent to do something, for example, to make alterations to the property, the consent can be given retrospectively by the landlord. However, this does not apply to adding additional contract-holders to the contract, nor to transferring the contract to another person (or to a transferral of a joint contract-holder's rights and obligations under the contract).

## **CHAPTER 10 - COMPENSATION**

### **Section 87 - Compensation for failures relating to provision of written statements etc.**

255. This section sets out the other sections in the Act under which a landlord may become liable to pay compensation to the contract-holder. If a landlord becomes liable under any of those sections, section 87 applies for the purpose of calculating how much compensation is to be paid.

256. The compensation that is payable for any particular day is equivalent to the amount of rent that is payable under the contract for that day. A contract-holder may apply to the court for an order increasing the amount of compensation, if they believe the landlord's failure to provide a written statement of the contract or a written statement relating to a variation was intentional. The contract-holder can also apply for an increase if the written statement of the contract was incomplete or incorrect. In such circumstances, the court may increase the compensation to a maximum of double the original amount payable in respect of any particular day.

### **Section 88 – Right of set off**

257. This section provides a contract-holder with a right of 'set-off'. Where this section is incorporated as a term of the contract without modification, if a landlord is required to pay a contract-holder compensation for failing to comply with a term of the contract that requires a written statement of the contract, a written statement of variation or information about the landlord to be provided (see list of relevant provisions in section 87), the contract-holder may withhold rent to the value of the outstanding compensation.

## **PART 4 - CONDITION OF DWELLING**

### **CHAPTER 1**

#### **Section 89 – Application of Part**

258. Part 4 makes provisions relating to the condition of dwellings. These provisions apply to secure contracts, periodic standard contracts and fixed term standard contracts made for a period of less than seven years. Section 217 (retaliatory claims for possession to avoid obligations to repair etc.) gives the court discretion over whether to make a possession order if it is satisfied that the landlord made a possession claim to avoid complying with the obligations in Part 4.

#### **Section 90 – Fixed term standard contracts: determining the length of term**

259. This section makes provision for determining whether fixed term standard contracts are to be treated as being made for less, or more, than, seven years. This is important because the obligations set out in Part 4 apply only to fixed term standard contracts made for a term of less than seven years.
260. Subsection (4) provides that if a fixed term standard contract is for a term of more than seven years, but may be terminated by the landlord before the end of that seven year period, it will be treated as being made for a term of less than seven years. Such a situation would apply to a contract with a 'landlord's break clause' that can be exercised during the first seven years of the contract.

261. Subsection (5) provides that if a fixed term standard contract gives the contract-holder an option of renewing the contract at the end of the term and, if the contract-holder chose to exercise it exercise it, the initial term and the renewed term taken together would be for a period of more than seven years, the contract is treated as being made for a period of more than seven years. But if subsection (4) applies (that is, if the contract has a break clause that can be exercised within the first seven years), the contract will be treated as being made for a period of less than seven years.

## **CHAPTER 2 - CONDITION OF DWELLING**

262. Chapter 2 makes provisions relating to the condition of dwellings. Sections 91, 92, 93, 95, 96, 97, 98 and 99 are fundamental provisions applying to all occupation contracts to which Part 4 applies (see Chapter 1).

### **Section 91 – Landlord’s obligation: fitness for human habitation**

263. If this section is incorporated as a term of the contract without modification, a landlord is required to ensure the dwelling is fit for human habitation throughout the term of the contract. Section 94 makes further provision as to the determination of fitness.

### **Section 92 – Landlord’s obligation to keep dwelling in repair**

264. If this section is incorporated as a term of the contract without modification, the landlord is required to keep the dwelling in repair. This applies to the structure and exterior of the dwelling as well as to service installations (for example, in relation to water, gas, electricity, heating and sanitation).

### **Section 93 – Obligations under sections 91 and 92: supplementary**

265. If this section is incorporated as a term of the contract without modification, the landlord will be required to rectify any damage caused as a result of works carried out in order to comply with the fitness for human habitation and repairing obligations. Furthermore, the landlord must not place any obligations on the contract-holder if the contract-holder enforces the landlord’s obligations. For example, the landlord cannot include a term in the contract which requires the contract-holder to pay for any repairs which would be required because of a term of the contract that incorporates sections 91 or 92.

**Section 94 – Determination of fitness for human habitation**

266. The Welsh Ministers must set out specific matters in regulations to be considered in determining whether a dwelling is fit for human habitation. This may be done by reference to regulations made by the Welsh Ministers under Section 2 of the Housing Act 2004 (which concern the Housing Health and Safety Rating System). The matters to be considered in determining whether a dwelling is fit for human habitation may refer to the hazard types listed in regulations made under the 2004 Act (including damp and mould growth, excess cold and risk of fire), or refer to matters which might arise because of a failure to comply with an obligation to keep dwellings in repair. Furthermore, the Welsh Ministers may by regulation impose requirements on landlords for the purposes of preventing circumstances from arising which could cause a dwelling to be unfit for human habitation. The regulations may also prescribe that, if a landlord doesn't comply with any such obligations, a dwelling is not considered to be fit for human habitation.

**Section 95 - Limits on sections 91 and 92: general**

267. If this section is incorporated as a term of the contract without modification, the landlord's obligations to keep a dwelling fit for human habitation and in repair will not apply if the landlord could not comply without incurring unreasonable expense. The landlord will also not be required to rebuild a dwelling destroyed by fire, storm or flood.

**Section 96 – Limits on sections 91 and 92: contract-holders fault**

268. If this section is incorporated as a term of the contract without modification, the landlord is not obliged to make a dwelling fit for human habitation or to undertake repairs, where the dwelling is unfit or in need of repair due to action, inaction, or lack of care on the part of the contract-holder or other permitted occupier.

**Section 97 - Limits on section 91 and 92: notice**

269. If sections 91 and 92 are incorporated as terms of the contract without modification, the landlord's repairing obligations will apply for the duration of the contract. But if section 97 is incorporated, those obligations (apart from the obligation to ensure that a property is fit for human habitation on the occupation date) will only apply once the landlord becomes aware of the need for works or repairs.

270. To comply with the repairing obligations, the landlord must carry out the necessary works or repairs within a reasonable time after becoming aware that they are necessary. If there is a change of landlord, the new landlord is treated as being aware that action is necessary from the date of the transfer, if the old landlord was aware that works or repairs were required before the change.

271. This applies equally in situations where there are joint landlords, such that awareness of the need for works or repairs by any one of the joint landlords will mean that the obligations under sections 91(1)(b) and 92(1) and (2) will arise in respect of the joint landlords

### **Section 98 – Landlord’s right to access dwelling**

272. If this section is incorporated as a term of the contract without modification, the landlord has the right to enter the dwelling at any reasonable time to inspect or undertake repairs, but must give the contract-holder at least 24 hours’ notice before doing so (in the event of an emergency, the landlord has other rights under the law to access the property without giving notice). However, the landlord will not be liable for failing to comply with the fitness for human habitation and repairing obligations if the necessary works or repairs require access to a part of the building which the landlord does not have a right to access, and the landlord has been unable to gain access after making reasonable effort.

### **Section 99 – Rights of permitted occupiers to enforce Chapter**

273. If this section is incorporated as a term of the contract without modification, in addition to the contract-holder, a permitted occupier of the dwelling who suffers as a result of the landlord not complying with the fitness for habitation or repairing obligations may bring court proceedings against the landlord in their own right. ‘Permitted occupier’ is defined in Section 244.

## **CHAPTER 3 – MISCELLANEOUS**

274. This Chapter, unlike Chapter 2, applies to all occupation contracts. It addresses two separate issues which both concern the obligations of landlords and contract-holders in relation to the maintenance and repair of dwellings.

### **Section 100 - Specific performance**

275. This section provides that, in any proceedings for a breach of obligations to repair, maintain, renew, construct or replace any property, or in proceedings for a breach of obligations to keep any dwelling fit for human habitation (including a breach of the landlord’s obligations under a term of the contract that incorporates sections 91 and 92), the court may order a landlord to undertake repairs despite any rule in common law that might otherwise limit this.

### **Section 101 – Waste and tenant-like user**

276. This section provides that the common law concepts of ‘waste’ and use of a dwelling in a ‘tenant-like manner’ do not apply in relation to occupation contracts. ‘Waste’ is damage or harm caused by actions or neglect on the part of the contract-holder, whilst ‘tenant-like manner’ means taking care of the property on a day to day level (for example unblocking a sink or replacing a fuse). It is envisaged that a supplementary provision will be made by regulations which, if incorporated as a term of the contract, will require a contract-holder to take care of the dwelling and of any fixtures and fittings.



## **PART 5 - PROVISIONS APPLYING ONLY TO SECURE CONTRACTS**

### **CHAPTER 1**

#### **Section 102 – Overview of Part**

277. Sections 103 to 110 set out provisions relating only to secure contracts.

### **CHAPTER 2 - VARIATION OF CONTRACTS**

278. A variation of a contract is a change to the terms of the contract which is made after the contract comes into force. A 'variation' is defined in section 247, and includes the removal or addition of terms as well as the amendment of existing terms. Any change to the identity of the landlord or the contract-holder is not a variation (this is dealt with under section 40).

#### **Section 103 – Variation**

279. Where a term of a secure contract incorporates this section without modification it will provide that the contract may only be varied in accordance with terms that incorporate sections 104 to 108 or as a consequence of legislation made by Parliament or the National Assembly for Wales. This section is a fundamental provision, and section 103(1)(b) and (2) are fundamental provisions which must be incorporated as terms of secure contracts without modification. This is to ensure that variations of a secure contract do not undermine the operation of the fundamental provisions in the Act, and of supplementary provisions made under the Act.

#### **Section 104 - Variation of rent and Section 105 – Variation of other consideration**

280. Both of these sections are fundamental provisions, to be incorporated as fundamental terms of a secure contract if either rent or other consideration is payable (though they can be left out or modified in accordance with section 20). Terms that incorporate these sections without modification will set out how the terms of the contract as to rent or other consideration (which are terms relating to key matters) may be varied. The contract-holder under a secure contract must be given two months' notice of any change in the amount of rent or other consideration payable. The provisions allow for annual variation.

#### **Section 106 - Variation of fundamental terms**

281. If this section is incorporated as a term of a secure contract without modification, fundamental terms in the secure contract may be varied if the landlord and contract-holder agree. Exceptions to this will be set out in the term of the contract that incorporates section 108. Section 108(2) lists certain fundamental provisions that can never be varied (these correspond to the fundamental provisions listed in section 20 which must be incorporated as terms of all secure contract without modification (such as section 55, dealing with prohibited conduct)). Any permitted variation of a fundamental term must also improve the position of the contract-holder.

### **Section 107 – Variation of supplementary and additional terms**

282. If this section is incorporated as a term of a secure contract without modification, supplementary and additional terms of the contract can be varied, either by the landlord and contract-holder agreeing to do so, or by the landlord giving the contract-holder notice that such a term is to be varied. But this is subject to the restrictions on variation that will be set out in the term of the contract that incorporates section 108(4) and (5). Where the variation is by notice, the landlord must give the contract-holder a preliminary notice before the variation is to take place, providing information on the proposed variation and providing a reasonable opportunity for the contract-holder to comment. Having done so, the landlord may then issue a further notice informing the contract-holder of the variation that is to take place and when it will take effect.

### **Section 108 – Limitation on variation**

283. The purpose of this section (together with section 103) is to ensure that the parties to a 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 section 108 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.

284. A fundamental term of a contract that incorporates this section will limit how terms of a secure contract can be varied. 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).

285. 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.

286. 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)).

287. 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).

288. To ensure that the ability to vary terms cannot be altered, this section is itself a fundamental provision which must be incorporated into occupation contracts without modification.

### **Section 109 – Written statement of variation**

289. 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. But this obligation won't apply if the landlord has already provided a notice of variation (under terms of the contract that incorporate sections 104, 105(2) to (4) or 107(1)(b) and (2) to (6)). The written statement 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 110 – Failure to provide written statement etc.**

290. A landlord who fails to provide a written statement in accordance with a term of the contract that incorporates section 109 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 3 - JOINT CONTRACT-HOLDERS: WITHDRAWAL**

### **Section 111 – Withdrawal**

291. Where this section is incorporated as a term of a secure contract without modification, if there is more than one contract-holder under the occupation contract, any of those contract-holders may cease to be a party to the contract without bringing the contract to an end.
292. In those circumstances, a contract-holder who intends to leave the secure contract must provide the landlord with a 'withdrawal notice', stating the date on which they intend to cease being a party to the contract. They must also provide the other joint contract-holders with a written warning of their intention to leave the contract and a copy of the withdrawal notice at the same time as they give the notice to the landlord. As additional protection, the landlord must also provide the other contract-holders with a written warning and a copy of the notice.
293. Under a term of the contract that incorporates this provision without modification if, instead of providing a withdrawal notice under this section, a joint contract-holder gives a notice under a term of the contract that incorporates section 163 (contract-holder's notice to end contract), that notice has the same effect as a withdrawal notice.

### **Section 112 - Withdrawal: power to prescribe time limits**

294. The section places a duty on the Welsh Ministers to prescribe, for the purpose of section 111, a minimum notice period for withdrawing from a joint occupation contract.

## **CHAPTER 4 - DEALING**

295. Chapter 4 sets out specific provisions relating to dealing under secure contracts, specifically the ability to take in a lodger and to transfer the contract to a potential successor.

### **Section 113 - Lodgers**

296. If this section is incorporated as a term of a secure contract without modification, a contract-holder under a secure contract may take in a lodger without obtaining the landlord's permission. 'Lodger' is defined in section 244.

### **Section 114 and 115 - Transfer to potential successor**

297. If this section is incorporated as a term of a secure contract without modification, a contract-holder under the secure contract may, with the landlord's consent, transfer the occupation contract to a potential successor or, where there is more than one potential successor, to those successors who wish to be included in the transfer. If there is only one contract-holder, a potential successor is a person who would be qualified to succeed to the contract under section 74 if the contract-holder died (see note above). If there are joint contract-holders, a potential successor is a person who would be qualified to succeed to the contract under section 74 if a joint contract-holder died and, at the time of death, he or she was the only contract-holder.

298. Under section 115, what is reasonable for the landlord to take into account when considering whether to grant consent to a transfer that is requested under a term of the contract that incorporates section 114 is to be determined in accordance with Schedule 6 (and see in particular paragraph 11). Paragraph 12 of Schedule 6 enables the landlord to make it a condition of consent that, if the landlord considers that the probable effect of giving consent is to lengthen substantially the period during which the occupation contract is likely to continue in force, then the potential successor is to be treated as a priority successor or as a reserve successor in relation to the occupation contract.

## **CHAPTER 5 - PROHIBITED CONDUCT STANDARD CONTRACTS**

### **Section 116 - Order imposing periodic standard contract because of prohibited conduct and Section 117 - Conversion to secure contract**

299. This section applies to a secure contract with a community landlord or registered charity, in circumstances where a contract-holder has breached the term incorporating section 55 (anti-social behaviour and other prohibited conduct).

300. Rather than pursue eviction, this section enables the landlord to apply to a court to seek an order to end the secure contract and impose in its place a 'prohibited conduct standard contract', which is a type of periodic standard contract. The court may only make such an order where it is satisfied that the breach occurred, it would otherwise have made an order for possession because of the breach, that the landlord will provide support to the contract-holder in order to prevent further prohibited conduct, and it considers it reasonable to make the order. The Welsh Ministers may issue guidance as to what might be included in a support programme.

301. A prohibited conduct standard contract will last for 12 months, referred to as the 'probation period'. The probation period can be extended to 18 months (see Schedule 7).
302. At the end of the probationary period a prohibited conduct standard contract ends and is replaced by a secure contract, except where paragraph 3(9) of Schedule 7 applies. Paragraph 3(9) applies if a private landlord that is not a registered charity becomes the landlord before the end of the probation period. In those circumstances, the probation period will end, and the contract will continue as a standard contract (because of section 17(3)).
303. Schedule 7 makes further provisions relating to prohibited conduct standard contracts. The schedule sets out the procedure a landlord must follow to make an application for an order to the court, and explains how the terms of the prohibited conduct standard contract are determined. It also makes provisions regarding the probation period and how it can be extended. A contract-holder can ask the landlord to review the decision to extend the probation period, and can apply for a further review by the county court (if the landlord decides to confirm the decision to give the extension or fails to give a notice of the outcome of the review). A contract-holder may also, after six months, apply to the court for an order to end the probation period early.
304. The provisions in Schedule 7 about working out the probation period, about extending the probation period and about reviews and appeals are very similar to those in Schedule 4 (which deal with introductory standard contracts). See the notes on those provisions in Schedule 4 above.

## **CHAPTER 6 - PROVISIONS APPLYING ONLY TO SECURE CONTRACTS WITH COMMUNITY LANDLORDS**

### **Section 118 - Transfer to another secure contract-holder and Section 119 - Transfer to another secure contract-holder: landlord's consent**

305. If this section is incorporated as a term of a secure contract without modification, a contract-holder who has a contract with a community landlord may, with the landlord's consent, transfer their contract to another contract-holder of a community landlord who also has a secure contract.
306. Under section 119, what is reasonable for the landlord to take into account when considering whether to grant consent is to be determined in accordance with Schedule 6 (and see in particular paragraph 13). Paragraphs 14 of Schedule 6 enable the landlord to make it a condition of consent that, if the transfer is part of a wider series of transfers, it will only be granted if all the other transfers in that series take place. The landlord may also make it a condition that, if the person to whom the contract is being transferred is a priority or reserve successor in relation to his or her existing contract (see notes on sections 74 to 77 above), he or she will be treated as a successor of that kind under the contract transferred to him or her.



## **PART 6 - PROVISIONS APPLYING ONLY TO PERIODIC STANDARD CONTRACTS**

### **CHAPTER 1**

#### **Section 120 – Overview of Part**

307. Section 120 provides an overview of Part 6.

### **CHAPTER 2 – EXCLUSION FOR SPECIFIC PERIODS**

#### **Section 121 – Exclusion of contract-holder from dwelling for specific periods**

308. A periodic standard contract may specify periods when the contract-holder cannot occupy the property. 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 122 – Variation**

309. Where a term of a periodic standard contract incorporates this section without modification it will provide that the contract may only be varied in accordance with terms that incorporate sections 123 to 127 or as a consequence of legislation made by the National Assembly for Wales or Parliament. The approach is similar to the approach for secure contracts (see section 103). This section is a fundamental provision, and section 122(1)(b) and (2) are fundamental provisions which must be incorporated without modification.

#### **Section 123 – Variation of rent and Section 124 – Variation of other consideration**

310. Both of these sections are fundamental provisions, to be incorporated as fundamental terms of a periodic standard contract if either rent or other consideration is payable (though they can be left out or modified in accordance with section 20). Terms that incorporate these sections without modifications will set out how the terms of the contract as to rent or other consideration (which are terms relating to key matters) may be varied. The contract-holder under a periodic standard contract must be given two months' notice of any change in the amount of rent or other consideration payable. The provisions allow for annual variation.

#### **Section 125 – Variation of other terms**

311. If this section is incorporated as a term of a periodic standard contract without modification, subject to the restrictions set out in a term of the contract that incorporates section 127, the fundamental, supplementary and additional terms of a periodic standard contract may be varied by agreement between the landlord and the contract-holder or, if the contract incorporates section 126 and 173 (landlord's notice to end contract), by the landlord giving the contract-holder notice.

#### **Section 126 – Variation by landlord of other terms: notice procedure**

312. If a term of a periodic standard contract incorporates section 126 without modification, a landlord may vary a term of the contract without the agreement of the contract-holder (subject to the limitations set out in a term of the contract that incorporates section 127). This section should be read together with sections 173 to 180.



313. In order to vary a term of the contract without the contract-holder's agreement, the landlord must provide the contract-holder with a notice detailing the proposed variation at least two months before the variation takes effect. The notice must also state that it serves as a notice under the term of the contract that incorporates section 173 (landlord's notice to end contract). If the contract-holder does not give written consent to the variation before it is due to take effect, the landlord may seek possession of the property under a term of the contract that incorporates section 173 (landlord's notice).
314. If a fundamental term of the contract incorporates subsection (5) and section 173 then, so long as the landlord has complied with the requirements for giving a notice of variation, he or she is to be treated as having given the required notice under the term of the contract that incorporates section 173 (landlord's notice ground for seeking possession).
315. If this section is incorporated without modification, the landlord will be prevented from giving the notice (informing the contract-holder that unless they consent to a variation, the landlord will make a possession claim) within the first four months of occupancy. This has the effect of preventing any notice taking effect as a landlord's notice seeking possession (see section 173) within the first six months of occupancy.
316. Similarly, a landlord may not give the notice of variation if he or she is prevented from giving a notice under a term of the contract that incorporates section 173 due to not complying with terms that incorporate sections 175 and 176. This ensures that a landlord cannot use a notice of variation as a means of ending the contract when the landlord is prevented from giving a landlord's notice to end the contract.

### **Section 127 - Limitation on variation**

317. The purpose of section 127, together with section 122, is to ensure that the parties to a periodic 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 section 127 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.
318. A fundamental term of a contract that incorporates this section will limit how terms of periodic standard contracts can be varied (in the same way as a term incorporating section 108 limits how terms of secure contracts can be varied). 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).

319. 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.
320. 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)).
321. 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).
322. 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 128 – Written statement of variation**

323. 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 a written statement of the whole occupation contract with the varied terms included. But this obligation won't apply if the landlord has already provided a notice of variation (under terms of the contract that incorporate sections 123, 124(2) to (4) or 126(1)(b) and (2) to (6)). The written statement 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 129 – Failure to provide written statement etc.**

324. A landlord who fails to provide a written statement in accordance with a term of the contract that incorporates section 128 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 130 – Withdrawal**

325. Where this section is incorporated as a term of a periodic standard contract without modification, if there is more than one contract-holder under the occupation contract, any of those contract-holders may cease to be a party to the contract without bringing the contract to an end.

326. In those circumstances, a contract-holder who intends to leave the periodic standard contract must provide the landlord with a 'withdrawal notice', stating the date on which they intend to cease being a party to the contract. They must also provide the other joint contract-holders with a written warning of their intention to leave the contract and a copy of the withdrawal notice at the same time as they give the notice to the landlord. As additional protection, the landlord must also provide the other contract-holders with a written warning and a copy of the notice.
327. Under a term of the contract that incorporates this provision without modification, if, instead of providing a withdrawal notice under this section, a joint contract-holder gives a notice under a term of the contract that incorporates section 168 (contract-holder's notice to end contract), that notice has the same effect as a withdrawal notice.

### **Section 131 - Withdrawal: power to prescribe time limits**

328. The section places a duty on the Welsh Ministers to prescribe, for the purpose of section 130, a minimum notice period for withdrawing from a joint occupation contract.

## **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.

**PART 8 – SUPPORTED STANDARD CONTRACTS**

346. Part 8 contains provision about supported standard contracts. These contracts are standard contracts for use in relation to supported accommodation provided by community landlords and registered charities.

**Section 143 – Supported standard contract and supported accommodation**

347. This section defines ‘supported standard contracts’ and ‘supported accommodation’. Supported accommodation is accommodation that is provided by a community landlord or registered charity where support services are provided to the contract-holder in connection with the accommodation. Subsection (4) defines ‘support services’ as including help with overcoming addiction, with finding employment and with living independently. Subsection (5) defines ‘support’ as including advice and training.

**Section 144 – Mobility**

348. Under this section, a supported standard contract may include a term about ‘mobility’. This enables a landlord to relocate a contract-holder to a different dwelling within the same building without the need to end one contract and make another. This is designed to enable the landlord to, for example, locate a contract-holder away from another resident to avoid disputes.



### **Section 145 – Temporary exclusion**

349. A further power provided in relation to a supported standard contract is temporary exclusion. This allows the landlord (including persons designated by the landlord to act on the landlord's behalf) to require a contract-holder to leave the dwelling for up to 48 hours where the landlord reasonably believes the contract-holder has engaged in certain kinds of behaviour. The behaviour in question is: the use of violence against anyone else in the dwelling; doing something in the dwelling which creates a significant risk of harm to others; or behaviour which seriously impedes other residents' ability to benefit from the support provided.
350. A contract-holder cannot be excluded for more than 48 hours at a time and cannot be excluded more than three times in any six month period. A landlord must give notice to the contract-holder being excluded, explaining why he or she is being excluded. This notice should be given when the contract-holder is required to leave or as soon as possible afterwards. Subsection (8) provides for the section to be incorporated as a fundamental term of all supported standard contracts.

### **Section 146 – Temporary exclusion: guidance**

351. This section places a duty upon the Welsh Ministers to issue guidance to landlords in exercising functions under section 145. A landlord must have regard to any guidance issued by the Welsh Ministers under this section.

## **PART 9 - TERMINATION ETC. OF OCCUPATION CONTRACTS CHAPTER 1 - OVERVIEW AND INTRODUCTORY PROVISIONS**

### **Section 147 – Overview of Part**

352. An overview of this Part is provided by a table setting out the occupation contracts to which each chapter applies, and the content of each chapter.

### **Section 148 – Permissible termination etc.**

353. An occupation contract may only be ended in accordance with the fundamental terms relating to termination that apply to that type of contract, or in accordance with provisions in other legislation (including in other Parts of the Act). This does not affect the possibility of a contract being rescinded by the landlord or the contract-holder (for example, due to fraudulent misrepresentation by the landlord), nor the operation of the law of frustration (for example, the setting aside of a contract due to a circumstance rendering it impossible to comply with its contractual obligations). Section 20 provides that this section must be incorporated without modification as a term of all occupation contracts.

### **Section 149 – Possession claims and Section 150 – Possession notices**

354. Section 149 provides that a possession claim (i.e. a claim made to the court by the landlord to obtain possession of their property) may only be made in the circumstances set out in Chapters 3 to 5 and 7. Section 20 provides that section 149 must be incorporated without modification as a term of all occupation contracts.

355. A landlord wishing to make a possession claim must first issue the contract-holder with a 'possession notice', but this requirement does not apply where-
- a landlord gives notice under the contract term incorporating section 173 (the landlord's right to end a periodic standard contract simply by giving notice),
  - a landlord gives notice under a 'landlord's break clause' in a fixed term standard contract (see section 194), or
  - a landlord gives notice under the contract term incorporating section 186 (notice given in connection with the end of the fixed term of a fixed term standard contract).
356. This is because the termination of the tenancy arises in the above circumstances purely because the landlord has given a notice, and not for any other reason.
357. A possession notice will notify the contract-holder that the landlord is seeking to regain possession of the dwelling. Section 150 details what a possession notice must set out; that is, the details of the ground under which the notice has been given (the reason the landlord is seeking possession), the landlord's intention to make a possession claim to the court, and the date after which the landlord can make this claim.

### **Section 151 – Introductory standard contracts and prohibited conduct standard contracts: notices under section 173 and 181**

358. In relation to an introductory standard contract or a prohibited conduct standard contract, a notice given by a landlord under the term of the contract incorporating section 173 (landlord's notice), or a possession notice given by a landlord before making a claim under the term of the contract incorporating section 181 (serious rent arrears), must also set out the contract-holder's right to require the landlord to carry out a review (under section 202) of the decision to seek possession. Subsection (3) provides for the section to be incorporated as a fundamental term of all introductory standard contracts and prohibited conduct standard contracts.

## **CHAPTER 2 - TERMINATION ETC. WITHOUT A POSSESSION CLAIM (THIS CHAPTER APPLIES TO ALL OCCUPATION CONTRACTS)**

### **Section 152 – Early termination by contract-holder**

359. A contract-holder may, before the earlier of receiving the written statement of the contract or becoming entitled to occupy the dwelling, end the contract by giving the landlord notice. Any rent, deposit or other consideration given in connection with the contract must be returned by the landlord.

### **Section 153 – Termination by agreement**

360. This section provides for an occupation contract to be ended by agreement between the contract-holder and landlord (if the contract incorporates this section as a term). The contract ends when the contract-holder gives up possession as agreed. If a substitute occupation contract (defined in subsection (2)) arises, the contract which the landlord and contract-holder agreed to terminate ends immediately before the occupation date of the substitute contract.

### **Section 154 – Repudiatory breach by landlord**

361. A contract-holder may end an occupation contract by giving up possession of the property if the landlord has committed a repudiatory breach of the contract. A repudiatory breach is one so significant as to justify termination. For example, if the landlord is required to pay for utility bills under the contract, then a failure to pay such bills which results in termination of the utility could represent a repudiatory breach.

### **Section 155 – Death of sole contract-holder**

362. Where a contract-holder dies, and there are no joint contract-holders, the contract ends one month after the contract-holder's death or, if earlier, when the landlord is informed of the death by an 'authorised person' (defined in subsection (2)). If another person is entitled to succeed to the tenancy, the succession will take place in accordance with sections 73 to 83.

363. If a family property order (defined in section 251) requires the contract to be transferred to someone else, the contract will be dealt with in accordance with that order.

364. Section 20 provides that section 155 must be incorporated without modification as a term of all occupation contracts, except fixed term standard contracts that contains the provision mentioned in section 139(1) (transfer on death of sole contract-holder).

### **Section 156 - Death of landlord where occupation contract is a licence**

365. Since an occupation contract which is a licence is based on the granting of a personal interest to occupy the dwelling by the landlord, it will end on the death of the landlord.

## **CHAPTER 3 - TERMINATION OF ALL OCCUPATION CONTRACTS (POSSESSION CLAIMS BY LANDLORDS)**

### **Section 157 – Breach of contract**

366. This section provides that breach of the contract by the contract-holder is a ground on which the landlord may seek possession.

### **Section 158 – False statement inducing landlord to make contract to be treated as breach of contract**

367. This section provides that breach of contract includes circumstances where a landlord is induced to enter into an occupation contract as a result of a false statement made by the contract-holder or someone instigated to act by the contract-holder. This means that something done before the contract is entered into is a breach of contract. Section 20 provides that section 158 must be incorporated without modification as a term of all occupation contracts.

### **Section 159 – Restrictions on section 157**

368. This provides that a landlord, before making a possession claim under the term of the contract incorporating section 157, must give the contract-holder a possession notice setting out that ground. Subsection (2) provides that where the landlord relies on a breach of the prohibited conduct ground (which is addressed in section 55), the landlord may make a claim on the day the notice is given to the contract-holder. Subsection (3) provides that in the case of other breaches, the landlord may not make the claim less than one month after the date the landlord gave notice. Subsection (4) provides that any possession claim relating to a contract-holder's breach of contract must be made within 6 months of the date of the landlord giving the notice.

### **Section 160 – Estate management grounds**

369. A landlord who wishes to seek possession of a dwelling using one of the estate management grounds (set out in Part 1 of Schedule 8, which is also a fundamental provision) may apply to the court for a possession order.

370. Should the court make an order for possession, the landlord must pay the reasonable relocation expenses likely to be incurred by the contract-holder. This is not the case with Grounds A (building works) and B (redevelopment schemes), in relation to which the contract-holder is entitled to a 'home loss payment' under section 29 of the Land Compensation Act 1973.

## **Schedule 8 - Estate Management Grounds**

### **Part 1 – The Grounds**

371. Part 1 of this Schedule sets out the estate management grounds under which landlords of all occupation contracts can make a possession claim, subject to having complied with the notice requirements and time limits in section 161.

372. There are three principal types of ground: redevelopment grounds; special accommodation grounds; and under-occupation grounds. There is also an 'other estate management reasons' ground to address a substantial reason relating to the management of an estate which is not covered by the other grounds. The following paragraphs set out the circumstances in which each of the estate management grounds arise.

### **Redevelopment grounds**

#### **Paragraph 1 - Ground A (building works)**

373. The landlord intends to demolish or rebuild the dwelling or part of the building in which the dwelling is located, or carry out work on the dwelling or the building in which the dwelling is located or any land which is part of the dwelling (as to which, see the definition of dwelling in section 246(1)(b)), which could not reasonably be done without obtaining possession of the dwelling.

### **Paragraph 2 - Ground B (redevelopment schemes)**

374. This ground is satisfied if either of two conditions is met. The first condition is that the dwelling is in an area which is subject to an approved redevelopment scheme (the approval process for such schemes is set out in Part 2 of the Schedule), and the landlord intends to dispose of the dwelling in accordance with the scheme within a reasonable period after obtaining possession. The second condition is that part of the dwelling is within the area of an approved redevelopment scheme and the landlord intends to dispose of the dwelling in accordance with the scheme within a reasonable period after obtaining possession, and therefore reasonably requires possession.

### **Special accommodation grounds**

#### **Paragraph 3 - Ground C (charities)**

375. The landlord is a charity and the continued presence of the contract-holder would conflict with the objects of that charity. This is subject to the proviso that at the time the contract was made, and at all times since that date, any person who was the landlord has been a charity.

#### **Paragraph 4 - Ground D (dwellings suitable for disabled people)**

376. The dwelling is substantially different from ordinary dwellings in order to accommodate a person with a physical disability, no such person currently lives in the property and the landlord requires it for such a person.

#### **Paragraph 5 - Ground E (housing associations and housing trusts: people difficult to house)**

377. The landlord is a housing association or housing trust which provides dwellings specifically for those difficult to house, no such person is living in the dwelling or any such person who is a contract-holder has been offered a secure contract relating to another dwelling, and the landlord requires the dwelling for occupation by such a person. Sub-paragraph (2) sets out the meaning of 'difficult to house' for the purpose of this Ground.

#### **Paragraph 6 - Ground F (groups of dwellings for people with special needs)**

378. The dwelling is part of a group of dwellings which the landlord provides to people with special needs, there is a social service or special facility in close proximity to assist people with those special needs, there is no longer a person with those special needs living in the dwelling and the landlord requires the dwelling for a person with those needs.

### **Under-occupation grounds**

#### **Paragraph 7 - Ground G (reserve successors)**

379. The contract-holder succeeded to the contract as a reserve successor (i.e. a family member or carer who is not a priority successor; see sections 73, 76 and 77) following the death of the previous contract-holder, and the dwelling is larger than reasonably required. In such cases, under the term of the contract incorporating section 161(4), the landlord may not give the possession notice until at least six months have passed since the landlord became aware of the death of the previous contract-holder, and no later than twelve months after that date.

**Paragraph 8 - Ground H (joint contract-holders)**

380. A joint contract-holder has withdrawn or been excluded from the contract, and either the property is larger than reasonably required by the remaining contract-holder(s), or, if the landlord is a community landlord, the remaining contract-holder(s) do not meet the landlord's criteria for the allocation of housing. In such cases, under section 161(5), the possession notice must be given to the remaining contract-holder(s) within six months of the former joint contract-holder ceasing to have rights and obligations under the contract.

**Other estate management reasons**

**Paragraph 9 - Ground I (other estate management reasons)**

381. There is some other substantial estate management reason, including in relation to other premises of the landlord to which the dwelling is connected in some way.

**Section 161 - Restrictions on section 160**

382. A landlord seeking possession of a dwelling on an estate management ground must give the contract-holder a possession notice specifying the ground. The landlord may not make a possession claim within one month of, or six months after, the date the notice was given.
383. Where a scheme including the disposal and demolition or reconstruction of buildings, or the carrying out of other works to buildings or land, has been approved as a 'redevelopment scheme' under Part 2 of Schedule 8, but the approval is subject to conditions, the landlord may give a possession notice under estate management Ground B (redevelopment scheme) before the conditions are met.
384. Where a reserve succession has taken place following the death of the contract-holder, and the dwelling is more extensive than reasonably required by the successor, a landlord seeking possession under estate management Ground G cannot give the possession notice within six months of, or twelve months after, the date on which the landlord became aware of the previous contract-holder's death. Where there are joint landlords, the restrictions on making a possession claim on this ground will run from the date on which any of one the joint landlords becomes aware of the contract-holder's death.
385. A landlord seeking possession under estate management Ground H (departing joint contract-holder) may not give a possession notice specifying the Ground later than six months after the date on which the joint contract-holder's rights and obligations under the contract ended.

**Section 162 - Estate management grounds: redevelopment schemes**

386. Part 2 of Schedule 8 (approval of redevelopment schemes) makes provision supplementing estate management Ground B.



## **Schedule 8 - Estate Management Grounds**

### **Part 2 - Approval of redevelopment schemes for purposes of Ground B**

387. Part 2 of Schedule 8 sets out the process for obtaining approval from the Welsh Ministers, for the purposes of estate management Ground B, for a 'redevelopment scheme'; that is, a scheme for the disposal and redevelopment of an area of land which includes all or part of a dwelling subject to an occupation contract. This Part also concerns approval of variations of such schemes.

#### **Paragraph 11**

388. In addition to providing for the approval of redevelopment schemes and any variations, this paragraph defines the terms 'disposal' and 'redevelopment'.

#### **Paragraph 12**

389. This paragraph sets out the requirements in relation to the notice that must be given to contract-holders if a redevelopment scheme is proposed, or if a variation of such a scheme has been proposed. It provides for a 28 day period during which the contract-holder may make representations. No application can be made to the Welsh Ministers to approve a redevelopment scheme, or variation of a scheme, before any such representations are considered.

390. Where a landlord would otherwise be required to consult the contract-holder under arrangements it has made in accordance with section 234, sub-paragraphs (6) and (7) remove that requirement due to the consultation required by this paragraph.

#### **Paragraph 13**

391. This paragraph sets out the matters that must be taken into account by the Welsh Ministers in considering an application, including any representations made to them. The landlord must also give the Welsh Ministers information they request on any representations made under paragraph 12.

#### **Paragraph 14**

392. The Welsh Ministers may not approve a scheme or variation such that only part of a dwelling, or a dwelling unaffected by works but proposed to be included in any disposal, is included within the area of the scheme, unless satisfied that inclusion is justified.

#### **Paragraph 15**

393. This paragraph enables the Welsh Ministers to give any approval subject to conditions, and to make the approval valid only for a limited time. Conditions and time limits can be varied by the Welsh Ministers on the application of the landlord, or for any other reason.

#### **Paragraph 16**

394. This paragraph provides that, for the purposes of Part 2 of the Schedule, a community landlord is a landlord in relation to a dwelling if it has any kind of interest in the dwelling. This interest may be other than a freehold or leasehold interest.

## **CHAPTER 4 - TERMINATION OF SECURE CONTRACTS (CONTRACT-HOLDER'S NOTICE)**

### **Section 163 - Contract-holder's notice and Section 164 - Minimum notice period**

395. These sections provide that the contract-holder may end the occupation contract by giving at least four weeks' notice to the landlord.

### **Section 165 - Recovery of possession**

396. A landlord may make a possession claim on the ground that a contract-holder, having given notice to the landlord to end the contract under the term of the contract incorporating section 163, fails to give up possession on the date specified in that notice.

### **Section 166 - Restrictions on section 165**

397. This section sets out restrictions on the exercise of the landlord's power to seek possession on the ground set out in section 165. The landlord must give the contract-holder a possession notice specifying the ground. The landlord may make a possession claim on or after the day the possession notice is given to the contract-holder, but no later than six months after that day. Furthermore, the possession notice cannot be given more than two months after the date specified in the contract-holder's notice as being the date on which possession would be given up.

### **Section 167 - Termination of contract on contract-holder's notice**

398. Where the contract-holder gives up possession of the dwelling on or before the date specified in the notice given under the term of the contract incorporating section 163, the contract runs until that date. Where the contract-holder gives up possession after the date specified in the notice and no order for possession is made, the contract ends on the date the contract-holder gives up possession. If a possession order is made on the ground in section 165, the contract will end in accordance with section 206 (which sets out the effects of a possession order).

399. If the contract-holder, before the end of the notice period, withdraws the notice given under the term of the contract incorporating section 163 and the landlord does not object to this in writing, within a reasonable period, the notice ceases to have effect.

## **CHAPTER 5 - TERMINATION OF PERIODIC STANDARD CONTRACTS**

### **Section 168 to 172 - Contract-holder's notice and minimum notice period**

400. These sections provide that the contract-holder under a periodic standard contract may end the occupation contract by giving at least four weeks' notice to the landlord.

401. These sections are essentially the same as the provisions in Chapter 4 on the termination of secure contracts by contract-holders, discussed above.

**Section 173 – Landlord’s notice and Section 174 – Minimum notice period**

402. Section 173 provides that the landlord under a periodic standard contract may end that contract by giving the contract-holder notice that he or she must give up possession of the dwelling on a date specified in the notice. Where this section is not incorporated within an occupation contract, the related provisions in sections 125(1)(b) and 126 regarding variation of the contract by the landlord by giving notice will not apply (because those sections concern the power of the landlord to unilaterally vary the contract, and to treat a notice of variation as a notice seeking possession given under the term of the contract incorporating section 173, where the contract-holder does not accept the variation).
403. Section 174 sets out the minimum notice period. The landlord cannot specify a date by which a person must give up possession which is less than two months from the date on which the notice is given.

**Section 175 – Restrictions on section 173: notice may not be given in first four months of occupation**

404. A landlord is prevented from giving a notice under section 173 during the first four months of occupation. In the case of a substitute occupation contract (defined in subsection (3)), the four-month period is calculated from the occupation date of the original contract (also defined in subsection (3)). This section has the effect of preventing a landlord from obtaining possession of a dwelling using a landlord’s notice during the first six months of a person’s occupation of the dwelling. Section 20 provides that this section must be incorporated without modification in all periodic standard contracts, unless the contract does not incorporate section 173 as a term or is of a type listed in Schedule 9.

**Schedule 9 – Standard contracts to which limits in sections 175, 185(2) and 196 (landlord’s notice during first six months of occupation) do not apply**

405. This Schedule sets out the types of standard contract to which the restrictions (under sections 175, 185(2) and 196) on issuing a landlord’s notice, or the use of a landlord’s break clause, do not apply. For various differing reasons, these contracts need to retain the landlord’s ability to terminate the contract within the first six months of occupation. They include, for example, service occupancies, where it would not be reasonable for an employer, on the termination of an employment contract, to have to wait six months to recover possession of accommodation provided in relation to that employment.

**Section 176 – Restrictions on section 173: breach of information requirements**

406. Where a landlord has not provided the contract-holder with a written statement of their contract, as required by section 31(1) or (2), they may not give a possession notice under section 173. Furthermore, the landlord is prevented from giving a notice under section 173 for a period of six months starting with the day the written statement is provided.

407. Where a landlord has failed to provide the contract-holder with a contact address, or any of the other information required under the term of the contract incorporating section 39, the landlord is prevented from giving a notice under section 173 until information is provided.

### **Section 177 - Restrictions on section 173: breach of security and deposit requirements**

408. A landlord may not give a possession notice under the term of the contract incorporating section 173 where security has been taken in a form that does not comply with section 43 (that is, a form other than money or a guarantee), and has not been returned.
409. A landlord is also prevented from giving a notice under the term of the contract incorporating section 173 (subject to the exception below) where: a deposit has not been protected under an authorised deposit scheme; a deposit has been paid but the landlord has not met the initial requirements of the deposit scheme; or a deposit has been paid but the information required by the term of the contract incorporating section 45(2)(b) (that is, information prescribed by regulations under section 45(3)) has not been provided to the contract-holder.
410. The restrictions in the paragraph above on giving notice do not apply where a deposit has been returned or matters relating to an application to the court under paragraph 2 of Schedule 5 have come to an end. Section 20 provides that this section must be incorporated without modification in all periodic standard contracts, unless the contract does not incorporate section 173 as a term.

### **Section 178 - Recovery of possession**

411. Where a landlord has given a notice under the term of the contract incorporating section 173, the landlord may make a claim for possession to the court. Section 215 provides that the court must make an order for possession if satisfied that the ground in section 178(1) is made out (subject to any defence based on the contract-holder's human rights, and to the application of section 217, on retaliatory evictions, addressed below).

### **Section 179 - Restriction on section 178**

412. A landlord may not make a possession claim under the term of the contract incorporating section 178 before the date specified in the notice given under the term incorporating section 173, or after two months have elapsed from that date. This, therefore, provides for a two-month period in which the landlord is able to make a possession claim.

### **Section 180 - Termination of contract on landlord's notice**

413. Where the contract-holder gives up possession of the dwelling on or before the date specified in the notice given under the term incorporating section 173, the contract ends on the specified date. Where the contract-holder fails to give up possession on or before that date, the contract ends on the date that the contract-holder gives up possession or, if a possession order is made, on the date determined in accordance with section 206 (effect of possession order).

414. However, if the landlord withdraws the possession notice before the contract ends, and the contract-holder does not object to this in writing within a reasonable period, the notice will cease to have effect.

### **Section 181 - Serious rent arrears**

415. Where the contract-holder has fallen into 'serious rent arrears' the landlord may make a possession claim to the court on this ground. 'Serious rent arrears' is defined in subsection (2); for example, it arises where there is at least two months' unpaid rent where rent is payable monthly, or eight weeks' unpaid rent where rent is payable weekly.
416. Subject to any available defence based on the contract-holder's human rights, the court must make a possession order if it is satisfied the contract-holder was in serious rent arrears at the time the possession notice was given and also when the possession claim is heard by the court (see section 216).

### **Section 182 - Restrictions on section 181**

417. The landlord must give the contract-holder a possession notice stating the ground of serious rent arrears before making a possession claim on that ground. The landlord under most periodic standard contracts may make a possession claim after 14 days have passed from the date on which notice was given. The landlord under an introductory standard contract or a prohibited conduct standard contract may not make the claim before the end of the period of one month starting with the day on which the notice was given; this is to allow time for any review under Chapter 8 of this Part to take place. In either case, the claim must be made within six months of the date on which notice was given. Subsection (4) provides for these restrictions to be fundamental provisions incorporated into periodic standard contracts, and sets out which descriptions of periodic standard contract the specific restrictions apply to.

### **Section 183 - Relevance of events under fixed term standard contract**

418. Where the contract-holder remains in occupation following the end of the fixed term under a fixed term standard contract, and a periodic standard contract has arisen under section 184(2), the landlord may make a possession claim based on a notice given during the fixed term. Such a notice could be either a possession notice or a notice given under section 186 (landlord's notice in connection with end of fixed term).
419. The provisions relating to a landlord's notice set out in sections 174 to 177, 179 and 180 apply to a notice, and any related possession claim, under the term of a contract incorporating section 186.
420. In any possession notice given in relation to a periodic standard contract arising under section 184(2) the landlord may rely on events that occurred during the fixed term period.
421. This section is a fundamental provision but only in relation to a periodic standard contract which arises at the end of a fixed term standard contract, under section 184(2).

## **CHAPTER 6 - FIXED TERM STANDARD CONTRACTS: END OF THE FIXED TERM**

### **Section 184 - End of fixed term**

422. A contract made for a fixed term agreed between landlord and contract-holder ends at the expiry of that term. But where the contract-holder remains in occupation following the end of the fixed term, a new periodic standard contract will automatically be created.
423. The occupation date for the new contract immediately follows the end of the fixed term and the rental periods remain as they were. The fundamental and supplementary terms of the new contract will be those applying to periodic standard contracts. The terms of the preceding contract will otherwise continue to apply, so far as compatible with the new fundamental and supplementary terms.
424. Instead of a new periodic standard contract arising automatically in the way described above, a landlord and contract-holder may agree a new contract in the normal way, with an occupation date immediately following the end of the fixed term.
425. If, on or before the occupation date of the new contract, the contract-holder does something which would otherwise cause the new contract to end, that will not have the effect of ending the contract.
426. Where a periodic standard contract arises under subsection (2) following the end of a fixed term standard contract there is no requirement for the landlord to again provide the contract-holder with an address to which documents can be sent under the term of the contract incorporating section 39(1). The address of the landlord will not have altered purely as a consequence of the creation of the new periodic standard contract.

### **Section 185 - Written statement may address periodic standard contract arising under section 184(2)**

427. The section provides for a written statement of a fixed term standard contract to set out the terms of the periodic standard contract which may arise at the end of the fixed term under section 184(2). Where such a contract arises and the landlord has previously given the contract-holder a written statement as permitted by this section, he or she is treated as having complied with the requirement to provide a written statement in relation to a new contract under section 31(1).



## **CHAPTER 7 - TERMINATION OF FIXED TERM STANDARD CONTRACTS**

### **Section 186 – Landlord’s notice in connection with end of term**

428. A landlord may, before or on the last day of the fixed term, give notice that the contract-holder must give up possession on a date specified in the notice. The specified date must not in any event be less than six months after the occupation date of that contract (or, where that contract is a substitute occupation contract (see subsection (4)), the occupation date of the original contract (again, see subsection (4)). Additionally, the specified date must not be before the last day of the fixed term, and must not be less than two months after the date on which the notice is given. This section also provides for a landlord to make a possession claim on the ground of having served the notice in connection with the end of the fixed term. Under section 215, if the court is satisfied the requirements of the ground are met it must make a possession order, subject to any available defence based on the contract-holder’s human rights.
429. Therefore, regardless of the length of the fixed term period, a landlord may not make a possession claim until six months after the date on which the contract-holder became entitled to occupy the dwelling under the contract. A landlord is able to make a possession claim the day after the fixed term ends (unless the fixed term purports to be for less than six months), provided the required notice was given to the contract-holder at least two months previously.
430. Section 20 provides that this section must be incorporated without modification as a term in all fixed term standard contracts. However, subsections (2) and (4) are not incorporated into a contract which does not incorporate subsection (1) as a term (so that the landlord cannot give notice in connection with the end of the term), or is of a type listed in Schedule 9.

### **Section 187 – Serious rent arrears and Section 188 – Restrictions on section 187**

431. These provisions are identical in effect to the equivalent provisions relating to periodic standard contracts (see notes for sections 181 and 182).

### **Section 189 – Contract-holder’s break clause and Section 190 - Minimum notice period**

432. A fixed term standard contract may contain a contract-holders break clause. This enables the contract-holder to end the contract before the end of the fixed term. Where such a break clause is included, the contract-holder wishing to rely on it to leave the contract must provide notice to the landlord specifying the end date. Sections 190 to 193 are fundamental provisions incorporated into all fixed term standard contracts that have a contract-holder’s break clause. Section 190 requires that the date specified in the notice may not be less than four weeks after the date the notice is given. These provisions have broadly the same effect as the provisions relating to contract-holders’ notices under secure contracts and periodic standard contracts.

### **Section 191 – Recovery of possession**

433. This section enables a landlord to recover possession of the dwelling in the event of a contract-holder, having given notice to the landlord under a contract-holder's break clause, failing to give up possession on the date specified in that notice.

### **Section 192 – Restrictions on section 191**

434. This section sets out restrictions on the exercise of the landlord's power to obtain possession on the ground in section 190. If the landlord seeks possession on this ground, the landlord must give the contract-holder a possession notice specifying the ground within two months of the date the contract-holder was due to give up possession. The landlord may make a possession claim from the day the possession notice is given to the contract-holder, but not more than six months after that day.

### **Section 193 – Termination of contract under contract-holder's break clause**

435. This section provides that, where the contract-holder gives up possession of the dwelling on or before the date specified in the notice given under the contract-holder's break clause, the contract will end on that date. Where the contract-holder gives up possession after the date specified in the notice, the contract ends on the date the contract-holder gives up possession.

436. If the contract-holder, before the end of the notice period, withdraws the notice given under the contract-holder's break clause, and the landlord does not object to this, in writing, within a reasonable period, the notice ceases to have effect.

### **Section 194 – Landlord's break clause and Section 195 - Minimum notice period**

437. A fixed term standard contract may contain a landlord's break clause. This break clause enables the landlord to end the contract before the end of the fixed term, by giving notice to the contract-holder. Sections 195 to 201 are fundamental provisions incorporated into all fixed term standard contracts that have a landlord's break clause. Section 195 provides that the date for giving up possession specified in the notice must be more than two months after the date on which the notice is given.

### **Section 196 to 201 - Restrictions on use of landlord's break clause and arrangements for recovering possession**

438. See the notes addressing sections 175 to 180, regarding the restrictions on use of a landlord's notice under a periodic standard contract, and the related arrangements for recovering possession. The provisions relating to use of a landlord's break clause are broadly identical.

**CHAPTER 8 - REVIEW BY LANDLORD OF DECISION TO GIVE NOTICE  
REQUIRING POSSESSION  
(THIS CHAPTER APPLIES ONLY TO INTRODUCTORY STANDARD  
CONTRACTS AND PROHIBITED CONDUCT STANDARD CONTRACTS)**

439. Sections 202 and 203 concern internal reviews by landlords of decisions to seek possession. Such reviews apply to notices relating to introductory standard contracts (see section 16) and prohibited conduct standard contracts (see section 116), which are given under the term of such a contract which incorporates section 173 (landlord's notice) or section 181 (serious rent arrears).

**Section 202 – Review of decision to terminate introductory standard contracts or prohibited contracts standard contracts**

440. This section confers a right on a contract-holder, who has received a notice seeking possession under the term of the contract incorporating section 173 (landlord's notice) or a possession notice specifying the serious rent arrears ground (see section 181), to request a review by the landlord of the decision to give the notice. A request for review must be made to the landlord within 14 days of the date on which the landlord gives the contract-holder the notice (unless the landlord allows additional time).

**Section 203 - Landlord's review of decision to give a notice**

441. A landlord, having received a request to carry out a review which was made in compliance with section 202, must carry out a review of the decision to give a notice. The landlord must notify the contract-holder of the outcome of the review before the date after which the landlord may make a possession claim related to the notice. If the review confirms the decision to give the notice, the reasons for the confirmation must be given.

442. Under subsections (5) and (6), the Welsh Ministers may make regulations concerning the procedure relating to reviews.

**CHAPTER 9 - POSSESSION CLAIMS: POWERS OF COURT  
(THIS CHAPTER APPLIES TO ALL OCCUPATION CONTRACTS)**

**Section 204 – Possession claims**

443. Section 204 provides that the court may not consider a possession claim where the landlord has not complied with any relevant provision set out in subsection (1). Subsection (1)(a) sets out sections of the Act which impose specific requirements or restrictions relating to possession claims. Subsection (1)(b) sets out the general requirement for possession notices to comply with section 150, and section 151 in the case of introductory standard contracts or prohibited conduct standard contracts. Subsection (2) provides that the court may dispense with these requirements if it considers it is reasonable to do so.

444. Under subsection (3), subsection (1) does not apply to an application by the landlord, where there is a sub-occupation contract, for an 'extended possession order' against a sub-holder under section 65(2) (that is, an order which requires that a contract-holder and a sub-holder give up possession).

### **Section 205 – Orders for possession**

445. This section provides that the power of the court to make a possession order is limited to the grounds listed in subsection (1). Subsection (2) applies where a possession notice has been given to the contract-holder, and restricts the court to making a possession order only in relation to a ground specified in the possession notice, but subsection (3) provides that the court may allow the notice to be amended before it makes an order.

### **Section 206 – Effect of order for possession**

446. This section deals with the effect of a possession order. Where a court makes a possession order, the contract ends on the date specified in the order, even if the contract-holder gives up possession beforehand. If the contract-holder continues to occupy the dwelling after the date set in the order, the contract ends when the contract-holder gives up possession, but if the contract-holder does not give up possession before the order is executed, the contract ends when the order is executed. In cases where an order requires that some but not all joint contract-holder(s) must be offered a new contract in respect of the relevant dwelling, the original contract ends immediately prior to the new one commencing.

### **Section 207 – Participation in proceedings**

447. A person with 'home rights' (as defined by section 30(2) of the Family Law Act 1996; for example, a person living in their partner's property during a divorce or separation) who is occupying a dwelling but who is not the contract-holder, has a right to participate in possession proceedings relating to that dwelling, as well as a right to seek an adjournment, postponement, stay or suspension of those proceedings.

### **Section 208 – Misrepresentation or concealment of facts used to obtain order for possession**

448. The court may order a landlord to pay compensation to a contract-holder if it is satisfied that a possession order made by the court was obtained using misrepresentation or concealment of material facts.

## **CHAPTER 10 – POSSESSION CLAIMS: POWERS OF COURT IN RELATION TO DISCRETIONARY GROUNDS**

### **(THIS CHAPTER APPLIES TO ALL OCCUPATION CONTRACTS)**

#### **Section 209 – Breach of contract ground**

449. Where a landlord makes a possession claim on the ground of breach of contract the court may only make a possession order if it considers it reasonable to do so. The court is able to make a possession order even if the contract-holder was no longer in breach of the contract before the landlord made the possession claim.

450. This section also introduces Schedule 10.

### **Schedule 10 - Orders for Possession on discretionary grounds etc.: reasonableness**

451. Schedule 10 sets out the circumstances that the court must consider (so far as the court thinks they are relevant) in relation to making a possession order on the ground of breach of contract. The court has discretion as to whether to make the order (in contrast to the 'absolute grounds', where, broadly speaking, the court must make the order sought if the ground is made out). This Schedule also applies where the court is considering whether to make an order on an estate management ground (see section 210), and where the court is considering whether to adjourn proceedings or postpone the giving up of possession under a possession order (see section 211).
452. Paragraphs 4 to 13 set out the various circumstances. In summary, these are:
- Circumstances as regards the contract-holder;
  - Circumstances as regards the landlord;
  - Circumstances as regards other persons;
  - Whether the landlord has offered or undertakes to offer a new occupation contract;
  - Circumstances which are relevant to a possession claim on ground of breach of contract;
  - Circumstances which are relevant to a possession claim concerning section 55 (prohibited conduct);
  - Circumstances which are relevant to a possession claim on estate management Ground G of the estate management grounds (accommodation not required by reserve successor); and
  - Circumstances which are relevant to a possession claim on estate management Ground H (departing joint contract-holder).
453. Paragraph 14 sets out a circumstance to which a court must not have regard (subject to any other duty to have regard to that circumstance); that is, the likelihood of assistance being provided to the contract-holder in the event of him or her becoming homeless.

### **Section 210 – Estate management grounds**

454. Where a landlord makes a possession claim under an estate management ground (see section 160), the court may only make an order if it considers it reasonable to do so (see Schedule 10, addressed above) and is satisfied that the landlord will make suitable alternative accommodation available to the contract-holder (see Schedule 11).
455. Where a landlord makes a possession claim on Ground B (redevelopment), and the redevelopment scheme is subject to conditions, the court must be satisfied that such conditions have been, or will be, met before it can make the order. Any costs awarded for reasonable expenses to the contract-holder under section 160(4) should be agreed between the landlord and the contract-holder, but can be determined by the court and recovered from the landlord as a civil debt. A civil debt is a debt which can be enforced by the court.

456. This section also (along with section 222) introduces Schedule 11, which sets out the matters to be considered in determining whether alternative accommodation is suitable.

### **Schedule 11 - Suitable alternative accommodation**

457. This Schedule applies in relation to possession orders under an estate management ground. It also applies in relation to an order made under section 222 (appeal following possession for abandonment), which provides the court with a power to order a landlord to provide suitable alternative accommodation.
458. Schedule 11 makes provision about determining whether, in any specific case, suitable alternative accommodation will be available. In particular, paragraph 4 sets out a number of matters which the court must consider.

### **Section 211 - Powers to adjourn proceedings and postpone giving up of possession**

459. The court may adjourn possession proceedings made on the ground in section 157 (breach of contract) or on an estate management ground (see section 160) for such period or periods as it considers reasonable. Where the court makes a possession order under section 209 (breach of contract) or section 210 (estate management grounds), it may suspend the giving up of possession for such period or periods as it thinks fit.
460. Where under this section the court has adjourned proceedings or postponed the giving up of possession, it must impose conditions on the contract-holder in relation to any rent arrears and the continued payment of any rent until the proceedings are concluded, unless it considers that to do so would cause exceptional hardship to the contract-holder or be unreasonable in any other way.
461. The court may impose any other conditions that it thinks appropriate and can discharge the order for possession against the contract-holder if it considers that the required conditions have been met. The circumstances set out in Schedule 10 (addressed above) must be considered by the court, so far as it thinks them relevant, when making a decision on whether to adjourn proceedings or postpone the giving up of possession.

## **CHAPTER 11 - POSSESSION CLAIMS: POWERS OF COURT IN RELATION TO ABSOLUTE GROUND (THIS CHAPTER APPLIES ONLY TO SECURE CONTRACTS)**

### **Section 212 - Contract-holder's notice ground**

462. Where a contract-holder under a secure contract has given notice to the landlord under the term of the contract incorporating section 163, and subsequently the landlord has made a possession claim in reliance of the ground in the term of the contract incorporating section 165 (i.e. the contract-holder has failed to give up possession after he or she gave notice to end the contract), the court must make a possession order, subject to any defence based on the contract-holder's human rights.



**Section 213 – Review of claim made on absolute ground**

463. Where a landlord makes a possession claim under the term of the contract incorporating section 165, and the landlord is a community landlord or the landlord's decision to make such a possession claim is subject to judicial review, a contract-holder may, during possession proceedings in the county court, apply for a review by the court of the landlord's decision to seek possession. The court may confirm or quash the landlord's decision. The principles applied by the High Court during an application for judicial review will be applied by the county court; this section means that where the application for the order for possession is before the county court, there will be no need for the contract-holder to bring separate proceedings in the High Court on a judicial review of the decision to issue the notice.

**Section 214 – Powers to postpone giving up of possession**

464. Where the court makes an order for possession under section 212, it may postpone the giving up of possession. But it may not postpone the giving up of possession for more than 14 days after the making of the possession order unless exceptional hardship would be caused to the contract-holder. In such cases, possession may be postponed for up to six weeks.

**CHAPTER 12 - POSSESSION CLAIMS: POWERS OF COURT IN RELATION TO ABSOLUTE GROUNDS**

**(THIS CHAPTER APPLIES ONLY TO STANDARD CONTRACTS)**

**Section 215 – Notice grounds**

465. Where a landlord has made a possession claim under the term of the contract incorporating section 170 or 191 (which, respectively, concern failure to give up possession after giving a contract-holder's notice under a periodic standard contract or a fixed term standard contract), or section 186 (notice in connection with the end of a fixed term standard contract), the court must make a possession order, subject to any available defence based on the contract-holder's human rights.

466. The court must also make an order for possession where the landlord has made a possession claim under the term of the contract incorporating section 178 or 199 (which apply, respectively, to a landlord's notice under a periodic standard contract or a fixed term standard contract). This is subject to any available defence based on the contract-holder's human rights, and to section 217 (retaliatory evictions). In the case of certain landlords, the contract-holder may, under section 218, be able to seek a review of the landlord's decision to make the possession claim.

### **Section 216 – Serious rent arrears grounds**

467. A court must make a possession order against a contract-holder who has a standard contract where it is satisfied that the serious rent arrears ground (section 181 (periodic standard contracts) or 187 (fixed term standard contracts)) has been met. That is, the contract-holder is in serious arrears on the date the landlord made the claim and on the date the possession claim is heard by the court. This is subject to any available defence based on the contract-holder's human rights. In the case of certain landlords, the contract-holder may be able to seek a review of the landlord's decision under section 218.

### **Section 217 – Retaliatory possession claims to avoid obligations to repair etc.**

468. Where a landlord has given a landlord's notice and makes a possession claim under the term of the contract incorporating section 178 (periodic standard contracts) or section 199 (fixed term standard contracts), the court may choose not to make a possession order if it considers the claim to be a retaliatory claim; that is, the possession claim has been made by the landlord to avoid their obligations relating to repair of the dwelling and keeping it fit for human habitation under the terms of the occupation contract incorporating sections 91 and 92. Note that this provision effectively does not apply in relation to a fixed term standard contract for a term of seven years or more, as sections 91 and 92 are not automatically incorporated into such contracts.

469. Subsection (4) provides a power for the Welsh Ministers to make regulations amending the section in order to provide for further descriptions of retaliatory claim.

### **Section 218 – Review of claim made on absolute ground**

470. This section applies to a landlord who is a community landlord or whose decision to make a possession claim is subject to judicial review. This is in broadly identical terms to section 213, addressed above.

### **Section 219 – Powers to postpone giving up of possession**

471. This is in broadly identical terms to section 214, addressed above.

## **CHAPTER 13 – ABANDONMENT**

### **(THIS CHAPTER APPLIES TO ALL OCCUPATION CONTRACTS)**

#### **Section 220 - Possession of abandoned dwellings**

472. Where a landlord believes that a contract-holder has abandoned the dwelling, they may recover possession of the dwelling without the need for a court order. In such circumstances the landlord must give the contract-holder a notice stating the landlord believes the contract-holder has abandoned the dwelling. The notice must inform the contract-holder that he or she must contact the landlord in writing before the end of the 'warning period' to confirm the dwelling is not abandoned, and that if he or she does not do so, the landlord will end the contract. The warning period is four weeks from the day on which notice is given (as to which see section 237, which provides that notice can be 'given' to someone in a variety of ways, including by posting it to the dwelling in question).

473. The landlord must, during the warning period, carry out such inquiries as are necessary to satisfy themselves that the contract-holder has indeed abandoned the dwelling. If, at the end of the warning period, the landlord is satisfied that the contract-holder has abandoned the dwelling, the landlord may end the contract by means of giving the contract-holder a further notice, copies of which must be provided to any lodger or sub-holder who lives in the dwelling.

### **Section 221 – Disposal of property**

474. The Welsh Ministers may make regulations about what should be done with any property found in a dwelling where the contract has ended under section 220.

### **Section 222 – Contract-holder’s remedies**

475. Within six months of the notice ending the contract having been given, the contract-holder may apply to the court for a remedy on any of the grounds set out in subsection (2); for example, the ground that the landlord failed to make the necessary inquiries during the warning period.

476. A court can effectively overturn the landlord’s termination of the contract if it is satisfied that one of the grounds in subsection (2) is met. The court may reinstate the contract in relation to the dwelling, require the landlord to provide suitable alternative accommodation (the availability of which is determined in accordance with Schedule 11) or make any other order it thinks fit.

### **Section 223 – Power to vary periods of time relating to abandonment**

477. The Welsh Ministers may make regulations varying the warning period under section 220(8) or the period allowed for the contract-holder to seek a remedy under section 222(1).

### **Section 224 – Rights of entry**

478. Under this section a landlord is entitled to enter a dwelling at any time where they reasonably believe it has been abandoned, using reasonable force if necessary, in order to make the dwelling and its contents secure.

## **CHAPTER 14 – JOINT CONTRACT-HOLDERS: EXCLUSION AND TERMINATION**

### **(THIS CHAPTER APPLIES TO ALL OCCUPATION CONTRACTS)**

#### **Section 225 – Non-occupation: exclusion by landlord**

479. Where the contract requires joint contract-holders to occupy the dwelling as their only or principal home, and the landlord believes that a joint contract-holder is not occupying the dwelling and does not intend to, the landlord can take action to exclude that joint contract-holder from the contract. To do so, the landlord must give the relevant joint contract-holder notice that they do not believe he or she is living in the property, and does not intend to live there in future, and that the landlord will therefore be terminating the joint contract-holder’s rights and obligations under the contract. The notice must require the joint contract-holder to contact the landlord in writing within four weeks of the day on which notice was given to confirm that they are occupying, or intend to occupy, the dwelling.

480. During this four-week warning period the landlord must make such inquiries as are necessary to be satisfied that the joint contract-holder is not occupying the property and does not intend to. If, at the end of the warning period, the landlord is satisfied that the joint contract-holder is not living in the dwelling, and does not intend to, the landlord may end the joint contract-holder's rights and obligations under the contract by giving a further notice to the joint contract-holder, copies of which must be provided to the other joint contract-holder(s). The joint contract-holder's rights and obligations under the contract end eight weeks after this second notice is given.

### **Section 226 – Remedies for exclusion under Section 225**

481. During the eight week period after the second notice is given and before the joint contract-holder's rights and obligations under the contract are ended under section 225, the joint contract-holder may apply to the court for a remedy on the grounds in subsection (2); for example, the joint contract-holder was occupying the dwelling and had a good reason for not responding to the notice.

482. If the court is satisfied that one of the grounds in subsection (2) is met, it can declare that the notice given under section 225(6) is of no effect and that the joint contract-holder continues to be a party to the contract. The court may also make any further order it thinks fit.

### **Section 227 – Non-occupation: exclusion by joint contract-holder**

483. Under this section, one joint contract-holder ('C') may act to end the rights and obligations of another joint contract-holder ('J'). This only applies where the contract requires occupation of the dwelling as the only or principal home of J.

484. C may seek to end the rights and obligations of J where C believes that J is not living in the dwelling and does not intend to do so in future. In such circumstances, C must give J notice that they do not believe that J is living in the dwelling, or intends to live there, and that J's rights and obligations under the contract may be ended unless they contact C in writing within four weeks to confirm that they are living, or intend to live, in the dwelling.

485. Copies of this notice must be provided by C to the landlord and any other joint contract-holders. During this four week period C must make such inquiries as are necessary to be satisfied that J is not occupying the dwelling and does not intend to. If, at the end of the four-week period, C is satisfied that J is not living in the dwelling, and does not intend to, C may apply to the court to have J's rights and obligations under the contract ended.

486. Where the court is satisfied that J does not live, and does not intend to live, in the dwelling, it may make an order ending J's rights and obligations under the contract on a specified date, unless J's absence can be attributed to another joint contract-holder breaching the prohibited conduct term of the contract (see section 55, and see also section 230 which sets out what the landlord may do in such situations).

**Section 228 – Remedies for exclusion under section 227**

487. J, within six months of the court order being made under section 227, may apply to the court to rescind its order on a ground in subsection (3). The court may rescind its order and reinstate J as a party to the contract, and make any other order it thinks fit.

**Section 229 – Power to vary periods of time relating to exclusion of joint contract-holder**

488. The Welsh Ministers may by regulations amend the time periods in sections 225(4) (the warning period relating to exclusion by landlord), 226(1) (period within which a joint contract-holder can seek a remedy from the court following exclusion by landlord), 227(10) (the warning period relating to exclusion by another joint contract-holder), and 228(2) (period within which a joint contract-holder can seek a remedy from the court following exclusion by another joint contract-holder).

**Section 230 – Prohibited conduct: exclusion by landlord**

489. A landlord may apply to the court for an order to end the rights and obligations under a contract of a joint contract-holder who the landlord believes is in breach of the term of the contract incorporating section 55 (anti-social behaviour and other prohibited conduct). Before making the application, the landlord must give a notice to the joint contract-holder stating the details of the breach, and that the landlord intends to apply to the court to have the joint contract-holder's rights and obligations under the contract ended. The landlord must also give a notice to the other joint contract-holders informing them that the landlord believes that a breach of the term incorporating section 55 has occurred, though not the details of it, and of the intention to apply for a court order. The application to the court must be made within six months of the notice being given to the joint contract-holder who has allegedly breached the term incorporating section 55. If a court makes the order, the joint contract-holder's rights and obligations end on the date set out in that order.

**Section 231 – Termination of occupation contract with joint contract-holders**

490. A contract with joint contract-holders can only be ended by the joint contract-holders acting together.

**CHAPTER 15 - FORFEITURE AND NOTICES TO QUIT NOT AVAILABLE**

**Section 232 – Forfeiture and notices to quit**

491. This section provides that landlords under occupation contracts may not do certain things, even if they may appear to have the right to do those things under the contract, or under other law.

492. So, any provision in an occupation contract or any other legal right allowing the landlord to give a notice to quit, or granting rights in relation to re-entry or forfeiture, has no effect.

493. A right to forfeiture is a landlord's unilateral right to bring a tenancy to an end in the event of a breach by the tenant.



## **PART 10 - MISCELLANEOUS**

### **CHAPTER 1 - FURTHER PROVISIONS RELATING TO OCCUPATION CONTRACTS**

#### **Section 233 - Effect of reaching 18**

494. Section 7(6) provides that a person under the age of 18 cannot be a contract-holder under an occupation contract, and paragraph 7(2) of Schedule 2 provides that where all the tenants or licensees living in a dwelling are under 18, there is no occupation contract. This section concerns what happens when either-
- a. a person below the age of 18 who is the only tenant or licensee in relation to a dwelling reaches the age of 18, or
  - b. where there is a tenancy or licence with more than one tenant or licensee and all the tenants are under 18, the eldest tenant or licensee reaches the age of 18.
495. In either of those circumstances it is necessary to determine whether the tenancy or licence is an occupation contract and, if so, whether it is a standard or secure contract and who the contract-holder(s) will be. This section provides that those questions (which will be answered in accordance with the rest of the Act, and with regard to the particular circumstances that arise) are to be answered on the basis that the tenancy or licence was made on the day the person turned 18.

#### **Section 234 - Consultation arrangements and Section 235 - Statement of consultation arrangements**

496. Under section 234, community landlords must have arrangements in place for informing contract-holders about certain 'relevant proposals on housing management matters', and giving them an opportunity to comment. What constitutes such a proposal is set out in subsection (4); and subsection (5) means that the requirement to consult does not relate to proposed changes to rent or consideration, or to facilities or service charges.
497. These requirements also do not apply where the requirement to consult under paragraph 12(7) of Schedule 2, which concerns redevelopment schemes and the estate management grounds, applies.
498. Under section 235, each community landlord must publish a statement on the arrangements it has made in order to meet the requirements in section 234(1), together with a summary, both of which must be available on request to contract-holders and to members of the public. Registered social landlords and private registered providers of social housing must send copies of the statement to the Welsh Ministers and the local housing authority for the area in which the dwellings in question are situated.



## **Section 236 – Form of notices, statements and other documents and Section 237 - Giving notices, statements and other documents**

499. Any notices or other documents given or made under the Act must be in writing, and the Welsh Ministers can make provision in regulations about the form of notices and documents. Notices and documents may be in electronic form, as long as they contain the certified electronic signatures of any required parties (or an agent authorised by the party), but this is subject to the conditions in section 237(4).
500. Where a notice or document is required or authorised to be given to a person under the Act, it is considered as given if it is delivered to the person or posted to, or left at, that person's last known address or place of business or any other place that the person has specified as a place where they may be given notices or documents. In the case of a contract-holder, the dwelling that the contract-holder occupies is also an appropriate address.
501. A notice or document may also be given electronically if the recipient has agreed to receive it in this manner, it is legible, and the text it contains can be used for subsequent reference.

## **CHAPTER 2 – TRESPASSERS: IMPLIED TENANCIES AND LICENCES**

### **Section 238 – Implied tenancies and licences**

502. Where a landlord accepts payments from a person knowing they are a trespasser, or where they ought to have known that the person is a trespasser, and does not take any action to evict that person, or otherwise show an intention to treat the person as a trespasser within two months of accepting the first payment, a periodic contract is created between the landlord and the person. That contract is a tenancy or licence. This entitles the trespasser to occupy the dwelling as his or her home from the day after that two month period ends. The amount of rent and the rental periods of the contract are to be determined based on the amount and frequency of payments made by the trespasser, and any other relevant circumstances.

## **CHAPTER 3 – TENANCIES AND LICENCES EXISTING BEFORE COMMENCEMENT OF THIS CHAPTER**

### **Sections 239 to 241 - Pre-existing licences and tenancies**

503. Section 239 provides that, on the day it is brought into force ('the appointed day'), no tenancy or licence can be:
- a restricted contract
  - a protected shorthold tenancy;
  - a secure tenancy;
  - an assured tenancy (of any kind);
  - an introductory tenancy; or
  - a demoted tenancy.

504. No existing tenancies or licences are ended by this section. Rather, section 240 applies for the purposes of determining whether the tenancy or licence will convert into an occupation contract, and if so, what kind. The nature and status of pre-existing tenancies and licences which do not convert into an occupation contract will not be affected.
505. The existing terms of converted contracts continue to have effect providing they do not conflict with the fundamental provisions of the Act which become incorporated as terms of the contract. Conversely, supplementary provisions which apply to the occupation contract are incorporated into the contract unless they conflict with the existing terms of the contract. If a contract has been agreed between a landlord and tenant or licensee before the day that the relevant provisions of the Act come into force, but the occupation date falls after that date, the Act applies to the tenancy or licence as if it was made on the day the relevant provisions come into force.

### **Schedule 12 - Conversion of tenancies and licences existing before commencement of Chapter 3 of Part 10**

506. Schedule 12 sets out further provision about tenancies and licences which convert into occupation contracts. It makes provision which applies only to such contracts, and also modifies the operation of certain provisions in the Act in terms of how they operate in relation to such contracts.

### **Section 242 - Interpretation of Chapter**

507. This section sets out the definitions of terms used in the Chapter.

## **PART 11 - FINAL PROVISIONS**

### **Sections 243 to 258**

508. Section 243 sets out the meaning of 'local authority' and definitions relating to other kinds of authorities referenced in the Act.
509. Section 244 sets out the meanings of 'landlord', 'lodger' and 'permitted occupier'.
510. Section 245 defines 'occupation date' as the date on which a contract-holder may begin occupying the dwelling subject to the contract.
511. Section 246 defines 'dwelling'.
512. Section 247 defines 'variation', in relation to the variation of terms of occupation contracts. It includes adding or removing a term of a contract, as well as changing an existing term.
513. Section 248 defines 'the court'.
514. Section 249 defines 'lease', 'tenancy' and related expressions.
515. Section 250 sets out when a person is to be treated as a member of another's family.

516. Section 251 defines ‘family property order’.
517. Section 252 provides definitions of other minor terms used in the Act.
518. Section 253 contains an index which sets out the various terms used and defined in the Act in alphabetical order, together with the section in which they are defined or explained.
519. Section 254 provides that the Act applies to the Crown.
520. Section 255 provides a power to make supplemental, incidental, consequential, transitional, transitory and saving provision in order to give full effect to the Act, or in consequence of any provision in the Act.
521. Section 256 makes provision about the making of regulations under the Act.
522. Section 257 provides for the commencement of the Act.
523. Section 258 gives the short title of the Act.

#### **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

524. The following table sets out the dates for each stage of the Act’s passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales’ website at: <http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=12055>

<b>Stage</b>	<b>Date</b>
Introduced	9 February 2015
Stage 1 - Debate	7 July 2015
Stage 2 Scrutiny Committee - consideration of amendments	30 September 2015 8 October 2015
Stage 3 Plenary - consideration of amendments	10 November 2015
Stage 4 - Approved by the Assembly	17 November 2015
Royal Assent	18 January 2016

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