

# **Renting Homes (Wales) Act 2016 Implementation Phase- The Legal Implications.**

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## Background

*“Around a third of the population of Wales lives in rented accommodation.”*

Community Housing Cymru 2016

- Schedule 7 to the Government of Wales Act 2006 defines the scope of the Assembly's legislative competence to make Assembly Acts, within areas where the Welsh Ministers exercise executive functions. Number 11/20 is Housing.
- The result of this is that the Housing Law situation is currently governed by a variety of both English and Welsh statutes and some Welsh specific legislation.
- The following is a non-exhaustive list of statutes that can currently directly affect the working practices and legal responsibilities of housing associations in Wales.

## The Current Position

<b>Housing Act 1980</b>	<b>Housing Act 1985</b>	<b>Housing Act 1988</b>
<b>Housing Act 1996</b>	Housing Act 2004	Housing (Wales) Act 2014
<b>Anti-Social Behaviour Crime and Policing Act 2014</b>	Equality Act 2010	Defective Premises Act 1972
<b>Rent Act 1977</b>	Protection from Eviction Act 1977	Commonhold Leasehold Reform Act 2002
<b>Landlord and Tenant Act 1985</b>	Human Rights Act 1998	Law of Property Act 1925

## Current types of occupation agreement

Common Law tenancy	Licence (Protected)	Licence (Excluded)	Introductory tenancy
Assured shorthold tenancy – fixed term	Assured shorthold tenancy – periodic	Starter tenancy	Assured tenancy
Protected tenancy	Secure tenancy	Demoted tenancy	

## The Call for Reform

*“...The main source of difficulty is the complexity of the substantive law itself...Questions whether someone is a licensee, a tenant or a sub-tenant raise issues of law which in some cases have had to be decided by the Court of Appeal or the House of Lords [Now Supreme Court]. A tenant whose home is in a state of disrepair may have a claim against his or her landlord in contract or in tort, under the Landlord and Tenant Act 1985 or the Defective Premises Act 1972 or the Environmental Protection Act 1990. It is difficult, if not impossible for tenants to decide these questions without advice. The complexity of housing law makes it a particularly difficult area for advice workers who are not legally qualified. When lawyers do become involved, the complexity of the issues increases...”*

**Lord Woolf, M.R. 1996**

“..simplifying substantive housing law would considerably reduce the costs of litigation in that area and improve access to justice. I recommend that the government should reconsider undertaking proposals such as a process of simplification, as proposed by the Law Commission in its papers of November 2003, May 2006 and August 2008.

**Lord Justice Jackson 2009**

## The Future...

- Welsh Government claim that the Renting Homes (Wales) Act 2016 will make it simpler and easier to rent a home in Wales, by replacing various and complex pieces of existing legislation with one clear legal framework.

## The Occupation Contracts

- At the heart of the Act are the new 'occupation contracts'. With a limited number of exceptions, the act replaces all current tenancies and licenses one of the following:

Secure contract –

Always periodic - See s.8(2)

Standard contract –

Periodic - See s.8(3)

Standard contract -

Fixed Period – see s.8(3)

The supported standard contract – See s.143 and Schedule 2 Part 5.

- Once implemented, the Act will require landlords to issue a written statement of the occupation contract which clearly sets out the rights and responsibilities of landlords and those renting from them. To help landlords comply with this requirement, the Welsh Government will provide free model contracts. All contracts will contain:

## **Occupation Contract Terms**

**Key terms** (such as rent, address of property – i.e. things that are unique to the occupation contract).

**Fundamental terms** - Essential rights and obligations of landlord and tenant. Some can be modified / omitted, others not.

**Supplementary terms** (maintenance of property etc.) – these can be left out or modified either in favour of the contract-holder or the landlord.

**Additional terms** (specific issues the parties want covered by the contract to which there are no statutory provisions, for example, the keeping of pets at the property).

## Other Key Sections

- S.7 - sets out what type of tenancies / licences will qualify as occupation contracts.
- S.9 – Defines “Community Landlord”
- s.11(1) – An occupation contract made with a community landlord is a secure contract unless one of the following exemptions applies:

- Schedule 3 applies – occupation contracts made with community landlords which may be standard contracts, (this includes supported accommodation, introductory occupation, accommodation for homeless persons etc.).
- s.13 notice has been served pre contract that the contract will be a standard contract.
- Order pursuant to s.116 (periodic standard contract because of prohibited conduct)
- Contracts continuing at end of fixed term. (*Fixed term roll overs*)
- Implied tenancies and licenses for trespassers.

## Provision of information

- The landlord under an occupation contract must give the contract holder a written statement of contract before the end of a period of 14 days starting with the occupation date. (See s.31(1)).
- Equally if there is a change of identity of contract holder, the landlord must give the new contract holder likewise information within 14 days of the change or if later, the date of the landlord becoming aware of the change, (See s.31(2)).

- If the landlord fails to provide a written statement, save for when the failure to comply is attributable to an act or omission of the contract holder (s.34(4)), the contract holder may **apply to the court for a declaration as to the terms of the contract**. On such an application all fundamental and supplementary provisions applicable to the contract are to be treated as incorporated without modification unless the contract holder prefers otherwise. The court will determine these claims.
- Likewise if the document is incomplete. See s.32.

## **s.87 Compensation for failures relating to written statements**

- (a) section 35 (failure to provide a written statement under section 31);
- (b) section 36 (providing an incomplete written statement);
- (c) section 37 (providing an incorrect written statement);
- (d) section 40 (failure to provide information under section 39 – landlord contact details);
- (e) section 110 (failure to provide written statement of variation of secure contract);
- (f) section 129 (failure to provide written statement of variation of periodic standard contract);
- (g) section 137 (failure to provide written statement of variation of fixed term standard contract).

## **s.87 continued**

- (2) Where the landlord under an occupation contract is liable to pay compensation to the contract-holder under this section, the amount of compensation payable in respect of a particular day is equivalent to the amount of rent payable under the contract in respect of that day.
- (4) If compensation is payable because of section 35 , 110 , 129 or 137 (failure to provide statement), the contract-holder may apply to the court for an order increasing the amount of the compensation on the ground that the landlord's failure to provide a written statement was intentional.

## Other important aspects

- S.91 and s.92 - obligations re condition of dwelling
- S.143 and Sch 2, Part 5 – The Supported Standard Contract
- S.145 – Temporary Exclusion
- County court *judicial review* of landlord activity: eg Review of decision to extend and introductory tenancy (Sch 4), notice of standard contract (s.13 and 14), refusing to issue supported standard contract after 6 months, (Para 15.7 Sch 2).
- Serving notices to end contracts within the first 6 months – the new 4 month rule for std contracts. (s.175, 186 and 196). But do note the exceptions at Schedule 9.
- Note the current plan for implementation.

## Implementation phase – see Part 10 and Schedule 12

### Paragraph 1

On and after the appointed day, no tenancy or licence (whenever made) can be a restricted contract; (Rent Act 1977), (b) a protected shorthold tenancy; (Housing Act 1980), a secure tenancy; (Housing Act 1985), an assured tenancy (including an assured shorthold tenancy); (Housing Act 1988), an introductory tenancy; (Housing Act 1996) (this will include starter tenancies), or a demoted tenancy. (Housing Act 1996)

### Paragraph 2

Schedule 2 (tenancies or licences not with section 7 but that can be occupation contracts if notice is given), applies to a tenancy or licence which immediately before the appointed day was a secure tenancy, an assured tenancy, an introductory tenancy or a demoted tenancy, and a tenancy which existed immediately before the appointed day but is not within paragraph (a)

**Paragraph 3**

**Determination of whether a converted contract is a secure contract with private landlords holding secure tenancies.**

**Paragraph 4**

(1) The landlord under a converted contract may give notice under section 11(2)(b) (notice of standard contract) at any time before the end of the initial notice period.  
(2) If the landlord does so, the contract is to be treated as having become a standard contract on the appointed day.

**Paragraph 5**

A converted contract which immediately before the appointed day was an introductory tenancy has effect as an introductory standard contract (see schedule 12 paragraph 23 for exceptions relating to death and succession).

<p><b>Paragraph 6</b></p>	<p>A converted contract has effect as a prohibited conduct standard contract (see paragraph 24) if immediately before the appointed day [it was a demoted tenancy]. (see schedule 12 paragraph 24 for further guidance).</p>
<p><b>Paragraph 7</b></p>	<p>Determination of whether a converted contract is a secure contract where agreement is fixed term, a premium was paid for the contract and the contract holder wants the agreement to be a fixed term standard contract.</p>
<p><b>Paragraph 8</b></p>	<p>Determination of whether a converted contract is a secure contract when community landlord becomes the landlord under a fixed term standard contract.</p>
<p><b>Paragraph 9</b></p>	<p>Additional exceptions to the rule that contracts made or adopted by community landlords are secure contracts due to issues around succession, assignment, sub-letting and death.</p>
<p><b>Paragraph 10</b></p>	<p>Where the tenant dies before the appointed day.</p>

Paragraph 11	Written contract to be provided to contract holder before the end of the period of six months starting with the appointed day (“the information provision period”).
Paragraph 12	s.36 and s.37 timeframes to allow for the information provision period
Paragraph 13	s.39 time frames to allow for the information provision period
Paragraph 14	(1) A converted contract may not be varied before the landlord has given the contract-holder a written statement of the contract. (2) Sub-paragraph (1) does not apply to a variation under section 104 or 123 (variation of rent).
Paragraph 15	Rent
Paragraph 16	Waste
Paragraph 17	Fundamental provision

Paragraph 18	Rights for joint contract-holders who were tenants in common in equity immediately before the appointed day.
Paragraph 19	Transfer rights in respect of converted contract which will be a fixed term standard contract.
Paragraph 20 and 21	Succession on conversion
Paragraph 22	Requirement to occupy dwelling as main home under certain converted contracts.
Paragraph 23	Additional info relating to introductory standard contracts
Paragraph 24	Additional info relating to Prohibited conduct standard contracts
Paragraph 25,26 and 27	Provisions relating to termination of contracts by landlord.
Paragraph 28 and 29	Termination of contract that was an assured tenancy – absolute grounds for possession
Paragraph 30	Deals with trespassers on conversion.

## What will not change

- Organisation own policies and where applicable, procedure guides?
- Multiple matter specific pre-action protocols
- Welsh Government guidance, circulars etc.
- Proportionality under Article 8 ECHR
- Public Law obligations

## Practical Considerations

- Do you need a data cleanse?
- How will you logistically manage the issuing of new agreements?
- Are your board up to speed / do they need to be?
- How are you going to manage the queries and responses?
- Are you communicating the change with tenants and if so, how?
- Are you going to tie this in with a change of policy?
- Training!

## Conclusion

- It will not be the one stop shop for housing professionals or tenants
- Don't be too worried about the changes of name and sections; a lot of the substance remains the same.
- It's still a bit complicated.
- Appears as though Art 8 and Public Law challenges will remain in place.
- A firm move away from the *English Model*