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| **Guidance on Standard Occupation Contracts for use by private landlords and letting agents in Wales** |

The Renting Homes (Wales) Act 2016 (‘the Act’) and supporting legislation is intended to make it simpler and easier to rent a home in Wales. The Welsh Government have published prescribed occupation contracts to encourage consistency in the way written statements are drafted.

For the purposes of this note, we will focus on standard occupation contracts (both periodic and fixed term) which are the contracts used by private residential landlords and letting agents in Wales from 01 December 2022 when the Act and supporting legislation came into force.

With a few exceptions, most existing residential tenancies and licences in Wales automatically converted to an occupation contract on 01 December 2022. Converted contracts are covered in further detail later on in this note.

* **Occupation Contracts**

1. **Definition of Occupation Contract**

A tenancy or licence is an occupation contract if the following apply:

1. Rent or other consideration is payable under it; and
2. It is made between a landlord and an individual (who must be 18 years or older); and
3. It gives the individual a right to occupy the dwelling as a home.

This is a wider definition than assured shorthold tenancies which does not include second homes or tenancies where rents over £100,000 per annum are payable.

Therefore, most former assured shorthold tenancies, licences, student lettings (not granted by an educational institution or housing provider), house in multiple occupation (HMO) lettings and most contractual tenancies will be occupation contracts.

1. **Exceptions to the definition**

Although they may fall within the definition of occupation contract, the following tenancies or licences are not occupation contracts, unlessthe **‘Notice Condition’** is met:

1. Holiday Lets;
2. Accommodation in a care institution;
3. A tenancy or licence made with a person who entered the dwelling as a trespasser; and
4. Accommodation that is shared with the landlord (the landlord must occupy the dwelling as his only or principal home).

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| **Notice Condition** - this is where a landlord gives a notice to the other party at the outset which states that the agreement will be an occupation contract. |

1. **Tenancies and licences which can be Occupation Contracts**

Some tenancies or licences (which do not fall within the definition of occupation contract) can become occupation contracts if:

1. an individual (who is not the person with whom the contract is being made) has the right to occupy a dwelling and the Notice Condition is met; or
2. no rent or other consideration is payable, and the Notice Condition is met.
3. **Tenancies and licences that are never occupation contracts**

The Act provides a list of tenancies and licences which will never be occupation contracts, the key ones being:

1. A long tenancy (for a fixed term exceeding 21 years);
2. A business tenancy (Part II of the Landlord and Tenant Act 1954);
3. A farm business tenancy; and
4. A protected tenancy or statutory tenancy (Rent Act 1977).
5. **Periodic and Fixed Term Standard Occupation Contracts**

Below, we look at some of the key differences between a periodic and a fixed term standard occupation contract.

A Periodic Standard Occupation Contract:

1. continues from one rental period to the next (typically from month to month or week to week);
2. can be terminated using a section 173 notice (no-fault possession notice) which must not be served in the first six months of occupation and six months’ notice must be given (where this is a new periodic standard occupation contract). For an existing periodic tenancy which began before 01 December 2022, landlords are only required to give two months' notice under section 173, but such a notice must not be served within the first four months of the contract-holder's occupation. **However, please note that the Welsh Government intends to amend the Act so that a six-month no-fault notice period applies to converted periodic standard contracts from 1 June 2023**; and
3. can be terminated by a contract-holder serving only one months’ notice.

A Fixed Term Standard Occupation Contract:

1. can be granted for any length of time agreed between the parties (the model written statement is for a term of less than 7 years);
2. cannot be terminated using a section 173 notice (no-fault possession notice) (where this is a new fixed term standard occupation contract). For an existing fixed term tenancy which began before 01 December 2022, landlords are able to serve a s173 possession notice to end the contract at the end of the term. Landlords are only required to give two months' notice;
3. the contract-holder cannot terminate it unless there is a contract-holder’s break clause; and
4. will become a periodic standard occupation contract if the contract-holder remains in occupation at the end of the fixed term.

* **Written Statements**

1. **What is a written statement?**

Occupation contracts must be in writing, they cannot be made orally. A written statement is essentially an occupation contract. It is a written statement of all the terms, which include the rights and responsibilities of the landlord and contract-holder, which apply to that specific contract. It must also contain the ‘**Explanatory Information**.’

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| **Explanatory Information** – this is information prescribed by the Welsh Government which must be contained in the written statement, and which is a summary of the key provisions of the occupation contract. |

1. **Model written statements**

The Welsh government has published model written statements.

For ease of reference, you can find the following model written statements in the Guidance subfolder in our Renting Homes Wales group:

* ***Model written statement of a periodic standard occupation contract; and***
* ***Model written statement of a fixed term standard occupation contract for a term of less than seven years.***

1. **Use of the model written statements**
2. You do not have to use the model written statements; however, they are a good starting point. These statements can be modified, additional terms can be added, and certain terms can be omitted, however, the Act and supporting legislation prescribe which terms can be amended and how they are to be amended and you must ensure that any changes are done in accordance with the legislation. It is key that fundamental terms are properly incorporated.

If a landlord issues a written statement which is incorrect or incomplete, the contract-holder can apply to court for a declaration on the terms of the contract. The landlord could also be ordered to pay compensation.

1. You can use the model written statements without making any changes to them and simply add the relevant details to the key terms. However, you may wish to add additional terms or amend the supplemental and fundamental terms (where permitted under the Act and supporting legislation).
2. If you are dealing with an existing tenancy which converted to an occupation contract on 01 December 2022, you will need to amend the written statement to ensure that the special provisions for converted contracts (referred to below), and which deal with information provision and notice periods are reflected in the written statement.
3. **If you are making amendments to the statement in accordance with the legislation, these changes must be clearly shown. For example, a term which is being deleted can be shown as struck through and any new text is shown in CAPITALS.**

Editorial changes can be made to the wording of a term, provided it does not change the substance of that term in any way. For example, you can substitute the names of the landlord or contract-holder.

The model written statement contains footnotes. These do not form part of the terms of the contract but have been included as a useful reference point.

1. **Terms of the model written statements**
2. **Key Terms**: these include the address of the dwelling, the occupation date, the amount of rent, the rental period, any period where the dwelling is not to be occupied as a home and the signatures of both the landlord and contract-holder.

There is no statutory requirement for the contract-holder to sign. Contract-holders should be encouraged to sign the document to confirm their understanding and agreement to the terms of the written statement.

1. **Fundamental Terms**: these are terms which are automatically included in an occupation contract.
2. Those terms marked with an **(F)** cannot be left out or changed,for example, possession claims, anti-social behaviour and other prohibited conduct and the requirement to use a deposit scheme.
3. Those terms marked with **(F+)** can be left out or changed, but only with the agreement of the parties and only if the change benefits the contract-holder. They cannot be amended if they conflict with a fundamental term which cannot be varied.
4. **Supplementary Terms**: these terms are automatically included in an occupation contract and are marked with an **(S).** They can be left out or changed by agreement of the parties. They cannot be modified so as to conflict with a fundamental term. Any change to a supplementary term must also be fair under consumer protection law.
5. **Additional Terms:** these terms should be marked with **(A)** and can cover any matter agreed between the landlord and the contract-holder, as long as they do not conflict with a key term or a fundamental term or supplementary term. It could cover pets at the dwelling or rent increases or interest on late payments. Any additional term must be fair under consumer protection law.

* **Converted Contracts**

Most fixed term assured shorthold tenancies in Wales automatically converted into a fixed term standard occupation contract on 01 December 2022, with the fixed term coming to an end on the same date as set out in the existing tenancy agreement.

Most periodic assured shorthold tenancies in Wales automatically converted into a periodic standard occupation contract on 01 December 2022.

***Converted contracts and the written statement***

For existing tenancies which converted on 01 December 2022, landlords have six months to provide the written statement to all contract-holders (by 31 May 2023). A converted contract may not be varied before the landlord has given the contract-holder a written statement of contract (save for a variation to the rent).

In order to produce the written statement, landlords and letting agents in Wales will need to go through the existing tenancy agreement or licence, and the relevant model written statement, and consider which of the existing terms can be carried across to the written statement of the converted contract:

* 1. The existing terms of the tenancy or licence will apply unless they conflict with the ***fundamental terms***;
  2. Supplementary terms will be included unless they conflict with the terms of the existing tenancy or licence; and
  3. Any other terms in the existing tenancy or licence will form part of the occupation contract as additional terms (provided they do not conflict with any fundamental or supplementary term).

***Special Provisions for converted contracts***

1. The Act and supporting legislation recognise that it would be unfair to replace certain provisions which were agreed in the existing agreement, and therefore certain provisions must not be replaced. For example, notice periods for possession in converted contracts:
2. For an existing periodic tenancy which began before 01 December 2022, landlords are only required to give two months' notice under section 173, but such a notice must not be served within the first four months of the contract-holder's occupation. **However, please note that the Welsh Government intends to amend the Act so that a six-month no-fault notice period applies to converted periodic standard contracts from 1 June 2023.**
3. For an existing fixed term tenancy which began before 01 December 2022, landlords are able to serve a possession notice to end the contract on or after the last day of the term. Landlords are only required to give two months' notice. When a fixed term tenancy ends and becomes periodic following 01 December 2022, six months’ notice period for possession will be required.
4. For an existing fixed term tenancy which began before 01 December 2022 and contained a landlord’s break clause, a landlord will be able to exercise their break serving two months’ notice only (instead of six months’ notice which is required for new fixed term occupation contracts containing a landlord’s break clause). The break notice may not be given until after the first four months of occupation.
5. There are different timescales for landlords of converted contracts to provide information to contract-holders, which is discussed in further detail below.

* **Provision of Information**

Under the Act, a landlord has obligations to provide the contractor-holder with the written statement of contract. The landlord also has obligations to provide the contract-holder with information about the landlord.

If the contract-holder agrees, the written statement and the information about the landlord can be provided electronically.

Failure to comply with these provisions can result in a court order, and the landlord may also be liable to pay compensation.It may also prohibit a landlord from serving a ‘no-fault’ possession notice.

1. **Provision of information relating to written statements for new occupation contracts:**
   1. A landlord must **give all contract-holders** a written statement of the contract before the end of the period of 14 days starting with the occupation date. This applies to new contracts from 01 December 2022.
   2. A landlord must **give a new contract-holder** a written statement of the contract before the end of the period of 14 days starting with:
      1. The day on which the contract-holder changes; or
      2. If later, the day on which the landlord becomes aware that the contract-holder has changed.
   3. A written statement must be provided free of charge. If a further written statement is requested by the contract-holder, a landlord can charge a reasonable fee for providing a further statement.
   4. If a **further written statement** is requested, a landlord must provide this within 14 days, starting with:
      1. The day of the request; or
      2. If a fee is payable, the day on which the contract-holder pays the fee.

Failure to comply

1. If a landlord **fails to provide a written statement** to the contract-holder, the contract-holder can apply to the court for a declaration as to the terms of the contract. A landlord could be liable to pay compensation, up to a maximum of two months’ rent, from the date the written statement should have been provided to the contract-holder. A landlord may also be liable to pay interest on any compensation due. If the failure to provide the written statement was intentional, the landlord may be liable to pay more compensation. A contract-holder can also withhold rent to the value of the compensation.

A landlord will be prevented from issuing a no-fault possession notice (s173 notice, s186 notice or exercising a landlord’s break clause), for a period of six months from the day the written statement is provided to the contract-holder.

1. If a landlord provides an **incomplete written statement** or an **incorrect written statement** to the contract-holder, the contract-holder can apply to the court for a declaration as to the terms of the contract. A landlord may be liable to pay compensation, up to a maximum of two months’ rent. A landlord may also be liable to pay interest on any compensation due. A contract-holder can also withhold rent to the value of the compensation.
2. **Provision of Information relating to written statements for converted contracts** 
   1. A landlord must **give all contract-holders** a written statement within six months (by 31 May 2023), for existing tenancies which convert to occupation contracts on 01 December 2022. The same consequences apply as failing to serve a written statement for a new occupation contract, as referred to above. The contract-holder cannot apply for a court order until after the six month period from 01 December 2022.
   2. **New contract-holders** - If the contract-holder changes during the six month implementation period, the landlord does not have to provide the new contract-holder with a written statement during this six month period.

If the landlord fails to provide the written statement by 31 May 2023, they will be prevented from issuing a no-fault possession notice (s173 notice, s186 notice or exercising a landlord’s break clause), for a period of six months from the day they provide the written statement to the contract-holder.

* 1. If the landlord provides an **incorrect or incomplete written statement,** the contract-holder can apply to the court for a declaration as to the terms of the contract, within 14 days of receiving the written statement (even if this is before the 31 May 2023). The consequences for providing an incorrect or incomplete written statement are the same as for a new occupation contract, as referred to above.

1. **Provision of Information About Landlord for new occupation contracts:**
   1. A landlord must give the contract-holder **notice of an address** for where to send documents to them, within 14 days, starting with the occupation date of the contract. A landlord should use prescribed form [RHW2](https://gov.wales/notice-landlords-address-form-rhw2) to inform contract-holders of an address;
   2. If the **landlord changes**, the new landlord must give the contract-holder the new landlord’s name and address within 14 days, from the day on which the new landlord becomes the new landlord. The new landlord should use prescribed form [RHW3](https://gov.wales/change-landlords-identity-and-notice-new-landlords-address-form-rhw3) to notify contract-holders of a change to the identity of the landlord, and of an address that documents can be sent to;
   3. If the **landlord’s address changes**, the contract-holder must be informed within 14 days, from the day on which the address changes. The landlord should use prescribed form [RHW4](https://gov.wales/change-landlords-address-form-rhw4) to tell contract-holders of a change in their address.

If a landlord fails to comply with the requirements to provide information about them to the contract-holders, they will be liable to pay compensation to the contract-holder, up to a maximum of two months’ rent. A landlord may also be liable to pay interest on any compensation due. A contract-holder can withhold rent to the value of the compensation.

A landlord will also be prevented from issuing a no-fault possession notice (s173 notice, s186 notice or exercising a landlord’s break clause), where these obligations are outstanding.

1. **Provision of Information About Landlord for converted contracts:**
   1. A landlord must give the contract-holder **notice of an address** for where to send documents to them, within six months from 01 December 2022 (by 31 May 2023). A landlord should use prescribed form [RHW2](https://gov.wales/notice-landlords-address-form-rhw2) to inform contract-holders of an address;
   2. If the **landlord changes, or in respect of a landlord’s change of address,** the provisions above, which apply for new occupation contracts, remain unchanged (i.e., within 14 days of these changes occurring).

If a landlord fails to comply with the requirements to provide information about them to the contract-holders, they will be liable to pay compensation to the contract-holder, up to a maximum of two months’ rent. A landlord may also be liable to pay interest on any compensation due. A contract-holder can also withhold rent to the value of the compensation.

A landlord will also be prevented from issuing a no-fault possession notice (s173 notice, s186 notice or exercising a landlord’s break clause), where these obligations are outstanding.

1. **Provision of Information following a variation to the contract**

If a variation is agreed after the start of the contract, the landlord must provide a written copy of the new term or terms, or a written statement of the contract as varied, within 14 days of the change being agreed. The landlord cannot charge a fee to provide a written statement of the occupation contract as varied.

If a landlord fails to comply with this requirement, they may be liable to pay compensation, up to a maximum of two months’ rent. A landlord may also be liable to pay interest on any compensation due.