

The Renting Homes (Wales) Act 2016 (the Act) what Landlords need to know

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The Renting Homes (Wales) Act 2016 (the Act) took effect on 1 December 2022, extending to both new and existing rental agreements by transforming them into "occupation contracts."

This legislation introduced a myriad of new terminology: tenants and licensees are now referred to as "contract-holders," and landlords must furnish "written statements" detailing the conditions of the occupation contract to these contract-holders.

This article offers a comprehensive summary of the challenges presented by the newly implemented regime, with uncertainties surrounding some of its practical implications.

As a firm with presence in both England and Wales, we work with landlords who often may reside in England with a 2nd, 3rd or 4th rental property across the border in Wales.

For buyers and landlord owners of Welsh properties subject to residential occupancies, it is essential to examine the following issues as part of their due diligence.

Which residential occupations are affected?

Firstly, it is important to identify which residential occupations fall under the new regime. The previous common form of residential tenancy granted by private landlords, assured tenancies, are now replaced by occupation contracts. However, Rent Act tenancies predating 1989, agricultural leases such as FBTs and AHAs, and long leases exceeding 21 years are exempt from the new regulations.

Nevertheless, the Renting Homes (Wales) Act 2016 has extended its application beyond traditional tenancies governed by the Housing Act 1988, to include licenses and other informal agreements where some form of compensation is paid. The term "other consideration" is not specifically defined, but according to guidance, it may include services or work done for the landlord.

What is noteworthy is that there is no minimum rent threshold, meaning that even a token rent of £1 per year, paid or not, brings the agreement under the Act's ambit.

Therefore, landlords and buyers must gather information on all residential occupations on the property, including informal arrangements, to confirm which ones fall under the Act. As ever, there must be a cautious approach if considering granting holdover licenses after completion, as there is a risk of inadvertently being subject to the Act's provisions.

What is a written statement and what do Landlords need to know about them?

Written statements must contain specified "fundamental terms," which are automatically included in all occupation contracts, "supplementary terms" (with any agreed-upon amendments indicated within the contract), and any "additional terms" agreed upon by both parties.

Landlords have a legal obligation to serve a written statement to contract-holders within 14 days of the "occupation date."

If the contract was converted from an existing tenancy to a new occupation contract, the statement must be served before 1 June 2023. However, the obligation to provide a written statement can arise again on other occasions, such as within 14 days of a new periodic tenancy arising at the end of a fixed-term contract, if there are any changes to the identity of the contract-holder, and if the contract-holder requests a further written statement.

If landlords miss the statutory deadlines for serving the written statements, contract-holders are entitled to statutory compensation that they can set off against rent. If the landlord fails to serve any statement or provides an incorrect or incomplete statement, the contract-holder can apply to court for a declaration of the terms of the contract under the Act.

What is the "occupation date" and how does it affect the deadline for serving written statements?

There are a number of questions landlords should consider.

- Has the seller served written statements on all contract-holders within the statutory deadlines, including those for new periodic tenancies and changes to contract-holders' identities?
- Are there any existing tenancies or licences on the property that have been converted into occupation contracts, and if so, have the written statements been served before the deadline of 1 June 2023?
- Have any contract-holders requested a further written statement during the life of their contract, and if so, have the landlords provided it within the 14-day deadline?
- Are there any less formal arrangements, such as licenses or other agreements, that could be caught by the Act and require written statements to be served?
- Have any applications for consent been received, and if so, have the landlords responded within the statutory deadlines and provided a written statement if requested?
- What are the reasons for any refusals or conditions imposed on applications for consent, and have they been communicated to the contract-holders in writing?
- Has any contract-holder applied to court to challenge a refusal or conditions imposed on their application for consent, and if so, what is the status of the court proceedings?
- Are there any disputes or potential disputes with contract-holders about the agreed terms of their contracts, and if so, what steps have been taken to resolve them?
- Can you provide information about the current contract-holders or tenants of the property, including their identities and the terms of their occupation contracts?
- Have any parties recently been added or removed from the contracts, and if so, were the proper procedures followed in obtaining landlord's consent?
- Additionally, have any contract-holders passed away while occupying the property, and if so, have their family members or carers made any claims to succeed to the contract?

To ensure compliance with the updated regulations, all landlords and any prudent new purchasers should obtain information regarding the condition of the properties and whether any necessary works have been carried out to meet the new standards. They should also inquire whether any ongoing inspections are taking place to ensure that the properties remain fit for human habitation. For converted contracts, it would be important to determine whether the exception to the smoke alarms and electrical safety certificate requirements applies and whether the grace period has been used by the landlord.

When is it that the earliest vacant possession can be obtained, if required?

It's worth noting that the Act doesn't completely eliminate "no-fault" evictions, which are commonly served through s.21 notices for Housing Act 1988 tenancies.

However, it does lengthen the amount of time before landlords can repossess a property. For new periodic tenancies, landlords must provide six months' notice to terminate the contract (an increase from two months), and they are not allowed to serve the notice in the first six months of the term (previously four months). On the other hand, a contract-holder can end a periodic contract with just four weeks' notice.

For new fixed-term contracts, the earliest that a landlord can regain possession through a contractual landlord's break clause is two years, since they must provide six months' notice, and this cannot be served during the first 18 months. There are transitional rules for converted contracts.

Like the English rules for s.21 notices, there are additional restrictions for serving break notices. Landlords cannot serve valid notices if they are in breach of statutory obligations to provide EPCs, gas certificates, or required information relating to rent deposits. Nor can they do so if they have breached the rules regarding the provision of written statements.

Overall, the Act represents a new system, and for new landlord buyers of properties in Wales there should be a keen awareness around the due diligence that must be carried out and seek legal counsel where necessary.

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Finally, what about transitional periods? What are the transition arrangements under the new Welsh legislation?

Converted contracts have specific rules compared to the new contracts. The rules aim to manage the transition and minimise changes from the original agreed terms, particularly in comparison to new contracts. One such change being to Section 173, which is the replacement for a Section 21 notice. Typically, a Section 173 notice necessitates a six-month notice period and cannot be issued during a fixed-term contract. However, for converted contracts, this rule differs and reflects the regulations in place when the contract was signed.

This means that landlords with converted contracts can issue a two-month notice under Section 173 during the converted fixed term (Form RHW38) or during the converted periodic contract (Form RHW17).

In light of recent developments, landlords can only employ the shorter notice period for periodic contracts until May 30, 2023. For converted fixed-term contracts, landlords can only utilise the two-month notice until the fixed term ends. If they enter into a new replacement contract, they must follow the standard rules.

Overall, the Act represents a new system, and for new landlord buyers of properties in Wales there should be a keen awareness around the due diligence that must be carried out and seek legal counsel where necessary.

This can all feel overwhelming and complex. The team at Allington Hughes have spent the last twelve months preparing for and working with the new legislation to be able to offer you the best possible advice and support. Please do contact the team today. On the next page, you will see our jargon buster which will hopefully help make some of the complex language more relatable and easier to understand.

Jargon Buster

Key parties:

Contract-holders – this will replace the term ‘tenants’. If you live in rented accommodation, you will be known as a contract-holder.

Community landlord – homes rented out by councils or housing associations – Trivallis is a community landlord.
Private landlord – any other landlord who not a community landlord

Types of contract:

Occupation contracts – these will replace existing tenancy agreements.

Secure Contract – for use by community landlords (Trivallis). In general, community landlords will be required to enter into secure contracts, which offers greater security to the contract holder compared to the standard contract.

Standard Contract – this is the default contract for the private rented sector but can be used by local authorities and registered social landlords in certain circumstances (e.g., a ‘supported standard contract’ within supported accommodation).

Joint Contract – contract-holders can be added or removed from occupation contracts without the need to end one contract and start another. This can help support those experiencing domestic abuse by just targeting the abuser for eviction.

Supported Standard Contract – if you live in supported accommodation for over six months, you become entitled to this contract. Similar to the standard contract, this allows the contract-holder to change where they are living within the building, and give the landlord the ability to temporarily exclude the contract-holder from the dwelling for up to 48 hours.

In the Written Statement:

Key Matters – to be include in the written statement, this refers to essential information, such as names and the address of the property.

Fundamental Terms – to be included in the written statement, this covers the most important parts of the contract, such as the landlord’s obligations to repairs and how a landlord can get possession of a house.

Supplementary Terms – to be included in the written statement, this look sat the more practical, day-to-day matters., such as notifying the landlord if the property will be left unoccupied for over four weeks.

Additional Terms – to be included in the written statement, this addresses any other specifically agreed terms, such as keeping pets.

Other important terms:

Fit for human habitation (FFHH) – this is where a property is in condition where contract-holders can live safely.

Retaliatory eviction – this is where a landlord evicts a contract-holder through no fault of the contract-holder. The new contracts provide more protection from this happening.

Abandonment Procurement – landlords can repossess an abandoned property without needing a court order.