

RENTING HOMES (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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, 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.