



# The Renting Homes Wales Act: Big Issues and Appeal Points

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10 September 2024

# Introduction

What are we covering?

- Brief overview and cases in 2024;
- Matters outside the contract – consent & succession;
- Incompatibility;
- Conversion of existing assured, secure etc tenancies to occupation contracts on 01.12.22;
- ‘Converting’ supported and homelessness accommodation contracts;
- Mobility clauses; and,
- Sanctions.

# Brief overview

- Renting Homes (Wales) Act 2016 ('the Act');
- Aimed to simplify the residential tenancy regime & regulatory framework;
- Royal Assent - 18 January 2016;
- Implemented - 1 December 2022 (originally expected 15 July 2022);
- Accompanied by Regulations.



# Contracts



**Secure**



**Standard**

# Terms

**Key**

**Fundamental**

**Supplementary**

**Additional  
(existing)**



# Matters outside the contract: consent & succession



# Consent (1)

- Chapter 9, sections 84-86 of the 2016 Act
- Section 84 applies in relation to **any term of an occupation contract** which permits something to be done only with the landlord's consent.
- It is **not limited** to where consent is required by the Act.
- The landlord may not **unreasonably refuse** consent, or give consent subject to **unreasonable conditions**.
- For a contract-holder to obtain consent, the request must be made in writing.
- The landlord may ask for information to enable it to deal with a request.
- The landlord may not ask for such information after the end of the period of 14 days starting with the day on which the request is made.
- If the landlord asks for information which it is not reasonable to ask for, the landlord is to be treated as not having asked for that information.

# Consent (2)

- **BEWARE** - If the landlord does not give or refuse consent in writing before the end of “the relevant period”, the landlord **is to be treated as having consented without conditions**.
- A landlord needs to have systems in place to receive, record and deal with requests for consent.
- The relevant period is the period of one month starting with the later of the day on which the request for consent is made, or if the landlord asks for information, the day on which the information is provided. Note that the landlord need to ask for information in accordance with the provisions of section 84.
- If the landlord consents subject to conditions, the landlord must give the contract-holder written notice of the conditions at the same time that consent is given; and if the landlord does not do so, the landlord is to be treated as having consented without conditions.
- If the landlord refuses consent or consents but subject to conditions, the person who made the request may ask for a written statement of the landlord’s reasons.
- **BEWARE** - If the landlord does not give a written statement of reasons before the end of the period of one month starting with the day on which the statement is asked for, the landlord **is to be treated as having consented without conditions**.



# Consent (3)

- Section 86(1) provides that:

“Where a term of an occupation contract permits something to be done with the landlord’s consent, the landlord may give consent after the thing has been done”.

- This does not apply to consent for adding a joint contract-holder (section 49 of the 2016 Act) or to any term of the occupation contract permitting the transfer of the contract, or of a joint contract-holder’s rights and obligations under the contract.

# Reasonableness of withholding consent (1)

- Schedule 6 of the 2016 Act applies to the determination of whether a landlord has reasonably refused consent or whether the conditions imposed are reasonable.
- **Split into two parts:**
- **Part 2** sets out circumstances which must be taken into account for that purpose, to the extent that they are relevant (and to the extent that there is no other requirement to take them into account for that purpose; for example, under the Human Rights Act 1998).
- **Part 3** sets out circumstances (in addition to Part 2) which must be taken into account for that purpose in relation to specific kinds of transaction, to the extent that they are relevant (and to the extent that there is no other requirement to take them into account for that purpose).
- Both parts also set out certain circumstances in which it is always reasonable for a landlord to refuse consent or impose conditions (subject to the Convention rights of the contract-holder and any other person affected by the landlord's decision).

# Reasonableness of withholding consent (2)

## Part 2, schedule 6:

- **Status of the occupation contract** - whether any party to the contract has taken steps towards ending the contract or done any act which may cause the contract to end.
- **Size and suitability** - will it be overcrowded? Will it provide more extensive accommodation that is reasonably required? Will it be unsuitable? Will an estate management ground become available? Where it is reasonable to take such matters into account, has a landlord established requirements as to the number of persons to occupy the dwelling or the age or general characteristics of person to occupy the dwelling and will such requirements be met?
- **Circumstances of the contract-holder and occupiers** - probable effect of the transaction, financial interests (does not apply (subject to the contract-holder's Convention rights) if the contract is a secure contract with a community landlord), conduct of the contract-holder and whether the contract-holder provided any information requested by the landlord.

NOTE: If the contract-holder is in breach of the contract, it is reasonable for the landlord to impose a condition that (a) the landlord's consent is to take effect only after the contract-holder ceases to be in breach, or the person, or all the persons, who will be contract-holders after the transaction are to be liable in respect of the breach.

# Reasonableness of withholding consent (3)

## Circumstances of the landlord (still Part 2, sch 6)

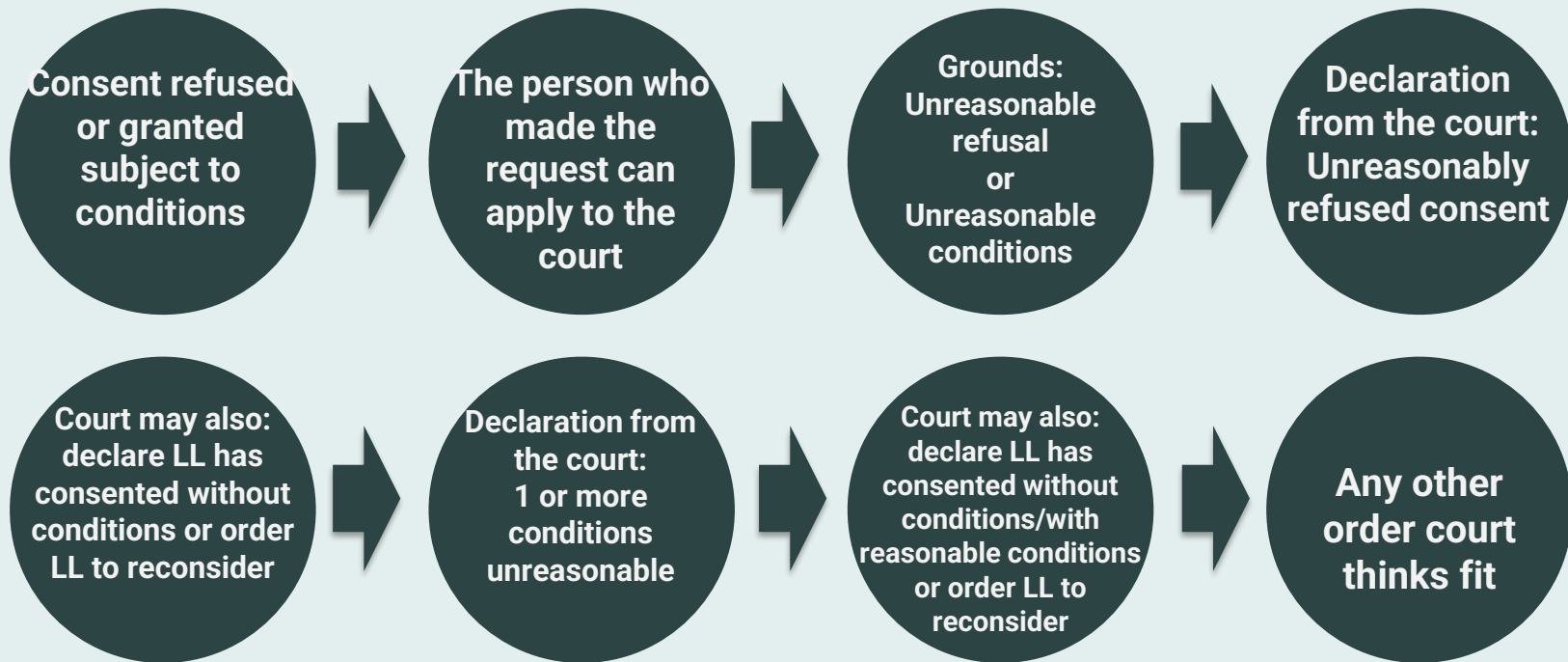
- The landlord's interests, including financial interests.
- The probable effect of the transaction on a community landlords ability to fulfil its housing functions.
- Whether (and if so, when) a person would obtain a dwelling (or a dwelling similar to the dwelling affected by the transaction) from the landlord if the transaction did not take place.
- If the landlord is required to publish a summary of rules under section 106, Housing Act 1985 (allocation of housing accommodation), those rules.
- If the landlord is a local housing authority, its allocation scheme and any information available under section 167(4A), Housing Act 1996 to a person applying for an allocation of housing accommodation.
- If the landlord has criteria for the allocation of accommodation (but s.106, HA 1985 and/or s.167, HA 1996 do not apply) those criteria.
- The landlord's refusal of consent to a transaction is reasonable if the landlord is a local housing authority, and as a result of the transaction a person who is ineligible (or is to be treated as ineligible) for an allocation of housing accommodation by the landlord will become a contract-holder. **NOTE:** does not apply to a transfer to a potential successor under section 114 or to a secure contract-holder under section 118 Act.
- Whether a person is ineligible, or is to be treated as ineligible, for an allocation of housing accommodation by the landlord is to be determined in accordance with section 160A of the HA 1996 and relevant regulations.

# Reasonableness of withholding consent (3)

## Part 3, schedule 6 (circumstances which may relevant to certain transactions):

- **Proposed joint contract-holder (s.49)** – suitability (likely to comply/complied with other contracts), member of the contract-holder’s family (and nature of relationship), whether likely to become sole contract-holder, whether likely to succeed under section 73 (probable effect).  
**NOTE:** If the landlord considers that the probable effect is to substantially lengthen the period during which the occupation contract is likely to continue, it is reasonable for the landlord to impose the following condition: the joint contract-holder is to be treated as a priority successor or as a reserve successor in relation to the occupation contract.
- **Transfer to potential successor (secure contract) (s.114)** - the probable effect of giving consent as regards the persons who may in future be qualified to succeed, and the period for which the occupation contract is likely to continue if one or more of those persons do succeed to it.  
**NOTE:** if the probable effect is to lengthen substantially the period during which the occupation contract is likely to continue, it is reasonable for the landlord to impose the following condition: the potential successor is to be treated as a priority successor or as a reserve successor in relation to the occupation contract.
- **Transfer to a secure contract-holder in relation to a secure contract with a community landlord (s.118)** – whether the transfer is part of a series of transactions and, if it is, all the circumstances relating to the other transactions in the series and whether the transferee is a priority or reserve successor to the secure contract before the transfer.  
**NOTE:** Reasonable to impose the following conditions: (a) transfer only if the other transactions take place; or (b) the transferee is to be treated as a successor of that kind in relation to the secure contract transferred to him or her by the transferor

# The courts and consent Section 85, 2016 Act



# Succession (1)

- Matters outside the contract? Converted contracts?
- Statutory succession scheme in sections 73 to 83 of the 2016 Act.
- Created **priority** and **reserve** successors.
- A person is a **priority successor** of the contract-holder if:
  - a. he or she is the spouse or civil partner of the contract-holder, or lives together with the contract-holder as if they were spouses or civil partners, and
  - b. he or she occupied the dwelling as his or her only or principal home at the time of the contract-holder's death.
- But no person is a priority successor of the contract-holder if the contract-holder was a priority successor in relation to the occupation contract.

# Succession (2)

## Reserve Successor: carer

- A person is a **reserve successor** of the contract-holder if he or she is not a priority successor of the contract-holder and:
  - a. he or she meets the **carer condition**,
  - b. he or she occupied the dwelling as his or her only or principal home at the time of the contract-holder's death, and
  - c. he or she meets the **carer residence condition**.
- A person meets the **carer condition** if at any time in the period of 12 months ending with the contract-holder's death he or she was a carer in relation to:
  - a. the contract-holder, or
  - b. a member of the contract-holder's family who, at the time the care was provided, lived with the contract-holder (if the contract-holder was a priority successor in relation to the occupation contract, the references to the contract-holder here include the person the contract-holder succeeded).



# Succession (3)

- A person meets the **carer residence condition** if:
  - a. he or she meets the basic residence condition, and
  - b. at the time of the contract-holder's death there was no other dwelling which the person was entitled to occupy as a home.

## Reserve Successor: family member

- A person is a **reserve successor** of the contract-holder if he or she is not a priority successor of the contract-holder and:
  - a. he or she meets the **family member condition**,
  - b. he or she occupied the dwelling as his or her only or principal home at the time of the contract-holder's death, and
  - c. if he or she meets the family member condition, he or she also meets the **basic residence condition**.

# Succession (4)

- A person meets the **family member condition** if he or she is a member of the contract-holder's family (if the contract-holder was a priority successor in relation to the occupation contract, this reference to the contract-holder include the person the contract-holder succeeded).
- A person meets the **basic residence condition** if throughout the period of 12 months ending with the contract-holder's death:
  - a. he or she occupied the dwelling, or
  - b. he or she lived with the contract-holder (if the contract-holder was a priority successor in relation to the occupation contract, this reference to the contract-holder include the person the contract-holder succeeded).

# Succession (5)

- A person is qualified to succeed if that person is a priority successor of the contract-holder or a reserve successor of the contract-holder, and, is not excluded.
- A person is excluded if they have not reached the age of 18 at the time of the contract-holder's death; and/or, at any time in the period of 12 month ending with the contract-holder's death they occupied the dwelling or part of it under a sub-occupation contract.
- A person is not excluded if they are a priority successor of the contract-holder, or they are a reserve successor, who meets the family member condition, and, the sub-contract under which he or she occupied the dwelling or part of it ended before your death.

# Succession (6)

- Schedule 12 of the Act sets out some further provisions relating to succession where the contract is a converted contract.
- A contract holder is to be treated as a priority successor in relation to the contract if:
  - a. immediately before the appointed day, the converted contract was a secure, introductory or demoted tenancy;
  - b. before the appointed day it had vested in the CH under section 89, Housing Act 1985 or sections 133 or 143H, Housing Act 1996 respectively; and,
  - c. the CH qualified to succeed under sections 87 and 113(1)(a), Housing Act 1985 or sections 131, 140(1)(a) or 143P(1)(a) or (b) respectively.
- A contract holder is to be treated as a priority successor in relation to the contract if:
  - a. immediately before the appointed day the contract was an assured tenancy;
  - b. before the appointed day it had vested in the CH under section 17, Housing Act 1988; and,
  - c. on the appointed day, the landlord under the contract was a community landlord.

# Succession (7)

- A contract holder is to be treated as a reserve successor in relation to the contract if:
  - a. immediately before the appointed day, the converted contract was a secure, introductory or demoted tenancy;
  - b. before the appointed day it had vested in the CH under section 89, Housing Act 1985 or sections 133 or 143H, Housing Act 1996 respectively; and,
  - c. the CH qualified to succeed under sections 87(b) and 113(1)(b), Housing Act 1985 or sections 131(b), 140(1)(b) or 143P(1)(c) respectively.
- A contract holder is to be treated as a reserve successor in relation to the contract if:
  - a. immediately before the appointed day the contract was an assured tenancy;
  - b. before the appointed day the CH had become entitled to the assured tenancy under paragraph 3, schedule 1, Rent Act 1977.
- You, as the contract holder, are to be treated as a reserve successor in relation to the contract if:
  - a. immediately before the appointed day the contract was an assured tenancy;
  - b. before the appointed day it had vested in the CH under section 17, Housing Act 1988; and,
  - c. on the appointed day, the landlord under the contract was a private landlord.



# Incompatible?



# Key term in the Act

01

## Section 24

- When supplementary terms cannot be incorporated or can be modified
- **BUT** cannot remove a ST or modify if it such an action is incompatible with a fundamental term of the contract

02

## Section 240

- Conversion of existing tenancies and licences
- How supplementary terms are incorporated and existing terms remain



# 'Converted' Contracts

Conversion of existing assured, secure etc tenancies to occupation contracts on  
01.12.22





# Existing tenancies & the Act

01

**Abolished existing  
statutory tenancies**

02

**'Conversion' of  
tenancies to  
occupation  
contracts**

03

**Terms of converted  
contracts change  
per the Act**

04

**Obligation to serve  
written statement  
within six months**

# Working out terms of 'converted' contracts

- Section 240(4)-(7)
  1. Fundamental terms incorporated
  2. Existing terms not incompatible with fundamental provisions also incorporated
  3. Any supplementary terms not incompatible with existing terms incorporated
- Special rules in Schedule 12 to the Act



# Tricky issues

**Incompatibility**

**Complexity**

**Fixed terms**

# Converting fixed term tenancies

01

**Fixed term expired  
before 01.12.22**

*Periodic standard occupation  
contract*

02

**Fixed term expired after  
01.12.22 but before  
service of written  
statement**

*Section 184 periodic standard  
occupation contract*

03

**Fixed term unexpired by  
31.05.23**

*Fixed term standard occupation  
contract*

*Written statement needed for  
subsequent s184 periodic  
contract*



# 'Converting' supported and homelessness accommodation contracts

Terms of supported and homelessness accommodation standard occupation contracts  
preceded by common law tenancies or licences



# Supported/homelessness standard OCs preceded by tenancies or licences

01

## Context

- Supported: first six months outside scope of the Act
- Homelessness: outside Act where (a) with LHA & not full housing duty or (b) with other landlord for 1<sup>st</sup> 12 months

02

## The problem?

- Occupation contracts will be preceded by common law tenancies or licences
- No 'conversion' mechanism set out in the Act (cf. s240/Schedule 12)

03

## The answer?

- Fundamental and supplementary provisions incorporated
- Existing terms become 'additional terms' –no effect if incompatible with any FTs or STs



# Mobility clauses

Moving supported accommodation contract-holders between buildings



# Mobility clauses

## Section 144

*(1) A supported standard contract may provide that the dwelling subject to the contract is the dwelling, within a building specified in the contract, as is from time to time specified by the landlord.*

*(2) If it does so, then references in this Act to the dwelling subject to the occupation contract are to be read as references to the dwelling for the time being specified by the landlord.*

## The questions

- Can occupiers be moved between rooms in different buildings specified by the contract?
- Or must the rooms be within the same building?
- How should “building” be defined?





# Sanctions

Penalising landlords for non-compliance with written statement obligations



# Written statement obligations

Incomplete

Information  
re: landlord

Failure to  
provide at all

Incorrect

Variations

# Key issues

01

## Intentionality

- Whether or not the landlord's default is 'intentional' may dictate (i) the level of compensation or (ii) whether compensation is awarded at all.
- What is an 'intentional default'?

02

## Quantum

- Discretionary aspect to quantum of any awards of compensation
- What factors will the court take into account?