

Housing Law: Supporting tenants with a disability (Supplement)

Mencap WISE Student Advice Project

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Introduction

Housing law is a devolved function, which means that the Welsh Assembly can pass legislation regarding housing law in Wales. Two key pieces of legislation have been passed, which mean that housing law in Wales differs from the law applicable in England. The new legislation is:

- Renting Homes (Wales) Act 2016 – which revises the system for renting property in Wales and increases the legal protection offered to tenants.
- Housing (Wales) Act 2014 – which introduces a system of registration and licensing for landlords, and revises the law relating to homelessness.

This supplement summarises the key provisions of the new legislation, and is designed to be read in conjunction with the main Mencap Cymru ‘Housing Law: Supporting tenants with a disability’ tool kit. Whilst the Housing (Wales) Act 2014 **is in force**, it is important to note that the Renting Homes (Wales) Act 2016 **is not yet in force**, but it is expected that the legislation will be enacted in the near future.

This supplement is divided into four Parts. Part 1 relates to the Housing (Wales) Act 2014, and the remaining three Parts relate to the key changes that will be introduced by the Renting Homes (Wales) Act 2016. An overview of the contents of each Part is provided below:

Part 1 – The Housing (Wales) Act 2014 – summarises the key changes introduced by the 2014 Act, particularly in relation to landlord registration and licensing, and homelessness.

Part 2 – The main types of occupation arrangements – explains the new arrangements under which people will be able to rent accommodation in Wales, and the key features of those arrangements.

Part 3 – Termination and possession proceedings – explains the grounds that a landlord can rely upon when bringing possession proceedings and the defences that may be relied upon by a tenant (contract-holder) when threatened with eviction.

Part 4 – Repairs – explains the obligations of landlords to repair rented property and the limitations on these obligations.

The **Appendix** contains a flow chart, which provides an overview of the various occupation contracts that will be available under the Renting Homes (Wales) Act 2016.

This supplement includes hyperlinks to key online resources. Wherever a reference is underlined in the text, it indicates that it is a hyperlink, which will take you to the relevant external resource. In this supplement:

- the Housing (Wales) Act 2014 is referred to as ‘HWA 2014’, and
- the Renting Homes (Wales) Act 2016 is referred to as ‘RHWA 2016’.

Part 1 – The Housing (Wales) Act 2014

This Part summarises the main changes introduced by the Housing (Wales) Act 2014 (HWA 2014). These changes are in force, so the information in this section applies today. The HWA 2014 is accompanied by detailed Explanatory Notes, which help explain the meaning of each section of the legislation.

Registration and Licensing

The HWA 2014 creates a compulsory registration and licensing scheme for all private rented sector landlords, and letting and management agencies. This means that landlords, and any person dealing with the property on the landlord's behalf, must become registered under the Rent Smart Wales scheme.

Where a landlord or agent is involved in managing property, they must also be licensed. In order to be granted a licence landlords/agents need to undertake training and demonstrate that they are a 'fit and proper person' to be licensed. Licences are usually granted for a period of five years, and all licensed landlords/agents must comply with the Welsh Government's Code of Practice.

Landlords and agents must not undertake any letting or property management without a licence. If a landlord/agent operates without a licence they can be prosecuted and fined. In addition, where it appears that a landlord/agent is acting in breach of the licensing provisions it is possible for an application to be made to the Residential Property Tribunal for either a:

- *rent stopping order* - which means that the tenant does not have to pay some/all of the rent until the licensing provisions are complied with; or

- *rent repayment order* - which requires the landlord to re-pay rent paid by the tenant when the landlord was in breach of the licensing provisions.

The Guild of Residential Landlords has produced a comprehensive overview of Registration and Licensing In Wales, which includes a Table summarising all of the obligations and potential offences which exist under the HWA 2014.

Homelessness

The HWA 2014 makes some fundamental reforms to the law relating to homelessness. In particular, it imposes duties on local authorities to help secure accommodation for homeless people or for those threatened with homelessness. The following paragraphs summarise the key provisions under the HWA 2014, and more detailed discussion of the duties that local authorities must comply with is set out in the Welsh Government's Code of Guidance to Local Authorities on the Allocation of Accommodation and Homelessness 2016.

Under Part 2 HWA 2014, homelessness prevention services must be available to anyone who is in danger of losing their home within *56 days*. This duty applies even if the person has no local connection or does not fall into the 'priority need' categories set out in s70 HWA 2014 (such as pregnant women, dependent children, someone vulnerable as a result of old age, person with mental illness and/or physical disability). This means that any person threatened with homelessness is entitled to help from the local authority up to 56 days before the loss of their accommodation occurs, as the purpose of the legislation is to prevent homelessness.

Under s50 HWA 2014, each local authority must have a homelessness strategy, and s60 HWA 2014 requires every local authority to provide information, advice and assistance relating to preventing homelessness.

Under s62 HWA 2014, an applicant who applies for help must be assessed by the local authority provided they are eligible and either homeless or in

danger of losing their home within 56 days. (Schedule 2 HWA 2014 sets out the applicants not eligible for help, but this mainly relates to people from abroad.) The local housing authority will assess whether the applicant has access to accommodation that it would be reasonable for the applicant to occupy (s55 HWA 2014). Section 57 HWA 2014, specifically provides that it will not be reasonable for a person to occupy accommodation if it is probable that living in the accommodation will lead to the person, or a member of the person's household, being subjected to abuse.

If the local housing authority concludes that it has a duty to assist the applicant to retain accommodation (known as a 'prevention duty' under s66 HWA 2014) it must work with the applicant, and appropriate partner organisations, to help to ensure that suitable accommodation does not cease to become available to the applicant. Section 64 HWA 2014 sets out a range of provisions that local authorities may provide to prevent homelessness:

- mediation;
- payments by way of grant or loan
- guarantees that payments will be made
- support in managing debt, mortgage arrears or rent arrears
- security measures for applicants at risk of abuse;
- advocacy or other representation;
- accommodation;
- information and advice;
- other services, goods or facilities.

If the applicant is already homeless, the local housing authority must help to ensure that suitable accommodation is available (known as a 'relief duty' under s73 HWA 2014). If a homeless applicant is also a person that the local authority believes to be in priority need, s68 HWA 2014 requires the local authority to ensure that temporary accommodation is available.

A local authority's duties to assist an applicant to retain or secure accommodation (under s66 and s73) will end when the local authority is satisfied that the applicant is no longer threatened with homelessness/has secured suitable accommodation, and the accommodation is likely to be available for occupation by the applicant for a period of at least 6 months. The local authority will also be released from its duty to assist the applicant if:

- a period of 56 days has expired; or
- the applicant refuses an offer of suitable accommodation which is available for at least 6 months; or
- the applicant refuses to co-operate with the authority.

A local authority is obviously not able to simply allow 56 days to expire in order to avoid providing the requisite assistance. Where an applicant is dissatisfied with the assistance provided a review can be requested (under s85 HWA 2014), and if the applicant is dissatisfied with the review decision an appeal can be made to the county court (under s88 HWA 2014).

Under s75 HWA 2014, local authorities have an ongoing duty to secure accommodation for applicants who are in priority need and unintentionally homeless. The s75 duty (known as the 'final duty') provides additional help for applicants in priority need who could not be helped to secure accommodation under s73. (For qualifying applicants, this duty will follow on from the temporary accommodation duty under s68.) The duty under s75 ends when the applicant secures appropriate accommodation, or either refuses suitable accommodation or becomes intentionally homeless.

Gypsies and travellers

Under sections 101-103 HWA 2014, local authorities have a duty to assess and meet the accommodation needs of gypsies and travellers. This includes carrying out an assessment of their accommodation needs every 5 years, providing mobile homes, work space and facilities.

Summary of key changes made by HWA 2014

Section	Changes introduced
Sections 50-52	Requires local housing authorities to carry out homelessness reviews, and formulate a homelessness strategy based on the results of that review.
Sections 55/56	Defines homelessness/threatened homelessness, and accommodation available for occupation.
Sections 57/58	Establishes protection for victims of abuse and domestic abuse.
Sections 60	Establishes the general duty to provide information, advice and assistance relating to preventing homelessness.
Sections 61 to 63	Require local authorities to assess applicants who are homeless or at risk of homelessness, and inform them of the outcome of the assessment.
Sections 64 and 66	Set out the 'prevention duty' requiring local housing authorities to work with applicants, and appropriate partner organisations, to help to prevent an applicant from becoming homeless (s66), and ways in which that duty may be discharged (s64).
Sections 73	Sets out the 'relief duty' requiring local housing authorities to help to secure that suitable accommodation is available.
Sections 70 and 68	Define applicants who are deemed to be in priority need (s70), and places a duty on local housing authorities to ensure that a priority need applicant who is homeless is provided with suitable temporary accommodation (s68).
Sections 75	Sets out the 'final duty' requiring local housing authorities to secure suitable accommodation for applicants in priority need.
Sections 95	Improves co-operation between organisations such as Registered Social Landlords, Housing Associations, and private landlords with local authorities to ensure that they help applicants.

Part 2 – The main types of occupation arrangements

Currently, people who rent accommodation in Wales are known as tenants (or licensees), and they rent their property under a tenancy (or licence). The Renting Homes (Wales) Act 2016 (RHWA 2016) will make a number of very significant changes to landlord and tenant law in Wales. In particular, the current statutory tenancies¹ will be replaced with ‘occupation contracts’, and tenants/licensees will become known as ‘contract-holders’.

Who can be a contract holder?

Any person with whom a landlord makes an occupation contract is referred to as a contract-holder. However, a contract-holder cannot be under 18 years of age.

What is an occupation contract?

An occupation contract is an agreement made between a landlord and an individual(s), giving the individual(s) the right to occupy a property. The individual has to pay either rent or give some other form of consideration.

The types of occupation contract

Under the RHWA 2016 there will be two types of occupation contract – *secure contracts* and *standard contracts*, and some of the key features of the new arrangements are set out below.

(1) *The written statement*

Section 41 RHWA 2016 requires landlords to issue a written statement to the contract-holder within 14 days of the date when the contract-holder starts living in the property. The written statement should set out the rights and obligations of contract-holders under the contact. If the written statement is incomplete, the contract-holder may be entitled to financial or

¹ Secure tenancy (Housing Act 1985); Assured tenancy and Assured shorthold tenancy (Housing Act 1988); Introductory tenancy (Housing Act 1996); Demoted tenancy (Anti-Social Behaviour Act 2003) – detailed information can be found in PART 1 of the main Housing Law tool kit.

other compensation, and the contract-holder has the right to ask for a further written statement at any time.

The RHWA 2016 sets out *key*, *fundamental* and *supplementary* terms which must be included in all written statements. It also provides that *additional* terms can be agreed between the landlord and the contract-holder.

- *Key terms* - include the rent payable and the address of property.
- *Fundamental terms* - essential rights and obligations of a landlord and a contract-holder, which can be left out or modified only if the effect of this is to the advantage of the contract-holder. However, there are automatic fundamental terms that must be incorporated (e.g. the fact that the contract-holder must not engage in anti-social behaviour). (Part 1 of Schedule 1 RHWA 2016 provides an overview of the key fundamental terms.)
- *Supplementary terms* - these can be left out or modified either in favour of the contract-holder or the landlord (e.g. terms relating to maintenance of property).
- *Additional terms* – specific issues that the parties want covered by the contract in relation to which there are no statutory provisions (e.g. the keeping of pets at the property).

In addition, s39 RHWA 2016 requires the landlord to provide the contract-holder with the address to which the contract-holder may send documents intended for the landlord. This information must be provided within 14 days of the start of the occupation contract. If the identity of the landlord or the contact address changes, the contract-holder must be provided with the new details within 14 days of the change and may be entitled to compensation if the information is not provided.

(2) *The rights enjoyed by all contract-holders*

The RHWA 2016 specifies a number of rights that are enjoyed by all contract-holders:

- the right to occupy the property without interference from the landlord (s54 RHWA 2016);
- the right to deal with the property with the landlord's consent (ss 57 & 58 RHWA 2016);
- the right to sublet (s59 RHWA 2016);
- the right to transfer the contract (Part 3 Chapter 8 RHWA 2016);
- the right to add a joint contract-holder (s49 RHWA 2016);
- the right to have certain repairs carried out by the landlord (s92 RHWA 2016);
- entitlement to claim compensation (s87 RHWA 2016).

(3) *Secure contracts*

Under RHWA 2016 a secure contract does not have an end date, and it runs from week to week or month to month. Secure contracts can only be granted by local authorities or other community landlords, and all contracts granted by local authorities or community landlords will be secure contracts unless an exception in Schedule 3 applies (e.g. where the contract involves accommodation for asylum seekers or students).

In addition to the rights enjoyed by all contract-holders outlined above, secure contract-holders enjoy further rights:

- A secure contract-holder can have a lodger (s113 RHWA 2016).
- A secure contract-holder can, with the landlord's consent, transfer his/her contract to a successor in the event of his/her death (s114 RHWA 2016).
- A secure contract holder has the right to end the contract by giving notice to the landlord (s163 RHWA 2016).

- A joint secure contract-holder may withdraw from the contract by giving notice to the landlord and a written warning to the other joint contract-holder (s111 RHWA 2016).

Furthermore, the landlord is able to vary the rent payable under a secure contract by giving at least two months' notice to the contract-holder (s104 RHWA 2016). There must also be at least twelve months between increases in rent. Variation of consideration other than rent can be made by written agreement between the landlord and the contract-holder.

A community landlord may apply to the court for a secure contract to be converted to a *prohibited conduct standard contract* (under s116 RHWA 2016) on the ground that the contract-holder has or has threatened to engage in an illegal act or conduct causing nuisance. The prohibited conduct standard contract is a *periodic standard contract*, which means that it runs from the date specified in the court order for a probationary period. The length of the probationary period is specified in Schedule 7 RHWA 2016, and will be at least 12 months and can be extended up to 18 months. At the end of the probationary period, a prohibited conduct standard contract reverts to being a secure contract.

(4) Standard contracts

Under RHWA standard contracts are offered by private landlords. There are two types of standard contracts – periodic standard contracts and fixed term standard contracts.

Periodic standard contracts - a periodic standard contract has no specified end date, and runs from week to week, or month to month depending on how the rent is calculated. The main features of periodic standard contracts are set out in Part 6 RHWA 2016, and include the following:

- A periodic standard contract can provide that a contract-holder will not be allowed to live in the property during specified periods (s121 RHWA 2016).

- The landlord is able to vary in writing the rent payable by the contract-holder provided at least two months' notice is given (s123 RHWA 2016). Increases cannot be more frequent than every twelve months.
- Generally, the landlord is able to vary any other term of the contract provided at least two months' notice is given. However, the 'fundamental terms' of the contract generally cannot be varied (unless permitted by s127 RHWA 2016).
- Where a contract is varied the landlord must issue a new written statement within 14 days of the variation taking effect, and failure to do so may lead to the landlord having to pay compensation to the contract-holder under section 87.
- Joint contract-holders may leave the contract ("withdrawal") by giving notice to the landlord and a warning notice to the other joint contract-holder.

Although standard contracts are usually offered by private landlords, under s16 RHWA 2016, there is one circumstance in which a community landlord can grant a periodic standard contract, known as an introductory standard contract. This is a periodic standard contract that provides for an introductory period of occupation of 12 months, which can be extended to up to 18 months. At the end of the introductory period, the contract becomes a [\(3\) Secure contracts](#). (Schedule 4 RHWA 2016 provides more detail regarding the circumstances in which an introductory standard contract applies.)

Part 2 of Schedule 1 RHWA 2016 provides an overview of the key provisions relating to periodic standard contracts.

Fixed term standard contracts - a fixed term standard contract is granted for a specified period and expires on a fixed date. As with periodic standard contracts, the fixed term contract-holder and the landlord can agree that the contract-holder will not be allowed to live in the property during specified periods.

However, unless the contract-holder agrees, the landlord cannot usually vary the terms of the contract. Where terms are varied, the landlord must again provide a new written statement within 14 days of the variation taking effect, and failure to do so may lead to the landlord having to pay compensation to the contract-holder under section 87.

Section 139 RHWA 2016 provides that a fixed term standard contract may allow the contract to be transferred when a sole contract-holder dies.

Part 2 of Schedule 1 RHWA 2016 provides an overview of the key provisions relating to fixed term standard contracts.

What about existing tenancies and licences?

On a date to be specified by the Welsh Government, all existing tenancies and licences will become either secure occupation contracts or standard occupation contracts.

In addition, Schedule 12 RHWA 2016 provides further information on how to determine whether converted contracts are secure or standard contracts. The fundamental provisions set out in the RHWA 2016 will become incorporated as terms of the converted contract. The supplementary provisions under RHWA 2016 will also become incorporated as terms of the converted contract, except where they are incompatible with the existing terms.

Under s29 RHWA 2016, the Welsh Ministers must prescribe model written statements of contract for each type of occupation contract.

The following table summarises how occupation contracts compare to existing tenancies and licences:

Occupation Contract	Type of Landlord	Previous tenancy or licence
Secure	Local Authorities or Community Landlord	Secure tenancies and assured tenancies.
Standard	Private Landlord	Introductory tenancies, demoted tenancies, assured shorthold tenancies, and other private tenancies and licences.

Glossary of key terms used in Part 2

The RHWA 2016 introduces a number of new concepts, and the key terms are summarised below for ease of reference:

Term used	Meaning
Additional provisions or terms	Terms of an occupation contract that are negotiated by the landlord and contract-holder.
Contract-holder	A person who enters into an occupation contract with a landlord. Replaces the concept of a tenant or licensee.
Deposit fee (or Security)	Money paid to make sure the property is kept for the contract-holder.
Fixed term standard contract	An occupation contract granted for a specified period and expiring on a fixed date.
Fundamental provisions or terms	The essential terms that must be included in the occupation contract, and which can only be modified if the modification is to the advantage of the contract-holder.
Joint contract-holder	Where there are two or more contract-holders under an occupation contract.
Occupation contract	An agreement between a landlord and a contract-holder for the contract-holder to occupy a property owned by the landlord. Replaces the concept of a tenancy or licence.

Periodic standard contract	An occupation contract that has no specified end date, and runs from week to week, or month to month depending on how the rent is calculated.
Secure contract	An occupation contract made with a community landlord.
Standard contract	An occupation contract usually made with a private landlord.
Supplementary provisions or terms	Statutory terms that must be included in the occupation contract unless the landlord and contract-holder agree that they can be modified or omitted.
Written Statement	The written statement sets out the rights and obligations of contract-holders under their contract. Section 41 RHWA 2016 requires that landlord to issue a written statement to the contract-holder within 14 days of the date when the contract-holder starts living in the property.

Part 3 – Termination and possession proceedings

This section explains the steps that a landlord must take before an occupation contract can be ended and the property recovered from the contract-holder. The RHW 2016 refers to the process by which a landlord recovers the property as termination and possession proceedings. This section will consider the general principles, which apply in all cases, and also the specific provisions that apply to either secure occupation contracts or standard occupation contracts. In addition, consideration will be given to possible defences to termination and possession proceedings.

General Provisions – all occupation contracts

Generally, a landlord will be required to obtain a court order to terminate an occupation contract and regain possession of the property. However, there are certain circumstances in which an occupation contract can end without a court order:

- The contract-holder has the right to terminate the contract by giving the requisite notice to the landlord (s152 RHW 2016).
- The contract-holder and landlord can agree that the contract should end (s153 RHW 2016).
- There is a breach of contract by the landlord (s154 RHW 2016).
- A sole contract-holder dies (s155 RHW 2016).

All occupation contracts can be ended by a court order. An order will only be made if one or more of the statutory grounds is established by the landlord. The key grounds are:

- *Breach of contract by the contract-holder.* This is a discretionary ground for possession (s157 RHW 2016), and the court may not make an order for possession on this ground unless it is reasonable to do so. Applying Schedule 10 RHW 2016, the court will consider the following factors when assessing whether it is reasonable to make an order:

- the effect of the order on the contract-holder and on any other occupiers of the property;
 - the effect of not making an order on the landlord's interest;
 - whether the landlord has offered a new occupation contract;
 - the nature, frequency or duration of the breach; and
 - the degree to which the contract-holder is responsible for the breach.
- *Estate Management*. This is again a discretionary ground for possession (s160 RHW 2016), and requires the landlord to show that he requires possession in order to demolish or rebuild the property, or carry out works to part of it. The estate management grounds are set out in Schedule 8 RHW 2016, and summarised in the following table:

Estate Management Grounds	Scope
Redevelopment	The landlord can use this ground if he/she intends to demolish or rebuild/redevelop the building or part of it.
Special accommodation	This relates to situations where the accommodation is for people with a physical disability, with special needs, or whose circumstances make it difficult for them to be housed, or where the accommodation is provided by a charity; and the accommodation is no longer required for the particular special purpose.
Under-occupation	This relates to situations where a joint-contract-holder or a successor in title is living in accommodation that is more extensive than is reasonably required by the contract-holder.
Other	The landlord can use this ground where he/she can establish that 'some other substantial estate management reason' means that it is desirable to allow the landlord to obtain possession of the dwelling.

When considering whether to make an order on estate management grounds the court will again need to assess whether it is reasonable to do so, applying the Schedule 10 RHW 2016 factors. In addition, the court needs to consider the availability of suitable alternative accommodation. Applying Schedule 11, key issues for the court to take account of include:

- Whether a certificate from the local authority confirming that the authority will provide alternative accommodation to the contract-holder is sufficient evidence that suitable alternative accommodation is available.
- Where the landlord is a private landlord, the court may consider whether the rent payable for the alternative accommodation is similar to the accommodation provided by community landlords for comparable persons.

Where an order for possession is made on the basis of an estate management ground alone (other than the redevelopment ground), the landlord must pay to the contract-holder a sum equal to the contract-holder's reasonable moving expenses.

In addition, s220 RHW 2016 allows the landlord to take possession of the property where the contract-holder has abandoned the property, provided the landlord has given the contract-holder notice stating that he believes the property to have been abandoned. (Provided the landlord has given the required notice, the abandonment ground does not need a possession order from the court.)

Secure Contracts

Where a secure contract-holder decides to terminate their contract, they must provide the landlord with at least 4 weeks' notice that possession of the property will be given up on a specified date (s164 RHW 2016). If the contract-holder fails to give up the property, the landlord can seek a possession order from the court to remove the contract-holder from the property - this is an **absolute ground** which means that the claim will

succeed so long as the court is satisfied that the contract-holder is in breach of the notice given.

Standard Contracts

The provisions relating to termination and possession for standard contracts vary according to whether the contract is a periodic standard contract or a fixed term standard contract.

As with secure contracts, *periodic standard contracts* can be ended by the contract-holder giving the landlord at least 4 weeks' notice that possession of the property will be given up on a specified date (s169 RHWA 2016). Again, if the contract-holder fails to give up the property, the landlord will be able to make an application for a possession order, which must be granted by the court.

Provided the contract-holder has been in occupation for at least four months, s173 RHWA 2016 allows the landlord to give two months' written notice that possession of the property is required on a specified date. In addition, where the contract-holder is in serious rent arrears, the court must make a possession order in the landlord's favour. Serious rent arrears are defined in s181 RHWA 2016, and the definition depends on the rental period (e.g. if the rental period is one month there will be serious rent arrears if at least two months' rent is unpaid).

Fixed term standard contracts terminate at the end of the period for which they are made. However, s184 RHWA 2016 provides that, if the contract-holder remains in occupation, a new periodic standard contract is created. Any new periodic standard contract will have the same rental period as the previous fixed term contract.

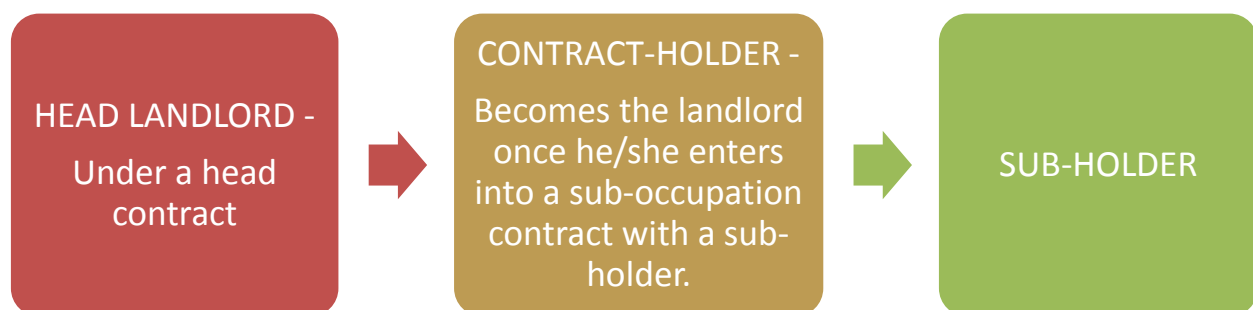
If a landlord wishes to recover possession of the property at the end of a fixed term contract, s186 RHWA 2016 requires that two months' written notice is given to the tenant. However, as with periodic standard contracts, if the contract-holder is in serious rent arrears, the landlord can apply for a possession order to recover the property before the end of the fixed term.

A fixed term standard contract may contain a *break clause*, which enables the contract-holder or the landlord to end the contract before the end of the fixed term. If the contract-holder wishes to rely on the contract-holder break clause, he/she must give the specified notice, which cannot be less than four weeks. Where a landlord wishes to rely on the landlord break clause, the specified notice cannot be less than two months. In addition, a landlord cannot normally serve notice during the first four months of the contract. Additional restrictions apply where the landlord is in breach of the requirement to provide information/written statement (s197 RHWA 2016), and where the landlord is in breach of security/deposit requirements (s198 RHWA 2016).

Sub-holders

In some cases it is possible for a contract-holder to enter into an occupation contract with another holder, known as a sub-holder. The contract-holder then becomes the sub-holder's landlord, with the contract-holder's landlord being referred to as the 'head landlord'.

Flow Chart 1: Sub-occupation contract.



If the head landlord wishes to recover possession of the property he must provide notice to both the contract-holder and the sub-holder. Similarly, if the landlord decides to seek a possession order against the contract-holder, he must also seek an order (known as an *extended possession order*) against the sub-holder.

Defences to termination or possession claims

The grounds upon which a landlord may seek possession of a property are either *discretionary* or *absolute*.

If the ground is absolute, the court **must** make the possession order unless a defence exists based on the contract-holder's rights under the Human Rights Act 1998. Generally, Human Rights Act defences are only available where the landlord is a public body, and information about possible defences is contained in the main 'Housing Law: Supporting tenants with a disability' tool kit.

If the ground is discretionary, the court **may** make the possession order. The discretionary grounds are 'breach of contract by the contract-holder' and the 'estate management' grounds. In deciding whether to make a possession order, the court must consider whether it is reasonable to make the order taking into account the factors set out in Schedule 10 RHW 2016 and, where the estate management ground is relied upon, the court must also consider the availability of suitable accommodation applying the Schedule 11 factors (see [General Provisions – all occupation contracts](#)).

A standard contract-holder can defend a possession claim brought by a landlord if it appears that the landlord has only given notice to avoid having to carry out an obligation to keep the dwelling fit for human habitation and/or in repair. This is known as a *retaliatory possession claim*.

In addition, a landlord's possession claim can be defeated if the landlord fails to comply with the procedural requirements of the legislation, including:

- *Improper Notice* – where the landlord wishes to terminate a standard contract, at least two months' notice is required. For periodic standard contracts, notice cannot be given during the first four months. For fixed term standard contracts, the date on which the notice takes effect cannot be earlier than six months after the occupation date.

- *Contract-holder's Notice* – where a contract-holder gives notice to terminate either a secure contract or a periodic standard contract, or exercises a contract-holder's break clause, the landlord has an absolute ground for possession if the contract-holder fails to vacate the property. However, the landlord can only obtain a possession order if the notice seeking possession is served within two months of the date when the contract-holder should have vacated the property **and** the possession claim is commenced within six months of the vacation date.
- *Breach of information requirements* – where a landlord wishes to terminate a standard occupation contract, notice cannot be given if the landlord is in breach of the obligation to provide information about the landlord (under s39 RHW 2016). If the landlord has failed to provide a written statement, notice cannot be given until a period of six months after provision of the written statement has expired (the 'restricted period').
- *Breach of security/deposit requirements* - where a landlord wishes to terminate a standard occupation contract, notice cannot be give if the landlord is in breach of the requirements relating to security/deposits.

Where a community landlord has commenced possession proceedings based on an absolute ground, it is possible for the contract-holder to apply to the county court for the decision to be *reviewed*. In deciding the application, the court will apply the principles of judicial review, which means that the court will look at the way in which the decision was taken. If the court decides that the decision-making process was wrong in some way (e.g. because important information was not taken into account), the court can quash the decision to begin the possession proceedings.

Glossary of key terms used in Part 3

The RHWA 2016 introduces a number of new concepts, and the key terms are summarised below for ease of reference:

Term used	Meaning
Head contract	An occupation contract that gives rise to a sub-occupation contract.
Head landlord	A landlord under a head contract.
Sub-holder	A contract-holder under a sub-occupation contract
Sub-occupation contract	An occupation contract made with a landlord who is a contract-holder under a head contract.

Part 4 – Repairs

The RHWA 2016 simplifies the law relating to repairs. The obligations regarding the condition of the property, set out in Part 4 Chapter 2, apply to all secure contracts, all periodic standard contracts and all fixed-term standard contracts made for a term of less than seven years.

An important feature of the RHWA 2016 is that it does not impose an obligation on landlords to make improvements to the property, with the main focus being on the general obligations to ensure that the property is fit for human habitation and kept in repair.

Under s91 RHWA 2016, the landlord must ensure that the “*dwelling is fit for human habitation*”. Section 94 requires the Welsh Ministers to prescribe the circumstances for determining whether a dwelling is fit for human habitation.

The s92 RHWA 2016 duty to keep the property in repair requires the landlord:

- to repair the structure and the exterior of the building (including drains, gutters and external pipes) and the service installations in the property (water, gas, electricity, sanitation, space heating or water heating);
- if the property forms only part of a building, the landlord is to keep the structure, exterior and service installations of any other part of the building in which the landlord has an interest in repair; and
- to repair any damage caused by works undertaken.

A contract-holder who suffers personal injury, or loss/damage to personal property, as a result of the landlord failing to comply with the obligations under sections 91 and 92 can bring court proceedings against the landlord. However, there are limits to the landlord’s obligations:

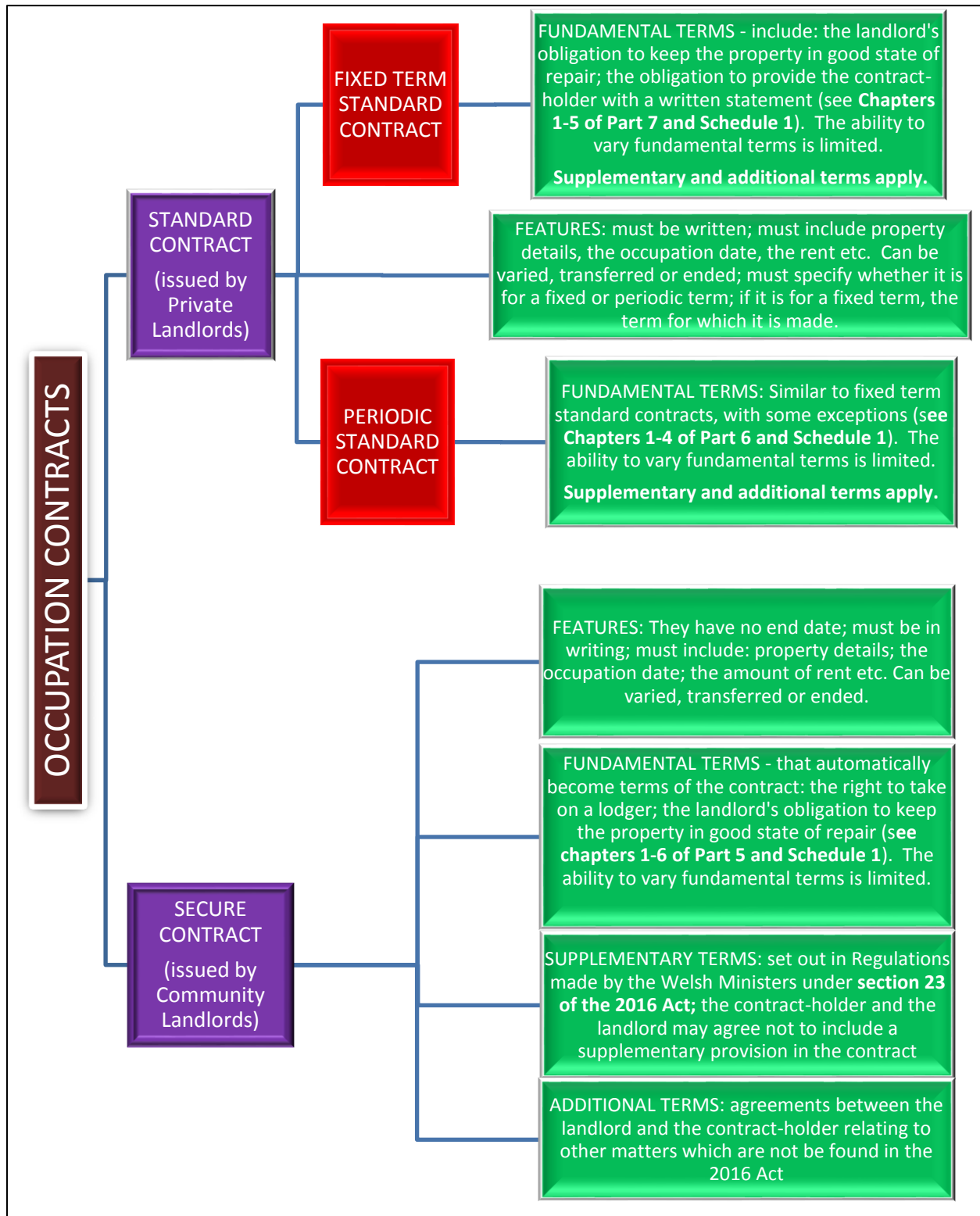
- a landlord cannot be required to make a property fit for human habitation if this cannot be achieved at a reasonable expense;
- there is no requirement to rebuild or reinstate the building where damage is caused by fire, storm, flood or other inevitable accident;
- the standard of repair must be reasonable, and in determining the standard of repair consideration must be given to the age and character of the building and the period during which the property is likely to be available for occupation as a home;
- the landlord does not have to carry out repairs unless the contract-holder's enjoyment of the dwelling is being disrupted;
- the landlord is not required to make the property fit for habitation or carry out a repair which arises as a result of the contract-holder's lack of care, and there is no obligation to repair anything which the contract-holder is entitled to remove from the property;
- a landlord's obligations to repair arise only when he becomes aware that repairs are necessary, but once he becomes aware the landlord must carry out the repair within a reasonable time.

Provided at least 24-hours' notice is given, a landlord has the right to enter the property at any reasonable time to inspect its condition or carry out the works needed.

Another important new feature is that s101 RHWA 2016 removes the obligation of a contract-holder to use the premises in a 'tenant-like manner'. This means that the contract-holder does not have to complete minor repairs (such as mending fuses or unblocking drains).

Appendix

Appendix: Occupation Contracts - Overview



For More Information you can contact:

Mencap WISE on 0808 8000 300 (Monday to Friday, 9am – 5 pm)

Or e-mail information.wales@mencap.org.uk

