

Converting Tenancies

After the 1 December 2022 you can no longer issue an Assured Shorthold Tenancy (AST) in Wales. All relevant tenancies and licences in the market, such as ASTs, will convert to standard occupation contracts on the 1 December 2022. There are some differences which will apply to these converted contracts.

What happens to tenants on ASTs on the 1 December 2022?

The tenancy will automatically move to being a Standard Occupation Contract on the 1 December 2022; there is no exception to this. The occupation date will stay the same as the date the tenant originally was allowed to occupy the dwelling.

It would be unfair to expect all old tenancy terms to change to ones which work under the new Act, so conversion strikes a balance between the required terms necessary for the occupation contract to operate under The Act, whilst allowing some existing terms to be maintained within the converted contract.

So what should I be doing to convert my tenancy?

The best approach to tackle this process is to go through your tenancy against the model written statement (MWS) and think about the following:

1. Are any tenancy terms in your AST incompatible with the fundamental terms (F/F+) in the MWS? If yes, that term in the AST is deleted and you should use the relevant fundamental term in the converted contract.
2. Are any tenancy terms in your AST incompatible with any supplementary terms in the MWS? If yes, do not use the supplementary term and instead use your term from the AST in the converted contract.
3. Are there any other terms in your AST not otherwise covered? If yes, add them in as additional terms to the converted contract (e.g. terms relating to pets or parking restrictions, etc).

When do I have to make these changes by?

Although the AST ceases to exist on the 1 December 2022 and instead a standard occupation contract will be in place, you have until the 1 June 2023 (6 months) to issue a written version of the converted contract. The same date applies for giving an address to send documents. However:

- Until the written statement is provided to the contract-holder no further variation of the contract is possible. The only exception is varying rent for a periodic contract (although this can still only be done once a year, running from the last time you did it).
- If you do issue it before the 1 June 2023, after 14 days of receiving it, a contract-holder can take you to court to determine the terms for an incomplete or incorrect written statement of contract if you can't agree them.
- If there is a new address or a new landlord's details that the contract-holder needs to know, this must be given within 14 days of the change.



The Welsh Government has produced guidance to help. This can be viewed at: gov.wales/creating-converted-occupation-contract-guidance-landlords

The guidance runs through converting from a periodic AST to a standard periodic occupation contract; however the same principles apply if you need to convert a fixed term AST to a standard fixed term occupation contract.



Don't delay. Issue your written version of the converted standard occupation contract as soon as you can from 1 December. Don't leave it until May 2023 and risk missing the deadline and being penalised.

The process of 'find and replace' with tenancy terms vs contract terms might sound daunting but will be self-explanatory once you start the process. The guidance offers further examples of times where current AST terms are not compatible with fundamental terms in the contract and can therefore not 'convert' over.

Some examples from the Guidance:

Fundamental term comparison:

Term 41 of the MWS is a fundamental term (F+) and it allows a contract-holder to end the occupation contract after providing notice to the landlord.

Term 42 of the MWS is also a fundamental term (F+) and it sets the minimum notice period required by the contract-holder to end the occupation contract at 4 weeks.

Any existing term which prevents a contract-holder from ending the occupation contract through the giving of a notice or which sets such a notice period longer than 4 weeks would be incompatible with the fundamental term/s.

As a result of this incompatibility the existing term/s will be removed and will not form part of the occupation contract.

This is because the old AST term is not in the contract-holder's best interest.

Supplementary term comparison:

Term 26 of the MWS is a supplementary term which deals with the security of the dwelling and requires the contract-holder to notify the landlord if the dwelling has or will be unoccupied for 28 or more consecutive days.

However, such a term would be incompatible with any existing term which sets a different requirement, such as a shorter or longer period, around notifying the landlord should the dwelling be vacant.

As a result of this incompatibility the supplementary term will be removed and replaced by the existing term.

Frequently Asked Questions

Can I change the type of contract on conversion. For instance make a periodic AST a fixed term standard occupation contract?

No, you must keep the 'type' of tenancy the same. So a periodic one stays periodic and a fixed term stays a fixed term.

What about deposits registered prior to the 1 December 2022 for ASTs converted to occupation contracts?

These deposits remain protected and you do not need to do anything further.

What if I need my property back on a converted contract? Can I still give two months notice to terminate the contract?

The following pages cover the specifics of how you can gain possession of a dwelling based on the different types of converted contracts and whether you have served a section 21 notice for possession prior to the 1 December 2022 or not.

The following sections detail the routes to gain possession via a 'no fault' landlord notice from the 1 December 2022. 

Possession of Converted Contracts

Standard Periodic Contracts:

Section 21 issued before the 1 December 2022: The notice will still be enforceable after the 1 December 2022 however the possession claim to court must be made by the 31 January 2023 or within two months of the notice expiring (whichever is later) otherwise it is no longer valid.

Example 1: If you served a section 21 notice on the 30 June 2022 which required possession from the 1 September 2022 and you did not take that claim to court to apply for a possession order it would no longer be valid after the 31 January 2023 and you would have to start the process for possession again in line with the requirements for all converted periodic contracts where a section 21 hadn't been served prior to the 1 December 2022.

Example 2: If you served a section 21 notice for possession on the 28 November 2022 with an expiry date of the 15 February 2023, it would not be able to be actioned after the 15 April 2023 (two months after the notice expired) if you did not take it to court by then. Instead you would have to start the process for possession again in line with the requirements for all converted standard contracts where a section 21 hadn't been served prior to the 1 December 2022.

No section 21 issued prior to the 1 December 2022: You are able to gain possession of the dwelling by giving two months' notice before making a possession claim to court (akin to the process under s.21). However, this is done under section 173 of The Act and using the form prescribed for this process (RHW17)

Further requirements:

1. You may not give the notice within the first four months of the occupation date of the contract (taken from the date the tenant was able to occupy the property on the AST).
2. If you serve the notice to avoid your obligations under sections 91 or 92 of the Act in relation to fitness for human habitation or keeping the property in repair, the court might uphold a defence from the contract-holder of 'Retaliatory Eviction' and refuse your possession claim. You would then be unable to serve a subsequent possession notice for 6 months.
3. The possession claim to court must be made within two months of the notice for possession expiring, otherwise it is no longer valid

4. The notice may not be given at a time when there is a breach of any of the following statutory obligations:

- failure to provide a valid Energy Performance Certificate (EPC) (to comply with Regulation 6 (5) of the Energy Performance of Buildings (England and Wales) Regulations 2012);
- failure to give or display a relevant gas safety certificate (in line with the Gas Safety Regulations 1998) to the contract-holder.
- failure to install carbon monoxide alarms where required;
- breached security and deposit requirements;
- asked for a prohibited payment and holding deposit under the Renting Homes (Fees etc.) (Wales) Act 2019 and not repaid it (and breached the legislation);
- not complied with your registration and licensing requirements under Rent Smart Wales; or
- not obtained a HMO licence from the local Council if one is needed.

5. If you serve the notice for possession **on or after the 1 June 2023** it also will not be valid if you have:

- failed to give a written statement of contract to all contract-holders;
- failed to give a written statement by 31 May 2023, then issued one, but then not waited six months; or
- failed to provide the contract-holder with the required information about your address for sending documents to.

Note: If your address where you would want to receive documents from the contract-holder hasn't changed, you have until the 1 June 2023 for a converted contract to issue it formally in writing. However, if your address does change before then, you must give notice of this new address within 14 days of the change for it to be valid.

If you serve the notice for possession **on or after the 1 December 2023**, it also will not be valid if you have:

- failed to ensure working smoke alarms and;
- failed to obtain an electrical condition report, or to give the contract holder such a report or written confirmation of certain other electrical work.



You must use prescribed form RHW17 produced by Welsh Government to terminate a converted periodic contract: gov.wales/notice-termination-periodic-standard-contract-two-month-minimum-notice-period-other-introductory



Please note: This section may change. It is subject to a public consultation which proposes changing the 2 months 'no fault' notice period to 6 months from the 1 June 2023.

**You can read the proposal on the Welsh Government website:
gov.wales/renting-homes-wales-act-2016-improving-security-tenure-increasing-period-notice-html**

Standard Fixed Term Contracts, with a Landlord's Break Clause:

Section 21 issued before the 1 December 2022: The notice will still be enforceable after the 1 December 2022 however the possession claim to court must be made by the 31 January 2023 or within two months of the notice expiring (whichever is later) otherwise it is no longer valid.

No section 21 issued prior to the 1 December 2022: You must use the form prescribed for this process (RHW25). Further requirements are the same as for periodic converted contracts on the previous page.



You must use prescribed form RHW25 produced by Welsh Government to terminate a converted fixed contract which has a landlord's break clause: gov.wales/notice-termination-under-landlords-break-clause-fixed-term-standard-contract-two-month-minimum

Standard Fixed Term Contracts:

Section 21 issued before the 1 December 2022: The notice will still be enforceable after the 1 December 2022 however the possession claim to court must be made by the 31 January 2023 or within two months of the notice expiring (whichever is later) otherwise it is no longer valid.

No section 21 issued prior to the 1 December 2022: You must use the form prescribed for this process (RHW38).

Further requirements:

1. The notice must be given before or on the last day of the fixed term contract and must give at least two months' notice before you state you will make a possession claim to court if they do not move out.
2. You may not give the notice within the first six months of the contract (taken from the date the tenant was able to occupy the property on the AST)
3. The notice cannot require possession before the last day of the fixed term.

The other obligations relating to statutory requirements covered in the box above for converted periodic contracts must also be adhered to.



You must use prescribed form RHW38 produced by Welsh Government to terminate a converted fixed contract:
gov.wales/notice-termination-fixed-term-standard-contract-converted-contract-form-rhw38

What if I have a fixed term AST which converts to a fixed term standard occupation contract; does the fixed term continue when it converts or start again?

If you had a 12 month AST which started on the 1 September 2022; on the 1 December 2022 it will convert to a fixed term standard occupation contract which runs until the 31 August 2023. The fixed term dates stay the same.



Be Aware

In this example, if the same people remain in occupation after the 31 August 2023 (the end of the fixed term), a new 'substitute' contract is created (based on section 184 of The Act) which is either by default a standard periodic contract or you can agree to create a new fixed term or periodic contract with specific terms. You must issue it in writing no later than 14 days from the 1 September 2023.

Even though the same people are in occupation, the new contract they are on removes certain dispensations you gained:

- You are no longer able to issue 2 months notice for possession; this new 'substitute' contract will default to 6 months notice and act like new contracts issued after the 1 December 2022. If this is for another fixed term, you will not be able to serve notice for possession during that fixed term. Read the next section of the course to find out more about ending contracts started after the 1 December 2022.
- Due to the unique circumstances where the contract-holder is an original contract-holder who was once on an AST, you still have until the 30 November 2023 to install compliant smoke alarms and to obtain a suitable Electrical Condition Report (ECR). Any security deposit taken remains protected.