Renting Homes (Wales) Act 2016

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Rent Smart Wales

Cwrs wedi'i gymeradwyo
Approved Course

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Course Overview

Please Note: Completion of this course is subject to you passing the corresponding online or paper assessment.

The Renting Homes (Wales) Act 2016 (The Act) received Royal Assent in January 2016 and comes into force on 1 December 2022.

This course aims to give you a complete overview of the new law. It covers the requirements for tenancies that convert to occupation contracts on the 1 December 2022 and also requirements for new contracts that start on or after that date. It will give you the knowledge necessary to feel confident about the new rules and to appreciate in many cases that your business practices can largely remain unchanged. You will learn about the guidance and documentation produced by Welsh Government which can be used for free and will make several processes more straight forward in future.

This training is suitable for all landlords, managing agents and staff. Completing this course on its own is not sufficient to apply for a licence (although it can be used as CPD if you are applying for a re-licence).

This course should take you approximately 3-5 hours to complete. A short assessment must be completed after finishing the course to confirm that everything has been understood.

This training course should be viewed as a guide only. Readers should be aware that the laws and procedures applicable to housing are complex and this training is not a substitute for taking professional advice.

Background

In 2001 the UK Government was asked to examine the rental sector and make recommendations for change, to help simplify the existing law and letting process into one clear legal framework. The Law Commission published its final recommendations in 2006 and received widespread support.

The Act and its provisions are grounded in the extensive work of the Law Commission and the evidence behind it. By creating one type of standard contract for landlords in the private rented sector to use which have clear terms, must be written and giving free access to standard model contracts and prescribed forms for processes such as possession and raising rent, the new law aims to achieve:

- A clearer, more logical, legal framework, which reflects fairness and equality.
- A simple and effective basis for renting a home.
- Greater understanding by landlords and tenants of their respective rights and responsibilities, thus reducing the problems and difficulties that occur with the previous system.
- More flexibility for private landlords to meet people's housing needs, including those of vulnerable groups

There is no bedding in period with The Act; it will come in and effect the vast majority of existing and future tenancies in Wales from the 1 December 2022.

The course aims to:

- Detail the knowledge necessary to set up and manage tenancies in Wales from 1 December 2022 onwards, including what to do with existing tenancies
- Share new important terminology and provide easy cross-referencing guides
- Help you avoid pitfalls by making sure that new obligations placed on you are well understood.

You will learn about:

- The circumstances when the Act will apply
- New contractual arrangements
- Changes to succession, joint contracts and providing consent
- Property condition requirements and ramifications if you get it wrong
- New contract-holder rights and obligations
- Securing possession, including where a property is abandoned

This course is not applicable to you if you only rent out your property in Wales on a regulated tenancy for the purposes of the Rent Act 1977, as these types of tenancies have not converted under The Act. If this is the only type of tenancy you have in Wales, please contact RSW so your account can be updated accordingly.

Introduction

The Renting Homes (Wales) Act 2016 (The Act) is one of the most significant changes in renting in Wales in our lifetime. This change in legislation is being brought in to make renting **simpler and clearer** for all.

Most people doing this course will have previously issued Housing Act 1988 tenancies, called **Assured Shorthold Tenancies (ASTs).** From 1 December 2022, these cannot be used. Instead, The Act creates a **Standard Occupation Contract** as the principle type of private rented contract for domestic property in Wales.

Although tenancies will now be under the umbrella of an 'occupation contract' how you go about your day-to-day business will not change. You are still providing a person with a home, and you have obligations, as do they. The central principle underlying renting will remain:

- The tenant (and people who live with him or her) does not have to share the dwelling with anyone else, because the tenant has an interest in the land which is subject to the tenancy
- Rent is payable by the tenant
- A contract gives rights to, and imposes obligations on, both the tenant and the landlord.

This course covers how tenancies created before 1 December 2022 will convert to an occupation contract as well as explaining what happens when new tenants move into your rental property after this date.

The Act will make things easier for you in the long run and in most circumstances you can simply download a model contract to use, which you can edit to fit your circumstances.

The other improvements brought about by the legislation may never affect you, but it is good to know that better protections are in place for tenants and landlords in Wales.

Property conditions will be improved as will some more difficult legal procedures such as dealing with an abandoned rental.

Why Have Things Changed?

Changes have been made to make things simpler and easier for landlords, agents and tenants, replacing various and complex pieces of existing legislation with one clear legal framework. Some of the improvements brought in include:

- ☑ **Everyone must use a written contract:** This will bring clarity on rights and responsibilities for all.
- ☑ **Freely available 'model' contracts:** It is expected that most landlords will issue these and so, in time, will be familiar with the terms within them, as will tenants. This will improve understanding in the sector over standard processes, rights and obligations.
- ☑ **Additional protection for vulnerable tenants:** No tenant should be in fear of being evicted for simply raising issues of disrepair in their home. This law prevents such situations and helps to clarify the minimum standard a property must meet to be fit for human habitation.
- ☑ **A new procedure for Abandonment:** to make it quicker and easier to repossess properties that have been deserted by the tenant.
- ☑ **Changing joint contract-holders:** A joint contract-holder will be able to move out as well as a new contract-holder added, without the contract ending for the remaining joint contract-holders.

These changes also affect 'social' landlords, so The Act provides a single legal framework for social and private renting in Wales.

Occupation Contract Criteria

Section 7 of The Act covers the criteria to be met for an occupation contract to be in place. In its simplest terms it is where:

- There is rent or some other consideration paid to the landlord
- It allows at least one individual to occupy the dwelling as their home, and
- It is between a landlord and at least one individual.

Terminology

It is important to introduce you to some of the key terms that you will become familiar with from now on.

Old terminology		New description	
Assured Shorthold Tenancy (AST) or Tenancy Agreement	→	**Standard Occupation Contract**	Standard Occupation Contracts will be the default type of contract in the private rented sector. Standard Contracts can be periodic or fixed term in the same way an AST could be.
Tenant	→	**Contract-Holder**	An individual who rents their homes under a tenancy or licence, and thus enters into a contract with the landlord.
Local Authority Landlord or Residential Social Landlord	→	**Community Landlord**	By default, this type of landlord issues a secure contract. As a general rule, the type of landlord dictates what kind of contract the occupier occupies under.
Landlord	→	**Private Landlord**	By default, this type of landlord issues a standard contract. A landlord of a dwelling in Wales who is not a ‘community landlord’ would be a private landlord under The Act.
Written Tenancy Agreement	→	**Written Statement of Occupation Contract**	Previously, an AST did not have to be written; however now all contracts must be written.

‘Off the Shelf’ ASTs	→	**Model Contracts/ Model Written Statement of Contract**	Whereas previously you would have had to buy a template AST from a stationers or obtain one from an agent or solicitor, now a model contract can be obtained from the Welsh Government for free and amended (if needed) to fit the situation.
Tenancy and Conditions	→	**Terms of the Contract**	The Act provides for 4 kinds of term: • “Fundamental terms”; • “Supplementary terms”; • Terms relating to “key matters”; • “Additional terms”. What the final terms of the contract are varies depending on the type of contract.

Specific Exclusions

The following situations will not be on an occupation contract under The Act; they are specifically exempt.

- If the tenant or licensee is **under 18 years old** (or, where there is more than one tenant or licensee, all of them are under 18)
- A tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies, which provides **protection for business tenants when renewing or terminating their lease.** These tenancies are not covered under this Act as they are not used for the purpose of renting a home
- A protected occupancy or a statutory tenancy within the meaning of the Rent (Agriculture) Act 1976, which affords security of tenure for **agricultural workers housed by their employers**, and their successors
- A protected tenancy or a statutory tenancy within the meaning of the **Rent Act 1977**; tenants under this Act have defined rights concerning the amount of rent they can be charged and security of tenure
- A tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986; **land comprised in a contract for an agricultural tenancy**
- A **farm business tenancy** within the meaning of the Agricultural Tenancies Act 1995; landlords and tenants have the right to negotiate their own provisions on rent levels and decide whether or not they want to have rent reviews, land must be farmed throughout the life of the tenancy to qualify
- Accommodation provided to a member of the **armed forces**, to a family member of a member of the armed forces or to a civilian subject to service discipline for the purposes of any of the armed forces
- A tenancy or licence which relates to **‘direct access accommodation’** (see The Act.)
- A **long tenancy** (see overleaf)

Long tenancies are excluded from being occupation contracts. These are defined as:

- A tenancy that is for a fixed term of more than 21 years (that is, at the outset the parties agreed that the tenancy would last for a specified period of time exceeding 21 years)
- A tenancy for a term fixed by law because of a covenant or obligation for perpetual renewal (such as an option for the tenant to renew the tenancy upon expiry, for example to continually renew the tenancy every 5 years).

There are other types of tenancies and licences that are also not deemed occupation contracts under The Act.

However, they can be made into an occupation contract if the landlord wants by giving notice before or at the time the contract is made. **These cover:**

- Holiday accommodation
- 'Temporary expedient' – that is, a tenancy or licence made as a temporary expedient with a person who was a trespasser when he or she entered the dwelling
- Accommodation that is shared with the landlord - for example, where the landlord takes on a lodger, and
- Where no rent or other consideration (for example work undertaken by the contract-holder as a form of rent) is payable.

Notice under this section, as contained in Schedule 2, is simply to 'state' the fact it will be an occupation contract to the contract-holder before or at the time of making the tenancy or licence.

Scenarios

It should be clear now which tenancies in your portfolio will be occupation contracts after the 1 December 2022.

Practice your understanding on the scenarios below. Check your answers on page 91.

1. Mike doesn't class himself as a landlord. He owns his own home but lets his friend Simon live there in a spare room and they share the bathroom, kitchen and living areas. He receives £350 a month off Simon to cover the mortgage and bills. **Do you think Mike needs to provide Simon with a written occupation contract from the 1 December 2022?**

Yes

No

2. Gwyneth bought two houses next door to an International Business. She now rents one to a Limited Company as a 'Corporate Let' (who use it to rent to staff that live there when they first re-locate to work in the company and who can only live there when they are employed by the company). The other has old staff members who no longer work for the company living in it who directly rent it off Gwyneth on an AST. **Which of the following do you think will apply from the 1 December 2022?**

A) Both houses will need to convert to a written occupation contract

B) The house rented to the Limited Company will not be an occupation contract but the one rented on an AST by Gwyneth will fall under the Renting Homes (Wales) Act 2016 legislation and must convert to a standard occupation contract issued in writing

C) She can carry on as she is, as nothing will change in relation to her two properties

A

B

C

Module Reflection and Further Information

This module has introduced the Act and explained the circumstances when the new Occupation Contract will and will not apply.

There are limited circumstances when an Occupation Contract is not automatically established e.g. where there is a resident landlord, but can be created if a landlord chooses to do so.

Be aware that, in these circumstances, additional obligations will apply that would not otherwise arise.

Working together
for a safe home for all

Types of Occupation Contracts

Before 1 December 2022 homes were rented out under a tenancy or licence. Under The Act, most people will rent their home under an Occupation Contract (and The Act refers to them as “contract-holders”). The new 'Occupation Contracts' replace the current confusing array of tenancy and licence agreements.

There are two types of Occupation Contract:

Secure Contract

The default contract issued by **“community landlords”** (the term used for local authorities and registered social landlords).

Standard Contract

The default contract for use by **“private landlords”** (all landlords other than community landlords).

There is a procedure in The Act for you to issue a secure contract, or a “community landlord” to issue a standard contract, but this would not be the norm.

Who is the “landlord” under The Act?

The landlord, in relation to all types of occupation contracts, is defined in section 244 of The Act. It is the person that is (or implies they are) entitled to allow an individual to live in the dwelling.

This covers the legal ‘person’ and so doesn’t have to be an individual. If you own your rental property through a Body Corporate (for instance a Limited Company) the name of the Limited Company will be the landlord and it will make a contract with named individuals (e.g. the contract-holder(s).

In most cases the landlord named on an occupation contract would be the same ‘person’ who registered as the landlord of the dwelling with Rent Smart Wales. Even if the rentals main licensee is an agent acting on behalf of the landlord, the landlord needs to be named as such on the contract (based on the definition above).

A contract-holder however cannot be anything other than a named individual. Therefore you cannot use an occupation contract to make a contract with a Limited Company, etc; this would need to be done on a commercial contract basis.

You are known as a ‘private landlord’ under The Act.

This course focusses on Standard Contracts. These are the most akin to ASTs and the type of contract, as default, you will issue to your tenants in the private rented sector. You can still issue ‘fixed’ and ‘periodic’ contracts, but they **must now always be in writing.**

Written Contracts

A key improvement The Act brings in is that all contracts must be in writing. This will make sure that contract-holders are given an accurate and complete document setting out their rights and obligations under the contract. Having this written contract protects the interests of all parties. It can also help you prevent disputes later over what was agreed and if there is a dispute, it can help you to resolve the dispute more quickly.

Key facts about a written statement of contract (often called written contracts):

- Can be issued either in hard copy, or if the contract-holder agrees to it, **electronically**
- **Model contracts** can be downloaded free of charge from the Welsh Government website and you can amend them to be specific for your rental
- You can issue a written contract as soon as **you and the contract-holder have agreed to the terms** of the rental. But the latest you can issue it is 14 days after the contract-holder is entitled to begin to live in the dwelling. This is known as the “occupation date” (section 31). The same requirement is in place if a new contract-holder in a joint contract begins to live in the rental
- Within the same timescale (14 days) you must also give the contract-holder notice of an address to which the contract-holder may send documents that are intended for you. This could be via an electronic means such as email address if you prefer and the contract-holder agrees.

Section 42 details when terms of the occupation contract become enforceable. If you have issued the written statement of contract the terms become enforceable as soon as it is issued; otherwise they come into force on the occupation date (even if you have not yet issued the written contract). After the 1 December 2022, if you want to give the written contract before the occupation date and lock the tenants into the terms of the contract before they occupy the property, they would have to give you notice (in line with The Act) in order to leave the contract, even if the occupation date hadn’t yet occurred.

You can obtain written model contracts from the Welsh Government at **gov.wales/renting-homes-housing-law-changing**

There is a prescribed form RHW2 produced by Welsh Government which you must use to inform tenants of your address: **gov.wales/notice-landlords-address-form-rhw2**

You **cannot charge a fee** to give a written statement of contract; however should a tenant mis-place it and request another copy you must provide another copy within 14 days of the request. You can charge a fee for this replacement; if you do you must provide the replacement copy 14 days after the fee is paid (rather than after the initial request).

Best Practice

Get the contract-holder(s) to sign the written contract when they receive it and for you to also sign it, as evidence that they have received it, read it and agree to it. But not getting it signed won't make it invalid.

Written Contract Case Study

When Susie and Alyn moved into their new flat they dealt direct with the agent Rogers Quality Lets. The agent stated that the landlord wanted to issue the default standard contract and they were told that the landlord, Marta, would provide it to them after the weekend (they had moved in on Friday 2 September 2022). Susie and Alyn felt this was ok as they knew what the model standard periodic contract on the Welsh Government website contained and the agent had shown them an email from the landlord Marta saying she was happy just to use the standard terms and did not need to make any changes.

However two weeks passed by after they moved in and Susie and Alyn did not hear from the landlord. They contacted the agent just to check, but they confirmed that they were no longer instructed to deal with the property now the tenants were in place and it was for the landlord to issue the written statement of the contract.

The tenants tried to contact the landlord via phone and letter using the details they had been given when they took on the property, but no contact had been possible. They knew from reading the Tenant Guide on the Rent Smart Wales website that if the landlord failed to give them a written version of the contract within 14 days of moving in, the landlord was liable to pay compensation to the contract-holder(s) until the landlord either gave them a written version, or for two months from the occupation date (whichever was sooner). They felt the best approach was to not pay their rent and to use the money as the compensation they were owed; The Act allowed them to do this. They knew they could go to court to apply for more compensation to be paid and to get the court to declare the terms of the contract. But they felt they didn't want to take things further; despite feeling pretty upset about the whole situation.

Three weeks later, the landlord came forward and issued the written statement for their standard periodic contract. She was very apologetic and had been dealing with some issues outside of her landlord work, but she recognised she had not acted correctly and acknowledged why the tenants had stopped paying rent. They agreed to move forward in a more positive way. The tenants then started paying their rent again (once the relevant amount of compensation had been covered).

Outcome

The example above is one where the tenants have been let down by the landlord, however are compensated for the additional work and worry the situation presented them. If the written statement had been issued, but it was incomplete or incorrect, the tenants would not have been able to decide to claim compensation without the intervention of the court; however they could apply to the court to determine this. It might be that a landlord tries to provide a written statement, or provides one that is subsequently found to be incomplete or incorrect but it is due to the act or omission of the contract-holder rather than the landlord's fault. In these cases the Court can reject the application and the landlord would not be held accountable.

There are different situations in The Act that allow for compensation to be paid to a tenant; sometimes the amount and liability is clear in The Act, other times it is up to the court to determine the award. Further information is in Section 87.

Terms

The Act requires all landlords to issue a ‘written statement’ of the occupation contract to the contract-holder. But what must a written statement contain? Unlike previously where a tenancy would be a list of agreements, the new standard contract categorises and standardises these ‘terms’ and makes them easier to be understood by all parties.

Later on in this training, when we introduce certain terms and their meaning, you will find the **following key to help you to locate the corresponding information** in the model contracts.

Key Matters

The following key matters must be included in **all** standard occupation contracts:

- The address of the dwelling
- The occupation date (the date from which the contract-holder is able to occupy the dwelling)
- The amount of rent or other consideration
- The rental periods (for example weekly or monthly)
- Whether the contract is periodic or made for a fixed term
- If it is made for a fixed term, the term for which it is made (how long does the contract run, when does it begin and when does it end)
- Any periods during which the contract-holder is not entitled to occupy the dwelling as a home (for example, to allow university landlords to use their student accommodation for other purposes during non-term time).

Fundamental terms

Set out within The Act and covering the most important aspects of the contract, including the possession procedures and the landlord’s obligations regarding repair.

Supplementary terms

Set out in secondary legislation, these terms deal with the more practical, day to day matters applying to the occupation contract, for example, the requirement to pay rent on time or taking care of the property.

A Additional Terms

These terms address any other specifically agreed matters, for example a term which relates to keeping pets or garden maintenance. Any additional terms must be fair, as required by the Consumer Rights Act 2015.

What terms you include in your standard contracts will depend on whether they are periodic or fixed term contracts. Using the model contracts benefits you by using terms which are standard across most private rented accommodation in Wales and they have have been assessed by Welsh Government as being fair and suitable.

If you do wish to change a term, with the agreement of the contract-holder, you may be able to, however the nature of the term impacts on the right to vary.

(F) (F+) (S)

In the model contract you will find that Fundamental Terms that cannot be left out of the contract or changed have (F) added after the term sub-heading. Fundamental terms that can be left out or changed (but only by agreement with the contract-holder and to their benefit) have (F+) added. Supplementary terms have (S) added.

The Welsh Government have produced a guide to help explain the meaning of terms included in standard occupation contracts, which can be read here: **gov.wales/standard-occupation-contracts-guidance-html**

It is intended for contract-holders but is also a useful read for landlords. It would be beneficial to provide to your contract-holder's with their contract so they can fully understand it.

Fundamental Terms

Looking at terms in more detail, let us first learn more about fundamental terms (sections 18-22, and Schedule 1 of The Act).

Once a “fundamental provision” is part of an occupation contract, the term which incorporates it is referred to as a “fundamental term”. The following are examples of terms that can never be amended or omitted, so you will find them in all standard contracts. This will make it clearer for landlords and tenants.

- Requirement to use a deposit scheme (if deposit taken)
- Anti-social behaviour and other prohibited conduct
- Variation of periodic or fixed term standard contracts
- Permissible reasons to terminate a contract
- Possession claims
- Death of sole contract-holder
- Restrictions on giving landlord's notice for possession under specific grounds such as failure to provide a written statement or failure to provide a gas safety certificate.

Other fundamental provisions can be amended/omitted but only if the:

- Landlord and contract-holder agree, **and**
- Modification/removal **improves** the position of the contract-holder.

Such terms would be:

- Variation of rent
- Landlord's right to enter the dwelling for repairs
- Restriction on giving landlord's notice for possession under a periodic standard contract during first six months of occupation.

You can make what is referred to in The Act as an ‘Editorial Change’ to any term – see section 33. These are changes to the wording of all fundamental or supplementary terms which do not change the substance of that term in any way; for example, substituting the names of the landlord or contract-holder for references to “the landlord” or “the contract-holder”, etc.

Supplementary Terms

Supplementary terms are set out in The Renting Homes (Supplementary Provisions) (Wales) Regulations 2022. They deal with the more practical, day to day matters in an occupation contract, such as the contract-holder's obligation to notify the landlord of a defect or disrepair, or permitting lodger's without the landlord's consent.

When you enter into a new occupation contract with a contract-holder you can both agree to omit or modify any of the supplementary terms. The default position, however, is that all supplementary provisions are incorporated, unmodified.

There is no requirement that modification or omission of a supplementary provision improves the position of the contract-holder; the only limit is that a change to a supplementary provision must not render the occupation contract incompatible with any fundamental term of the contract.

Some examples of supplementary terms found in the model contract

Use of the dwelling by the contract-holder

Changes to the dwelling

Security of the dwelling during unoccupied periods

Contract-holders' obligations at the end of the contract.

If you and the contract-holder(s) agree to leave out or change any fundamental or supplementary terms before the contract is issued this must be identified in the written statement. Normally this would be done by striking out the words changed (and adding in any words agreed). See Part 3 of the Standard Model Contracts for advice on this.

With both fundamental and supplementary terms found in the model contract you will probably find no need to amend or omit the ones that you are able to, as they are terms which have been deemed by the Welsh Government to be practical, reasonable and robust. There is no need to change them just for the sake of it.

Varying Rent and Other Contract Changes

If you, or the contract-holder, wish to vary a periodic contract during its term, you can only do so in accordance with The Act. The principles in The Act of varying a fixed standard contract are the same as detailed below for a periodic standard contract.

Varying the rent. The contract-holder under a periodic standard contract must be given **two months' notice** by you of any change in the amount of rent or other consideration payable.

The first time this is done during the contract it can be done at any time. Once done it can only be done at intervals **no less than a year apart.**

The Act does not cover varying the rent in a fixed term standard contract; but you could vary it if you and the contract-holder(s) agreed.

There is a **prescribed form RHW12 - Notice of variation of rent** produced by Welsh Government which you must use to give notice to a contract-holder of your intention to change their rent: **gov.wales/notice-variation-rent-form-rhw12**

If you wish to vary the terms of a contract during its existence, then you should refer to the process contained in The Act to be sure you are doing what legally you are able to. See sections 122-129. There are also fundamental terms in the contract covering this.

If a variation has been made in accordance The Act you must either provide a written statement of the terms varied or a written statement of the whole occupation contract with the varied terms included, within 14 days of the date on which the contract changed (no fee can be charged for this). This doesn't apply however if you are simply varying the rent as long as the correct notice of variation was used to notify of this.

In the same way as with the initial contract, if you don't provide an updated written statement within the 14 days, compensation is due to the tenant for your omission.

If the contract-holder requests it, you must provide a written receipt for rent, or other consideration paid, within 14 days of such a request from a contract-holder. This applies to all contracts unless you have issued a fixed term standard contract of more than seven years.

Deposits

Deposit protection rules are now covered by The Renting Homes (Wales) Act 2016 and accompanying regulations. The requirements are broadly the same as when they used to apply to Assured Shorthold Tenancy agreements. If you do not want to take a deposit, you still do not have to. But if you do take one, you must deal with it correctly.

Requirement to use a deposit scheme

Once you receive the deposit, you have 30 days (starting with the day on which the deposit is paid) to:

(a) comply with the initial requirements of an authorised deposit scheme, and

(b) give the contract-holder (and any person who has paid the deposit on his or her behalf) the required information.

You cannot ask for security (such as a deposit) to be anything other than money or a guarantee.

You must use a deposit scheme even if the deposit is paid by someone else, like a rent deposit scheme or a tenant's parents. That person must also be provided with a copy of the required information.

Once you have complied with your initial obligations and the deposit is protected, if there is any change to the 'type' of contract, such as it moves from being a fixed contract to a periodic one, relating to the same dwelling and the same contract-holders, you do not need to 're-protect' the deposit; you will have complied with the law.

Within 30 days of receiving a deposit, signed and in writing you must confirm the following details:

- The address of the rented property
- How much deposit the person has paid
- How the deposit is protected

- The name, address, telephone number and any email address for the following:

  - The deposit scheme used and its dispute resolution service
  - You (the landlord)
  - The contract-holder (including details to be used at the end of the occupation contract)
  - Any third party who paid the deposit.

- Why you would keep some or all of the deposit - for example, because the contract-holder has damaged the property and you need to fix it, by reference to the terms of the contract

- How to apply to get the deposit back at the end of the contract

- What to do if they cannot get hold of you, or you cannot get hold of the contract-holder, at the end of the contract

- What to do if there is a dispute over the amount of deposit to be returned at the end of the contract.

- The contract-holder must also have the opportunity to sign the confirmation of the required information you give them.

It would be best to create a standard form for yourself to use each time you deal with a deposit, containing this information, so that you don’t forget something you are legally obliged to cover.

Consequences of not protecting a deposit

Contract-holders (or anyone who paid their deposit) can apply to a county court any time during or after the contract if you:

- Fail to comply with the **initial requirements of an authorised deposit scheme.**
- Fail to comply with the **provision of required information.**
- Tell them that you have **used a particular authorised deposit scheme but they have been unable to obtain confirmation** from them that you have.

If the court agrees with the application grounds, it can order the person who appears to be holding the deposit, within 14 days, to either:

- **Repay it to the applicant,** or,
- In the case where a contract is still in place **pay it into a custodial deposit scheme.**

The court will also order the person who appears to be holding the deposit to pay the applicant an additional amount 1-3 times their original deposit within 14 days of making the order.

The court may also decide that the contract-holder does **not have to leave the property when the contract ends** if you did not use a deposit scheme when you should have.

Inventories

You are now required to provide a written inventory to the contract holder within 14 days of the occupation date (so by the same time you must provide a written statement of contract) unless, as with all supplementary terms, the contract-holder agrees to it being left out.

An inventory is an invaluable piece of evidence to document the current condition of the property, fittings and furniture (if furnished) at the start of the contract. It will also make resolving any disputes later on easier as it will generally be for you or your agent to prove the claim.

You must provide a copy to the contract-holder and give them 14 days to comment or agree it. If they do not respond within 14 days, you take it that it is agreed. If they do respond with comments, you should respond to these within 14 days.

Converted and Substitute Contracts

If you had a tenancy or licence, such as an Assured Shorthold Tenancy (AST), in place on the 1 December 2022 this converted to an occupation contract on that day. There were different rules for how this conversion process would take place in comparison to new contracts started from the 1 December 2022.

The Welsh Government gave all landlords 6 months to issue their contract-holders with a written version of the converted contract. The deadline of the 31 May 2023 has now passed so this training has been updated to remove detailed information on converted contracts. However it can still be read in the Renting Homes section of our Resources page and if you have this type of contract you should read the guide to make sure you understand the specific rules surrounding converted contracts.

If you missed the deadline to issue a written statement of a converted contract, then you must issue the written version straight away.

The longer you leave issuing the written version of the contract, the more compensation you may be liable to pay to the contract-holder. Furthermore:

1. You cannot further vary the contract until you issue the written statement.
2. You cannot serve a ‘no fault’ possession notice to get your property back until you issue a written version of the converted contract. But remember, even once the written version of the contract is issued you still must wait for **6 months** to issue the notice as you missed the 31 May 2023 deadline.
3. You must also provide the contract-holder with the information required in the prescribed form RHW2 – the address where a contract-holder can send correspondence to the landlord.

If any of the following has happened as part of your converted contract since the 1 December 2022 you should read the Rent Smart Wales conversion guide to find out the additional requirements.

- **A substitute contract has arisen after the initial converted contract has ended**

For example: where the initial converted contract was for a fixed term, but the contract-holders have stayed in occupation after the fixed term and created a new ‘substitute contract’ (whether fixed or periodic).

- **A change in the identity of the initial contract-holder(s)**

For example: on a shared contract or where someone has succeeded the contract.

Serving Notices

When The Act requires you to ‘give’ a notice or document to a contract-holder, the best place to either deliver, post or leave it, is at the dwelling the contract-holder occupies under the contract. However, useful alternatives offered by the Act are:

- Last known address,
- Place of business, or
- Any other place that the person has specified as a place where they may be given notices or documents.

When you leave a document or notice at any of the places mentioned above, even if you cannot be sure the person has seen it, that is the date you have given it under the law.

If you post a document, legal service is usually taken as the second day after it was posted or delivered provided that day is a business day; or if not, the next business day after that day.

A notice or document may also be given electronically if the recipient has agreed to receive it in this manner, it is legible, and the text it contains can be used for subsequent reference. If given in electronic form, it must contain the electronic signatures of any required parties (or an authorised agent).

If you need to serve a notice or document on a body corporate (such as a Limited Company), it would be sufficient to give it to the secretary or clerk of that body.

Important notices and documents which you give under The Act must be in writing and issued correctly. Remember they may be part of a legal case at a future date so it is important to get things right.

If the Welsh Government have prescribed a form to use as part of a process in The Act, you must use it, otherwise it cannot be enforced and will have no effect.

Examples of prescribed forms are:

Notice of change in landlord's identify and new landlord's address.

Available at: gov.wales/change-landlords-identity-and-notice-new-landlords-address-form-rhw3

Landlord's notice of termination – periodic standard contract with six-month minimum notice period.

Available at: gov.wales/notice-termination-periodic-standard-contract-six-month-minimum-notice-period-other-introductory

Notice of landlord's intention to end occupation contract due to abandonment.

Available at: gov.wales/landlords-intention-end-occupation-contract-due-abandonment-form-rhw27

These are all free to use. The full list can be found here: **gov.wales/renting-homes-forms-landlords**

Module Reflection and Further Information

This module has clarified that private landlords will from now on generally issue standard occupation contracts, and these have the ability to be fixed or periodic. A significant change is that the contract must now always be in writing. Welsh Government has made it easy for you by developing template contracts (called model written statements) which can be downloaded from their website. They are extensive, but cover most of the information you need contained within Fundamental and Supplementary terms. An interesting new addition is the requirement to provide a written inventory to the contract-holder within 14 days of occupation, which can only be removed as a term if agreed with the contract-holder. **This will assist you with securing the return of the property in a good condition and to make claims on any deposit taken.**

Be aware of deadline dates you must meet and specific information you have to give to the contract-holder at significant points. In addition, the Act sets out procedures that must be followed for things like varying rent or taking deposits.

The Act allows for compensation to be paid to a contract-holder where landlords have not met the requirements; sometimes the amount and liability is clear in The Act, other times it is up to the court to determine the award.

Welsh Government has developed guidance, and prescribed forms that you must use to complete processes under the Act. These will help you get things right first time round.

A ‘Start of Contract Checklist’ to give to contract-holders at the beginning of a contract is available for you to use at **rentsmart.gov.wales/en/resource-library/**

Death and Succession

Someone who lives with your contract-holder at the dwelling, but is not named on the contract, may have a right to carry on with the contract if the contract-holder dies.

Death of a sole contract-holder

If a sole-contract holder dies, the contract comes to an end one month after the death, or if earlier, when you are given notice of the death by someone authorised to inform you.

This is not the case however if there is someone living at the property who is not named on the contract, but who under The Act (section 73-83) could succeed them. If this is the case, the current contract would continue, but in the name of the person succeeding the person who died.

There are two types of ‘successors’, Priority and Reserve

The type of people in these categories will be family members or people who are the spouse or civil partner of the deceased (or living as such).

A person could qualify to take over an occupation contract on the contract-holders death as both a priority successor or a reserve successor (for instance a spouse). So in practice there may be, over time, two successions to an occupation contract (but no more).

It can work differently for a fixed term standard occupation contract, if you include a specific term. The process above is not followed, instead the contract can transfer to another person as part of the administration of the estate of the deceased contract-holder (section 139-142 of The Act.)

If your sole contract-holder dies you are advised to seek independent legal advice to deal with the situation appropriately.

Joint Contract-Holder wants to leave

Unlike previously, The Act allows people renting together on joint contracts to be **added or removed from occupation contracts** without the need to end the contract for all. Predominantly this will be used for student lets and help victims of domestic abuse, by enabling the perpetrator to be targeted for eviction.

For periodic contracts:

Under section 130 of The Act, a joint contract-holder in a periodic standard contract may withdraw from the contract, without needing your consent, if they follow the steps below.

They must give you a notice (a “withdrawal notice”) which:

1. Specifies the date on which the joint contract-holder intends to leave the contract (the “withdrawal date”). This must be a minimum of one month from the date they give you the notice.
2. Attaches a copy of the written warning(s) the contract-holder has given the other joint contract-holders to make them aware that they intend to leave the contract.

As soon as possible after you receive the withdrawal notice you must give your own written warning to the other joint contract-holders who are staying part of the contract. This is to make them aware of what is happening and to provide a copy of the withdrawal notice. The joint contract-holder ceases to be a party to the contract on their stated withdrawal date and will no longer be liable for any on-going rent or obligations under the contract.

If, on learning that one of the contract-holders want to leave, another contract-holder wants to leave, they can do so by following the same process. This might arise because they do not want to be made liable for their share of the additional rent or to share with another person, potentially a stranger.

If a contract-holder gives you any other type of notice, such as a section 168 notice, but its intention is to act as a ‘withdrawal notice’, you can accept it. You would then complete your part of the procedure as above.

For fixed contracts:

For one or more joint contract-holders to withdraw from a fixed term contract there must be a specific contract-holder break clause contained within the contract. There is no ‘model’ for this; if you wanted to add this you are advised to seek independent legal advice. Where a break clause has been included, notice is given under the break clause, and it is to be taken as a “withdrawal notice”.

As soon as practical after you receive the “withdrawal notice” you must give your own written warning to the other joint contract-holders who are staying part of the contract. This is to make them aware of what is happening and to provide a copy of the notice which is to be taken as a “withdrawal notice”.

The joint contract-holder ceases to be a party to the contract on their stated withdrawal date and will no longer be liable for any on-going rent or obligations under the contract.

These new provisions are useful, but it is important to remember that there is nothing to prevent a standard contract, whether periodic or fixed, from being terminated at anytime and without any notice period if by **mutual agreement** (section 153); that is if the landlord and contract holder(s) agree. So if a joint contract-holder came forward, and you agreed that they could move out if they found a suitable replacement tenant, or if the remaining contract-holder(s) were happy to cover their proportion of rent for instance, then you could.

The Act allows documents such as these to be provided electronically, as long as you and the person you are issuing such notices to have agreed to receive them electronically. It is worth getting this consent at the beginning of the contract to make things easier for all. You must include your signature on notices sent electronically.

Joint Contract-Holder Case Study

Gwyneth rents a house to a group of young professionals who are all named on the AST. Now the tenancy has converted to a standard occupation contract all the named tenants are contract-holders. Rowan, one of the contract-holders, messages Gwyneth to say that she has a new job in Bristol and she will be moving out. She also explains that she is worried about telling her housemates as she did not know what the implications would be for them. Would they have to move out too?

Gwyneth phoned Rowan the next day. She explained that the contract was a periodic standard contract, rolling month to month. She signposted Rowan to the part of the contract that explained the process of giving a “withdrawal notice” and explained she could not prevent Rowan leaving if she followed the instructions. She reassured Rowan that her housemates could stay in the property and the contract would carry on; they would then be responsible for her part of the rent, so they might want to find someone to replace Rowan and get them added as a joint contract-holder. Gwyneth explained she would be happy to search for a new housemate if that would help. After the call, she followed up all the information discussed with an email.

Outcome

Rowan and her housemates decided on a plan of action. Gwyneth and the tenants had agreed at the beginning of the tenancy that they were happy to receive important documents over email, so Rowan sent Gwyneth a “withdrawal notice” on the 25 March 2023 and attached a copy of the written warnings she had sent to her housemates. It gave a withdrawal date of the 30 April 2023. Once received Gwyneth sent a warning email to the other contract-holders and attached the withdrawal notice. In the meantime, the tenants staying at the property had found a friend, Neil, to move in. Gwyneth did all the usual checks she would complete for any new tenant to ensure he was suitable to move in and then issued a written statement of the joint contract to him to allow occupation from the 1 May 2023.

If there are two or more joint contract-holders under an occupation contract, each is jointly liable for every obligation to the landlord under the contract. And the same goes if the landlord is a joint landlord; each landlord named on the contract is fully liable to the contract-holder for the performance of every obligation to the contract-holder under the contract.

New Joint Contract-Holders and Consent

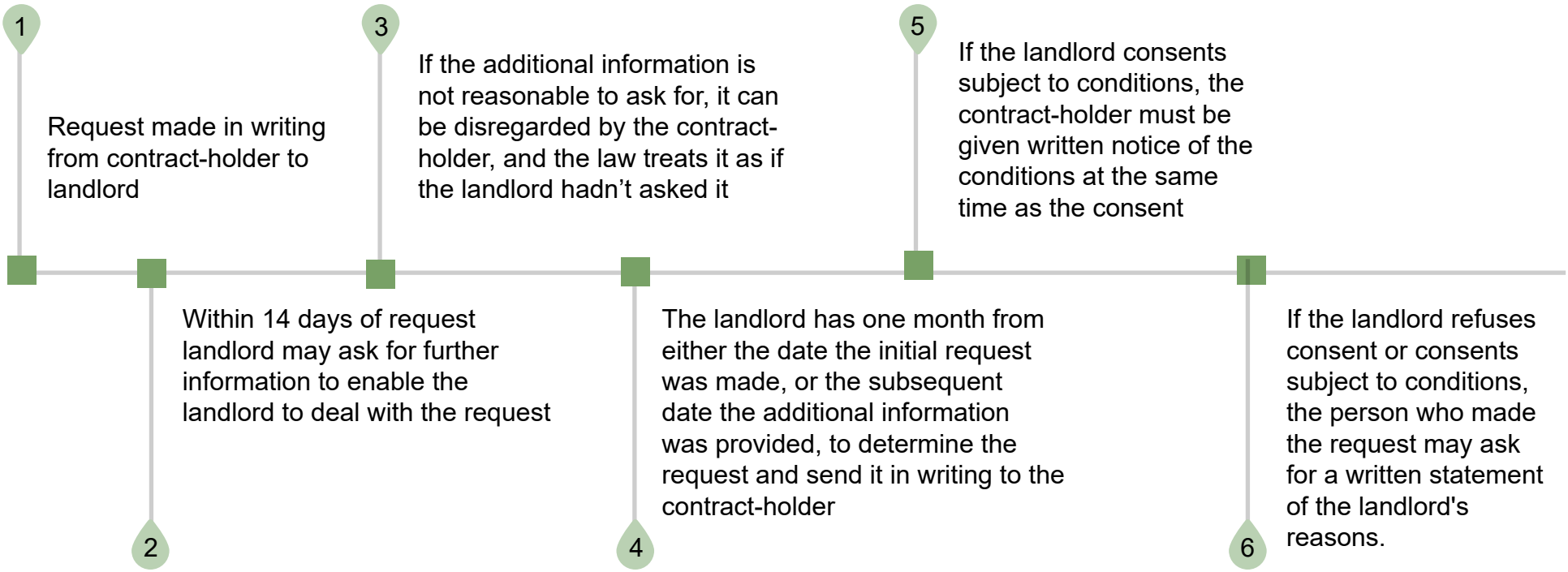
Adding a joint contract-holder

A contract-holder may add another person to be a joint contract-holder under their contract, with your consent

What happens when there is a request for a new joint contract-holder to be added to a contract?

- A request to add a joint contract-holder to an occupation contract must be signed (or executed) by the people currently part of the joint contract and the person who wishes to be added to the joint-contract. If you actively give consent to the addition, you must sign it too.
- From the day on which they become a joint contract-holder, they become entitled to all the rights and are subject to all the obligations that all other contract-holders under the contract have.
- The new contract-holder must be issued with a written statement of the contract, at the latest, within 14 days of their occupation date. If you fail to do this, you may be penalised.

Section 84 sets out the process for consent. This covers all requests for consent in your contract, not just adding a joint contract-holder:



There are a variety of situations where the landlord is treated as having consented to the request by default (with no conditions attached). These are:

- If you do not give or refuse consent in writing before the end of the relevant period
- If you consent subject to conditions but do not give the contract-holder written notice of the conditions
- If you do 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.

Consent Case Study

Kayleigh wanted to change her tv and internet provider and found a good deal, but she would need to have a satellite dish added to the property. She checked her written statement of contract and found the relevant term. She normally dealt with her landlord, Rhys, over email, so sent an email to ask him if she could have the satellite dish fitted next week.

Changes to dwelling

Rhys includes the following Supplementary Term in his standard periodic contract with Kayleigh:

1. You must not make any alteration to the dwelling without the consent of the landlord.
2. For the purposes of paragraph (1) of this term, “alteration” includes —
   a. any addition to or alteration of the fixtures and fittings in the dwelling,
   b. the erection of an aerial or satellite dish,
   c. the erection, removal or structural alteration to sheds, garages or any other structures in the dwelling, and
   d. the carrying out of external decoration to the dwelling.

Outcome

Rhys saw the email the next day, confirmed its receipt and said he would phone for a chat. When he spoke to Kayleigh he ran through the process he had to follow in order to give consent. He said the law gave him a month to make his decision but that he would have a think overnight and come back to her. He then rung her the next day and came to an agreement that she could have it fitted, but only if it could be fitted on the back wall of the house.

Kayleigh went away and checked with the installer who agreed this was possible so then Rhys replied to Kayleigh’s email to confirm the consent but on the condition that the dish was installed on the back of the house.

Reasonableness of Consent

If you do not take time to consider a request which requires consent and state your wishes, it will be automatically granted after one month. When considering a request, you cannot unreasonably refuse consent however you can grant consent with conditions.

The reasonable considerations for you to take into account when deciding whether to grant, refuse or give consent with conditions is contained in Schedule 6 of The Act. Some considerations are relevant to all requests, others only apply to specific ones.

The general circumstances to consider to reasonably withhold consent are:

- the status of the contract (whether any party has taken steps to end the contract);
- the dwelling (e.g. the size and suitability of the dwelling for the transaction being proposed);
- the circumstances of the contract-holder and other occupiers; and
- the circumstances of the landlord.

There are also additional considerations when dealing with a request to add a joint contract-holder:

- If they have been your contract-holder previously and, if so, whether they complied with the occupation contract to which they were a party
- If they are suitable based on the typical checks completed for an initial contract
- If they are part of the same family, and the nature of the relationship
- If in time, they are likely to become the sole contract-holder due to for instance, the elderly age of the current contract-holder
- whether otherwise he or she is likely to succeed to the contract.

If you consider the likelihood of giving consent is that it will substantially lengthen the occupation contract, you can make it a condition of consent that the joint contract-holder is treated as a priority successor (or as a reserve successor) in relation to the occupation contract.

If you refuse consent or give consent with conditions and the person requesting consent does not agree, they can apply to the court to have your decision overturned. The court may ask you to reconsider the request. It can also uphold your decision, overrule it, declare that you have consented without any conditions, or remove any conditions it deems unreasonable.

Module Reflection and Further Information

This module considered how changes to the ‘parties to a contract’ can be accommodated. The main elements covered were:

- Succession
- Withdrawal of a Joint Contract Holder
- Adding Contract-Holders and Consent.

You may feel that understanding ‘Succession, Joint Contracts and Consent’ is on the periphery of the knowledge you need to be an effective landlord. However, getting this wrong could have significant consequences for you.

For example, with consent:

1. If you do not respond to a ‘consent’ request, it will be assumed you are happy with it and the consent will be granted.
2. Where consent is being sought to add a joint contract-holder, and they move in, failing to issue a written statement of the joint contract within 14 days of the occupation date could lead to the normal penalties and restrictions that occur with a new contract. You could fall foul of the law by your lack of action.

Taking a sensible approach to requests and treating people fairly will result in the smooth running of contracts.
Being open and responding to requests in a timely fashion will gain you respect and will make sure things do not go wrong.

Obligations

You should be familiar with section 11 of the Landlord and Tenant Act 1985 repair obligations. However these have now been replaced and improved with new obligations relating to the condition of a dwelling under Part 4 of the Renting (Homes) Wales Act 2016.

- **You must keep your rental property both in repair and fit for human habitation (FFHH)**. This applies to all standard occupation contracts that are made for a term of less than seven years.
- You must keep the structure and exterior of the property in good repair and keep installations for the supply of water, gas or electricity, for sanitation, for space heating, and hot water in repair and proper working order.
- You must provide and maintain a rental which is FFHH. This will include, for instance, electrical safety testing and ensuring working smoke alarms and carbon monoxide detectors are fitted.

Tackling disrepair early and effectively can often prevent a dwelling becoming unfit for human habitation.

Penalties in the legislation state that a contract-holder is not liable for rent for each day (or part day) the dwelling is unfit for human habitation. So you can see that it is very important to get these obligations right – not just for your tenant's safety and welfare but also for your own business purposes.

Where a dispute cannot be resolved, it will be for the court to determine. In the majority of cases however it is expected that escalation to the courts will not be necessary, as it should be clear to both you and the contract-holder whether the dwelling is of a reasonable condition to live in. If the tenant stops paying rent as they believe the property is unfit and you disagree, you can take them to court for rent arrears and then they would probably submit a counter-claim for unfitness. The court would then make a judgement on the disagreement.

Rights of permitted occupiers

A permitted occupier who suffers personal injury, or loss of or damage to personal property, as a result of the landlord failing to comply with the property condition requirements may enforce it by bringing proceedings in respect of the injury, loss or damage.

Court Protocol

The courts have published a Protocol which they expect prospective parties in a housing disrepair claim to follow prior to the start of proceedings. It encourages the exchange of information between parties at an early stage and provides a clear framework within which parties in a claim can attempt to achieve an early and appropriate resolution of the issues.

If a claim proceeds to litigation, the court will expect all parties to have complied with the Protocol as far as possible. The court has the power to order parties who have unreasonably failed to comply with the Protocol to pay costs or to be subject to other sanctions.

The Protocol is in the process of being updated in line with the Renting Homes (Wales) Act 2016, but the principles behind the current edition are still relevant.

It can be read here: **justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-housing-disrepair-cases-wales**

Repair

Landlord's obligation to keep a dwelling in repair

The repair obligation extends to the structure and exterior of the dwelling (including drains, gutters and external pipes), and the service installations in the dwelling, such as those:

- for the supply of water, gas or electricity,
- or sanitation, and for space heating or for heating water.

You must keep the dwelling in repair at all times. Key points are:

- Once you are aware of the need for a repair, you must carry it out to a reasonable standard and within a reasonable timescale. What is 'reasonable' will vary depending upon the urgency and nature of the repair required. It would not be reasonable for the same timeframe to apply to a burst pipe and a small radiator leak.
- You must make good any damage that fixing the repair may have caused
- If the repair is not the fault of the contract-holder, they are not responsible for it and you cannot, for instance, expect them to either arrange for the repair or contribute to the cost of it.
- You have the right to enter the rental at any reasonable time to inspect or undertake repairs, but you must give the contract-holder at least 24 hours' notice before doing so.
- If the tenant refuses access for you to carry out the repairs they are breaching their contract.
- If subsequent deterioration occurs due to the tenant's refusal to allow entry, the tenant may be liable. The landlord may be able to justify taking the additional costs incurred from the deposit.
- The standard of repair which is reasonable to provide takes into account the age and character of the dwelling, and the period during which the dwelling is likely to be available for occupation as a home.

But how do I know my rental requires maintenance or repair if the tenant has not reported any issues?

Getting it right relies on a good relationship with the tenant and letting them know that you want to hear about problems at an early stage. But you must also ensure that you have robust management arrangements in place. Your Rent Smart Wales licence also requires this. You must visit your rental at appropriate intervals, taking into account property condition and tenant risk, document your visits and retain this evidence for at least 2 years. A 'Routine Visit Checklist' is available here to assist you: **rentsmart.gov.wales/Uploads/Downloads/00/00/01/92/DownloadFileEN_FILE/Routine-Visit-Checklist.pdf**

Whether you are notified by the tenants of a repair issue at the rental, or you find something during a routine visit, it is important to act on it swiftly. You must also ensure any work undertaken is to a high standard using suitably qualified/competent contractors. Avoid a 'patch' job which might only resolve the issue temporarily and cost you more in time and money in the long run.

Fitness for Human Habitation

Landlord’s obligation: Fitness For Human Habitation

You should be familiar with the Housing Health and Safety Rating System (HHSRS) from the Housing Act 2004, which applies to all rentals in Wales. It places a statutory duty on local Councils to identify hazards, and the effects that each may have on the current and future occupant or any visitor at a property. Landlords often use the HHSRS to identify potential hazards and assess the risks those 29 hazards pose.

Now, under the Renting Homes (Wales) Act 2016 there is a new additional measure to ensure properties are ‘fit’ to live in and the onus is on the landlord to ensure that a dwelling is fit when offering a property to rent and for the whole contract period.

What to consider when deciding if a property is FFHH?

These are set out in The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022. They broadly reflect the 29 hazards from the HHSRS but the titles and wording of some of the 29 ‘matters and circumstances’ have been modified slightly to provide greater clarity. The hazards they address remain unchanged.

There is detailed guidance from Welsh Government for both landlords and contract-holders on the 29 matters and circumstances, fitness and repair. You can read this on the Welsh Government Website here: **gov.wales/fitness-homes-human-habitation-guidance-landlords-html**

Whether or not a hazard as set out in the HHSRS exists at a dwelling does not predetermine whether a dwelling is unfit for human habitation in accordance with FFHH.

For example while a slight variation of floor surface may be a hazard under the HHSRS (which the Council might take enforcement action on the landlord for) it would be highly unlikely on its own, to result in the dwelling being considered unfit for human habitation under the contract.

29 Matters and Circumstances

The 29 ‘matters and circumstances’ to have regard to when determining if a dwelling is fit for human habitation can be found below.

A landlord who has concerns about the fitness of a dwelling is advised to seek professional advice before issuing an occupation contract. **Preventing your dwelling being found to be unfit under any of the 29 ‘matters or circumstances’ is the best approach to take,** as this is more cost effective and protects contract-holders from living in unfit conditions.

1. Damp, mites and mould or fungal growth

Exposure to house dust mites, damp, mould or fungal growths.

2. Cold

Exposure to excessively low temperatures.

3. Heat

Exposure to excessively high temperatures.

4. Asbestos and Manufactured Mineral Fibres

Exposure to asbestos fibres or manufactured mineral fibres.

5. Biocides

Exposure to chemicals used to treat timber or mould growth.

6. Carbon monoxide and fuel combustion products

Exposure to carbon monoxide; nitrogen dioxide; sulphur dioxide and smoke.

7. Lead

The ingestion of lead.

8. Radiation

Exposure to radiation.

9. Uncombusted fuel gas

Exposure to uncombusted fuel gas.

10. Volatile organic compounds

Exposure to volatile organic compounds.

11. Crowding and space

A lack of adequate space for living and sleeping.

12. Entry by intruders

Difficulties in keeping the dwelling secure against unauthorised entry.

13. Lighting

A lack of adequate lighting.

14. Noise

Exposure to noise.

15. Domestic hygiene, pests and refuse

1) Poor design, layout or construction such that the dwelling cannot readily be kept clean.

(2) Exposure to pests.

(3) An inadequate provision for the hygienic storage and disposal of household waste.

16. Food Safety

An inadequate provision of facilities for the storage, preparation and cooking of food.

18. Water supply

An inadequate supply of water free from contamination, for drinking and other domestic purposes.

17. Personal hygiene, sanitation and drainage

An inadequate provision of -

(a) facilities for maintaining good personal hygiene;

(b) sanitation and drainage.

19. Falls associate with baths etc

Falls associated with toilets, baths, showers or other washing facilities.

20. Falling on surfaces

Falling on a surface.

21. Falling on stairs etc

Falling on stairs, steps or ramps.

22. Falling between levels

Falling from one surface to another (including falling from height)

23. Electrical hazards

Exposure to electricity.

24. Fire

Exposure to uncontrolled fire and associated smoke.

25. Flames, hot surfaces etc

Contact with—
(a) controlled fire or flames;
(b) hot objects, liquid or vapours.

26. Collision and entrapment

Collision with, or entrapment of body parts in, doors, windows or other architectural features.

27. Explosions

An explosion at the dwelling.

28. Structural collapse and falling elements

The collapse of the whole or part of the dwelling including falling elements.

29. Position and operability of amenities etc

The position, location and operability of amenities, fittings and equipment.

Exercise

Check your answers on page 91.

The contract-holder rings to say they have black mould growth on the ceiling of their bathroom and back wall of their spare bedroom. **They say the property is unfit, do you agree?**

A) No, condensation mould growth is always a tenant issue and there is nothing as a landlord you can do to improve it so it can't make the property unfit.

B) Possibly yes; however you would need to visit the property first, maybe with a qualified contractor, to assess the mould growth, check for any contributing disrepair at the dwelling and to see if there was anything else which could be installed in the property to reduce the problem (for instance a humidistat extractor fan or air brick in the bedroom).

C) Yes it is unfit, but there is nothing you can do. You'll just leave it up to the courts to decide.

A

B

C

The contract-holder has a young baby and phones you to say that their heating and hot water has broken and they cannot heat their home nor wash. It is a cold, dark December day.
What do you think is the reasonable response?

A) Tell them you are away for a few days and to either move in with friends or buy some extra blankets and an electric heater.

B) Contact your plumber and ask for an emergency response. Advise the tenant the contractor can attend that day, to which they agree. The plumber attends but cannot fix the problem until the next day. You therefore buy electric heaters and an extra kettle for the tenant and drop them around to tide them over.

C) Contact your plumber. She can only come in 5 days time. You agree and book that in and let the tenant know.

A

B

C

Specific Requirements

There are three significant hazards which would now render a property unfit. They relate to fire, electrical safety and carbon monoxide poisoning. As a result, you must have the following in all your rental property.

- A working, mains powered and interlinked smoke alarm, on each floor of the dwelling;

- A working carbon monoxide alarm present in any room containing a gas appliance, an oil-fired combustion appliance or a solid fuel burning combustion appliance (for instance a gas cooker, gas boiler or wood-burning stove). A relevant room includes halls, landings and corridors; and,

- The electrical service installations must be safety inspected, in accordance with the British Standard BS7671, by a qualified person at intervals of 5 years or sooner where a previous electrical inspection has made such a recommendation. This is known as 'periodic inspection and testing' (PIT). A copy of the condition report setting out the results of an electrical safety inspection must be given to the contract-holder. In addition, you must provide the contract-holder with written confirmation of all investigatory and remedial work carried out on the electrical service installation as a result of an inspection.

These duties apply from the occupation date of all new contracts issued under The Act and you must have done them before a contract-holder moves in.

For tenancies converted to a standard occupation contract on the **1 December 2022** your rental must be in good repair and fit for human habitation. As long as your Electrical Installation is safe and your property is not high risk for fire where you might need additional coverage under the HHSRS, you have until the 1 December 2023 to arrange electrical safety testing and to install smoke alarms. This exemption no longer applies once the converted contract ends (because once vacant you can do the work before re-letting).

For all contracts from the 1 December 2022 there **must** be a carbon monoxide alarm present in each relevant room; there is no exception to this requirement even if you have a converted contract.

Placement and Maintenance of Smoke Alarms

Smoke alarms should be sited where they can be heard by the occupier when asleep, usually in the hall and landing. They must be connected to the electrical supply and inter-linked with all other mains powered smoke alarms fitted on each floor. Landlords may also consider:

- If the property is large, fitting more than one smoke alarm to each storey
- Fitting an additional heat alarm in the kitchen area.

A contractor specialising in the fitting of smoke alarms should be able to advise you on BS 5839 (part 6), the standard for the correct fitting of smoke alarms in domestic properties. You will only know if they are in proper working order during the contract if you test them regularly, and this includes checking the manufacturer's specific recommended life span of the fire alarm. An alarm which has passed its expiry date may not be fully operational and incapable of detecting smoke.

If you already have additional mains or battery alarms in other locations in your rental there is no reason to remove them.

Placement and Maintenance of Carbon Monoxide Alarms

Smoke alarms are normally placed on ceilings because heat and smoke rises, but this isn't necessarily the best place to install carbon monoxide alarms as the concentration of the gas could reach dangerous levels before reaching ceiling height. As such, carbon monoxide alarms are usually installed lower than smoke alarms.

You are required to ensure each alarm remains in proper working order, which includes noting its expiry date. Carbon monoxide sensors are typically more fragile than those within smoke alarms, so usually need to be replaced more regularly.

Inspection and testing of electrical installations

Periodic Inspection and Testing (PIT) is carried out on wiring and fixed electrical equipment to check that they are safe; the test will:

- Reveal if any of the electrical circuits or equipment is overloaded
- Find any potential electric shock risks and fire hazards
- Identify any defective electrical work, and
- Highlight any lack of earthing or bonding.

Periodic inspection and testing must be carried out by a **qualified person,** such as a registered electrician, competent to carry out a PIT in accordance with BS 7671 – Requirements for Electrical Installations (IET Wiring Regulations). You can find a qualified and competent electrician at:

- **electricalsafetyfirst.org.uk/find-an-electrician/**
- **electricalcompetentperson.co.uk/**

Once the PIT has been completed you will be issued with an Electrical Installation Condition Report (EICR). This report will:

- Inform you of any deterioration, defects, dangerous conditions and any non-compliance with the present-day safety standard that might give rise to danger
- Confirm the electrical installation is satisfactory for continued use, if no issues are found.

You are required to have the electrical installation of the dwelling tested **every five years** unless the requirements of the previous EICR indicates a shorter testing interval is required. Where a shorter interval is recommended, the five-year period will not apply and a future test must be undertaken at the recommended interval. **Failure to do so will mean the dwelling is considered unfit for human habitation.**

Within 14 days:

- Of the occupation date you must give the contract-holder the current EICR
- After you receive the information, you must provide the contract-holder with written confirmation of all investigatory and remedial work carried out on the electrical installation as a result of a PIT
- Of the inspection date, where a PIT is carried out after the occupation date, you must give the contract-holder the EICR.

If you have an EICR which is **dated before the 1 December 2022 and it is still valid** you can use that report to comply with your obligations under The Act; it does not have to be carried out after the date the law comes in.

You can use an Electrical Installation Certificate instead of an EICR, but only for a new build property. This certificate is valid for 5 years after the date of issue. An Electrical Installation Certificate is not a substitute for an Electrical Installation Condition Report (EICR) in any other circumstance (e.g. if you had had one issued for a re-wire, updated system, new sockets, etc).

Fitness and Repair Limitations

Limits on landlord obligation: contract-holder's fault

The Act does not require the landlord:

a. To keep in repair anything which the contract-holder is entitled to remove from the dwelling, or
b. To rebuild or reinstate the dwelling or any part of it, in the case of destruction or damage by a relevant cause, or
c. To fix any disrepair if it is due to the act, omission or lack of care from a contract-holder or permitted occupier of the dwelling.

What if I can't afford to do any work at the rental?

Being in the property business is not always about big profit margins and a healthy cash flow. Some periods can be tough, especially, as with your own home, work often needs doing all at once and can't always be foreseen. Your business plan and financial plan should set aside funds to cater for the cost of repairs and maintenance; the amount you will need will depend on the type of property you rent, how old it is, etc. For instance, if you rent out a Victorian terrace with an older boiler to a group of students you will probably need more set aside in case things go wrong than if you rent out a new purpose built flat to an individual. **You always need to plan for accessible cash to cover foreseen expenses, as well as unforeseen issues.**

Reasonable expense

If repair works would be prohibitively expensive, you could have an excuse not to carry them out. However, this excuse is unlikely to be possible for works such as a re-wire or a new roof, etc, because although they are expensive they are periodic costs every property has.

Access for Repair

Landlord's right to enter the dwelling – Repairs

The law states, in section 98, that:

- 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
- 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.

Landlord's right to enter the dwelling – Emergencies

In a situation that can be deemed an **"emergency"** you may enter without permission, and with no prior notice needed. This will include situations like flooding/leak or fire.

If you do enter without the contract-holder knowing, you must take all reasonable actions to notify them that you have entered the dwelling, as soon as possible after entry.

If the contract-holder is present and refuses access, **you cannot force entry**; you would have to apply for an emergency injunction from the court.

An emergency is defined as:

a) Something which requires urgent work to prevent the dwelling or dwellings in the vicinity from being severely damaged, further damaged or destroyed, and

b) Something which, if not dealt with by the landlord immediately, would put at imminent risk the health and safety of the contract-holder, any permitted occupier of the dwelling or other persons in the vicinity of the dwelling.

Landlord’s right to enter the dwelling – repairs to fixtures and fittings

You could, after giving 24 hours notice, enter the dwelling to sort out an issue which is actually down to the contract-holder to resolve, if they did not do it in a reasonable period of time. This would only apply to fixtures and fittings or other items listed in any inventory which would be your responsibility normally, but the contract-holder has damaged them.

But remember, even if you give notice, you cannot just let yourself in without the contract-holder's consent.

Read on to find out why and what further action you should take.

Right to Quiet Enjoyment

Right to occupy without interference from the landlord

Section 54 of The Act covers the ‘Right to occupy without interference from (the) landlord’. This is what is known as ‘quiet enjoyment’, and means the contract-holder has a legal right to live in the property as his or her home without interference from the landlord.

If you want to access the property you must be let in by the contract-holder; you cannot force entry. This equally applies to someone who acts on your behalf, or has an interest in the dwelling, or part of it, that is superior to yours (for example a “head landlord” in a sub-occupation scenario).

You must always give **at least 24 hours written notice** and respect the contract-holder's right to refuse to let you in. You do not want to get into a position where you are harassing them or acting illegally when entering (despite your good intentions). Being respectful and having a dialogue with them will get the best results.

The Protection from Eviction Act 1977 still applies in Wales; so you can still be prosecuted for conduct which is intimidating or deemed harassment

If you find that the contract-holder is not allowing you, or anyone acting on your behalf, into the property so that you can undertake your legal duties (such as carrying out repairs or periodic inspections) you should make all “reasonable” efforts to communicate with them and explain why you need to access the property. If they continue to refuse entry or ignore your efforts, you should try the following:

Write to them – send three powerful written letters (staggered by a week or so) requesting permission to enter, and explain why it so crucial.

Keep a copy of all your efforts and send all letters via your agreed communication method. This way if a claim is brought against you for neglecting your responsibilities to repair and maintain the property, you can prove that you have tried, and through no fault of your own, you were unable to meet your obligations.

Contact your local council – if it is a safety related issue or relatively important maintenance work that needs attending to, the Council may be able to talk to your tenants and explain the importance of the situation.

If the contract-holder persists and does not allow access despite all your reasonable attempts, you may apply to the court for an injunction. This would order that the contract-holder to let you into the property. Many injunctions are made with penal notices, this means that if the contract-holder breaches it, they may be held in contempt of court which is a criminal offence.

If you find yourself in this situation you **should take immediate independent legal advice.**

Module Reflection and Further Information

For all new standard occupation contracts (unless more than seven year fixed contracts), the property must be in good repair and fit for human habitation from the start and the duration of the period of occupation. This includes having:

- Mains interlinked smoke alarms on each storey of the dwelling
- A carbon monoxide alarm in each room which contains a gas appliance, an oil-fired combustion appliance or a solid fuel burning combustion appliance, and
- The electrical service installations in a dwelling are subject to inspection and testing by a qualified person at specified intervals.

The above must be in place from the 1 December 2022. The only exception is for converted contracts (ones which were an AST, etc before the 1 December 2022), which have a year (until the 1 December 2023) to obtain an electrical test certificate and have smoke alarms installed.

The contract-holder does not have to pay rent while your rental is not fit to live in, and without the specific safety measures above.

The Act doesn't significantly change the provisions for access to a dwelling or a contract-holders right to 'quiet enjoyment' that you will be used to.

Remember to always carry out a full inspection before the start of a new contract and also at periodic intervals. The effort you go to in doing this will be worthwhile as you will be more likely to meet your legal obligations, keep your tenants safe and have a good lasting contract at the property. Don't forget to keep records meticulously, as these will be your protection if any problems arise.

A landlord who lets a dwelling which is not fit or is in disrepair, or who fails to rectify an issue which is causing the dwelling to be unfit, may risk having their landlord licence revoked by Rent Smart Wales as a consequence of not complying with their legal obligations in Wales.

Working together
for a safe home for all

Anti-social behaviour

F Anti-social behaviour and other prohibited conduct

The aim of The Act is to make circumstances around anti-social behaviour fair and consistent for everyone. Anti-social behaviour and prohibited conduct can include the following which could affect anyone, from someone within the dwelling, a neighbour or even you or someone working on your behalf:

- **Excessive noise**
- **Verbal abuse**
- **Physical assault, or**
- **Domestic abuse (including physical, emotional, sexual, psychological, or financial abuse).**

The contract-holder can be held responsible for the behaviour of everyone who lives in and visits the dwelling. They must not use, or threaten to use, the dwelling, common parts or any part of the building in which the dwelling is located for criminal purposes.

If you feel there is a breach of this term, and you are unable to resolve the conduct, The Act allows you to give a possession notice to the contract-holder to inform them of your intention to make a possession claim in reliance of a breach of section 55 (anti-social behaviour and other prohibited conduct). It must detail all the reasons why you believe their conduct is contrary to their contract obligations.

On the same day you serve the notice you can make a claim to court for a possession order without waiting for a notice period to expire. The court will make an order for possession if they consider it reasonable to do so.

You must use **prescribed form RHW23** produced by Welsh Government as your notice to a sole contract-holder that you will be making a possession claim on the grounds of prohibited conduct on or after that day.

Available at: gov.wales/notice-making-possession-claim-form-rhw23

If you have a joint contract and you want to remove one contract-holder due to prohibited conduct, you must use **prescribed form RHW32** produced by Welsh Government.

Available at: gov.wales/landlords-intention-apply-order-ending-joint-contract-holders-rights-and-obligations-due-prohibited

If you take this action, you must also give **form RHW33** to the other joint-contract holders you aren't taking action on to inform them of what you are doing.

Available at: gov.wales/notice-other-joint-contract-holders-landlords-intention-apply-order-ending-joint-contract-holders

On the day you serve notice, the clock starts and you have six months to make a possession claim. Otherwise it expires and you have to start the process again.

Sub-Lets and Trespassers

Sub-occupation

The practice of sub-letting is called ‘sub-occupation’ in The Act and is covered in sections 59-68. There is no right under the Act for the contract-holder to enter into a sub-occupation contract with another person, but you may agree to it. This will generally be addressed by an additional term in the ‘head contract’.

If a contract-holder sub-lets the dwelling to another person this would create:

- A ‘sub-occupation contract’ between the contract-holder and that person (who would become a ‘sub-holder’)
- The contract-holder would then be the landlord of the sub-holder
- You would then be known as the ‘head landlord’ and the original contract as the ‘head contract’.

There are provisions and prescribed forms to follow if you wish to end the head contract even if there is a sub-occupation contract in place. Equally if the sub-holder believes their landlord (your contract-holder) has abandoned the contract, they can request to contract with you as the head landlord.

Your contract-holder must use **prescribed form RHW5** produced by Welsh Government to give notice to the sub-holder of the conditions imposed by you (as the head landlord) when consenting to a sub-occupation contract.

Available at: gov.wales/conditions-imposed-head-landlord-when-consenting-sub-occupation-contract-form-rhw5

You must use **prescribed form RHW6** produced by Welsh Government to give notice as the head landlord of your decision to treat a sub-occupation contract as a periodic standard contract, if this situation arises.

Available at: gov.wales/head-landlords-decision-treat-sub-occupation-contract-periodic-standard-contract-form-rhw6

Trespassers

This provision in section 238 of The Act is mostly for use by Community Landlords, but could effect you. If someone, who is not a contract-holder, lives in the property and the contract-holder dies and leaves them living there (and succession doesn't apply because for instance they are just a friend) then such people could start having rights if you start to take payments from them. If after two months of taking the first payment you do not take any action to evict that person, or otherwise show an intention to treat the person as a trespasser, a periodic contract is created between you and the person.

If you decide to allow these specific types of renting, you should seek independent legal advice and make yourself familiar with these provisions in The Act.

Further Rights and Obligations

Some contract-holder obligations have already been covered so far in this course (prohibited conduct, sub-occupation and repair reporting issues). But there are more.

The common law concept of ‘tenant like manner’, no longer applies to occupation contracts (apart from converted contracts). Obligations relating to taking care of the property on a day to day basis (for example unblocking a sink or replacing a fuse) are now covered in supplementary provisions which you should incorporate as a term of your contracts:

Contract-holders’ obligations at the end of the contract

When you vacate the dwelling at the end of this contract, you must:

a) Remove from the dwelling all property belonging —
i. To you, or
ii.To any permitted occupier who is not entitled to remain in occupation of the dwelling,

b) Return any property belonging to the landlord to the position that property was in on the occupation date, and

c) Return to the landlord all keys which enable access to the dwelling, which were held during the term of the contract by you or any permitted occupier who is not entitled to remain in occupation of the dwelling.

Duty to take care of the dwelling

You are not liable for fair wear and tear to the dwelling or to fixtures and fittings within the dwelling but must —

a. Take proper care of the dwelling, fixtures and fittings within the dwelling and any items listed in any inventory,

b. Not remove any fixtures and fittings or any items listed in any inventory from the dwelling without the consent of the landlord,

c. Keep the dwelling in a state of reasonable decorative order, and

d. Not keep anything in the dwelling that would be a health and safety risk to you, any permitted occupier, any persons visiting the dwelling or any persons residing in the vicinity of the dwelling

Additional points

In section 101 it states that contract-holders are not liable for waste in respect of the dwelling. This does not refer to domestic ‘everyday living waste’ but instead the common law meaning of waste (materials attributed to the deterioration of a building through normal use). This means landlords are responsible for the waste associated with ‘wear and tear’ and repair works. However, different obligations apply to converted contracts.

Overcrowding

Covered in the Explanatory information in the model contract, contract-holders must not allow the dwelling to become overcrowded by permitting more people to live in it than the maximum number allowed. Part 10 of the Housing Act 1985 provides the basis for determining the maximum number of people permitted to live in the dwelling.

Module Reflection and Further Information

Prevention and good management of anti-social behaviour is a key priority for Welsh Government; this explains why the issue is prioritised as a fundamental term in occupation contracts. Landlords are also assisted with prescribed forms to ensure appropriate action is taken when required.

It is worth noting that the common law concept that a tenant should behave and take care of the rental property in a ‘tenant like manner’ no longer implicitly applies to occupation contracts. This means that the expectations that you have of your contract-holders need to be specifically included in the contract. Mostly these issues are covered in supplementary terms within occupation contracts but you are advised to check for issues and add additional terms that are pertinent to your own properties/management practices. These terms must however be ‘fair’ under the requirements of the Consumer Rights Act 2015.

There will be some circumstances where the obligations on the contract-holder will differ depending on whether the contract was converted from an AST or a new contract. One example is the landlords responsibility for the waste associated with ‘wear and tear’ and repair works.

Overview

Section 21 and Section 8 notices, used to regain possession of a property, are no longer able to be issued and new provisions are covered in detail in The Act. Contract-holders also have obligations when they wish to leave a contract.

This part of the training covers the practicalities of managing the end of a contract, options for landlord and contract-holder termination of the contract and what happens when a fixed contract expires.

Termination by agreement

A contract can end at any time if agreed by you and the contract-holder (section 153).

It officially ends when the contract-holder gives up possession of the dwelling in accordance with what you have agreed.

Early Termination by Contract-Holder

A contract-holder can end the contract at any time before it officially starts by giving notice (section 152), by the earlier of:

a. When you give the contract-holder a written statement of the contract, or
b. The occupation date.

Once they give notice, they cease to be bound by the contract, and are entitled to the return of any deposit, rent or other consideration given to you under the contract.

Occupation After Expiry of Fixed Term

If occupation continues after the end of a fixed term contract the landlord and contract-holder have three options.

- **No fees can be charged** for issuing these contracts
- These provisions are detailed in **section 184 and 185** of The Act.

Option 1

Automatic default process:
If the contract-holder remains in occupation at the end of a fixed term contract a new standard periodic contract will be made

The fundamental and supplementary terms of this new contract must be used unedited as they are in the model written statement for a periodic contract; however the terms of the preceding fixed contract can otherwise continue to apply, so far as compatible with the new periodic fundamental and supplementary terms. The rental periods would also remain as they were.

Option 2

Agree with the contract-holder to start a new fixed term standard contract to commence when the current fixed term ends.

This can simply be an updated version of the previous fixed contract should you wish.

Option 3

Agree with the contract-holder to start a new periodic standard contract to commence when the current fixed term ends

This can have bespoke terms and the relevant fundamental and supplementary terms can be amended or omitted if they are agreed by the contract-holder (and if fundamental changes, make the situation better for them).

Whichever option you take, you must do the following:

- The occupation date on the new contract will immediately follow the end of the fixed term
- A new written statement of contract must be given to the contract-holder(s), within 14 days
- It is assumed an address for you where documents can be sent has not changed, so you do not have to re-issue this information to the contract-holder.

If you intend to go down the route of Option 1, The Act allows you to issue the terms of the periodic contract that will come into force at the end of the fixed period at the same time as the initial fixed term contract. If you do this, then you will not have to re-give the written statement of contract for the new periodic contract, 'the potential contract', within 14 days of it starting, as you will have already given a copy to the tenants from the beginning of the fixed term. However, as contracts tend to be quite long it might be a bit confusing to do this, despite being able to.

Can I serve notice for the contract to terminate at the end of the fixed term?

No, not if it is a short term fixed term contract (less than two years). In this case you cannot serve notice during the fixed term to require it to end on the last day of the contract. Therefore, it is best to open an early dialogue with the contract-holder to see what they intend to do before the fixed term contract expires.

Their options are:

- To leave on the last day of the fixed period (so terminate the contract by mutual agreement)
- Continue to live at the property on a 'statutory' periodic contract
- Continue to live there on a new periodic contract, or
- To continue to live at the property but on another fixed term contract.

Despite a new contract, there is continuing occupation by the same contract-holder(s) at the dwelling, so there is no need to re-protect the deposit or issue further required information.

Matters to Have in Place

If you find yourself in the situation where you feel your only option is to terminate the contract, and it is not by mutual agreement, you will need to follow the process set in The Act.

You must have done the following to start possession proceedings:

- Given a written statement of contract to all contract-holders; or
- If you failed to give a written statement within 14 days of the occupation date, but then did issue one, you have waited six months
- Provided the contract-holder with the required information about your address for sending documents to
- Issued a valid Energy Performance Certificate (EPC)
- Given or displayed a relevant gas safety certificate (in line with the Gas Safety Regulations 1998) to the contract-holder
- Provided working smoke alarms and, where required, installed carbon monoxide alarms
- Obtained and given to the contract-holder an electrical condition report and written confirmation of certain other electrical work
- Complied with security and deposit requirements and legal requirements surrounding prohibited payments and holding deposits
- Complied with your registration and licensing requirements under Rent Smart Wales
- Obtained a HMO licence from the local Council where one is needed.

These provisions are covered in the Renting Homes (Amendment) (Wales) Act 2021 at: **legislation.gov.uk/asc/2021/3/contents/enacted**

and The Renting Homes (Wales) Act 2016 (Amendment of Schedule 9A) Regulations 2022 at: **business.senedd.wales/mgIssueHistoryHome.aspx?IId=38597**

Remember this list is different for converted contracts – refer to the back of the relevant prescribed form for further information.

Restriction on giving notice

Best Practice

EPCs are valid for 10 years. The law (Regulation 6(5) of the Energy Performance of Buildings (England and Wales) Regulations 2012) requires you to have one when you let a property.

If the EPC has now expired but the same people are in occupation when you rented the property, that EPC would still be valid for possession purposes. **However, it would be good practice to get a new EPC as you will need one to market or sell the property anyway.**

Possession Orders from the Court

Depending on the reason why you are terminating the contract, will depend on the process you need to follow and the reason you will need to take the case to Court.

The Act covers how the court processes applications, when it can issue a possession order and what it must take into account when doing so.

Some general rules are:

- The court **may not make an order for possession on a ground that is not specified in the landlord's possession notice** (if one is needed) but may allow the ground (or grounds) specified in the possession notice to be altered or added to at any time before that point.

Where a court makes a possession order, The Act now clarifies when the contract ends. It will either end on the date:

- **Specified in the order**, even if the contract-holder gives up possession beforehand, or
- When the **contract-holder gives up possession** of the dwelling where they continue to occupy the dwelling after the date in the order, or
- When the order is performed and the court appointed bailiff removes the contract-holder.

If you need to go down this route and are not experienced in doing so, **you should always seek independent legal advice.**

Further guidance from Welsh Government about the possession process can be found online at: **gov.wales/understanding-possession-process-guidance-private-landlords**

Did you know?

The court may order a landlord to pay compensation to a contract-holder if it is satisfied that a possession order made by the court was obtained using misrepresentation or concealment of material facts.

Breach of Contract

Breach of Contract

Whether fixed or periodic, if the contract-holder breaches the standard contract the landlord may seek possession.

1. Serve notice before making a possession claim.

2. In most cases, you must wait one month after serving the notice before starting the possession claim at court. The contract-holder does not have to still be in breach.

3. After you serve notice, you have 6 months to make a claim for possession (starting on the day you gave the possession notice). If you don't go further to make the claim at court the notice expires. You would have to start the process again to take action on that ground again in future.

4. Once at court, the judge is not obliged to make the possession order. Instead they will consider if it is reasonable to do so, in conjunction with matters detailed in Schedule 10 of The Act. These would include:
   - the nature, frequency or duration of the breach or breaches,
   - the degree to which the contract-holder is responsible for the breach,
   - how likely it is that the breach will recur, and
   - what action you have made to end, or prevent a recurrence of, the breach

5. The court can decide to adjourn proceedings for such a time as it considers reasonable and if it does decide to make a possession order, it may (on making the order, or at any time before it is achieved) postpone the contract-holder having to give up possession of the dwelling for such a time as it thinks fit.

6. If the court adjourns proceedings or postpones the giving up of possession, it must impose conditions on the contract-holder in relation to any rent arrears and the continued payment of any rent until the proceedings are concluded, unless it considers that to do so would cause exceptional hardship to the contract-holder or be unreasonable in any other way.

7. The court may impose any other conditions that it thinks appropriate and can discharge the order for possession against the contract-holder if it considers that the required conditions have been met.

You must use prescribed form RHW23 produced by Welsh Government as your notice before making a possession claim.

Available at: gov.wales/notice-making-possession-claim-form-rhw23

Repudiatory breach by landlord

This is when a landlord refuses to perform a contract obligation which is so significant as to justify termination. In this case a contract-holder can end an occupation contract by giving up possession of the property (section 154).

An example might be where the landlord is required to pay for utility bills under the contract, but fails to do so. With no gas or electric the contract-holder is unable to reasonably live in the dwelling and moves out and ends the contract.

Rent Arrears

The breach of contract process should be followed if the contract-holder is not keeping up with rent payments. However, if they are in serious rent arrears there is a quicker process to follow.

Serious Rent Arrears

‘Serious rent arrears’ is defined in The Act, and arises where:

- There is at least two months’ unpaid rent where rent is payable monthly
- There is eight weeks’ unpaid rent where rent is payable weekly
- At least one quarter’s rent is more than three months in arrears where the rental period is quarterly; or
- At least 25% of the rent is more than three months in arrears where the rental period is a yearly.

Section 181 and section 187 contain these provisions for periodic and fixed term contract respectively.

If the contract-holder is in serious arrears and you wish to end the contract, you must give them a possession notice (RHW20) stating the ground of serious rent arrears before making a possession claim on that ground. Then after **14 days, but no later than 6 months,** from the date of the notice, you can make a possession claim to the courts.The court must make a possession order if it is satisfied the contract-holder was in serious rent arrears at the time the possession notice was given and also when the possession claim is heard by the court. The notice served for serious rent arrears expires after 6 months of being served. If you had not taken it to court by then, you would have to serve another notice on the same ground to take any action.

If your tenants are having trouble paying you their rent, you should talk to them about this as soon as you see the early warning signs. Offering help and advice is always the best starting point, as seeking possession of the property and finding new contract-holders will probably cost you more in the long run and is not in anyone's best interest. There is support and advice for people who are struggling to pay their rent; the Citizens Advice Bureau is a good place to start.

You must use prescribed form RHW20 produced by Welsh Government to give notice of a possession claim on the ground of serious rent arrears.

Available at:
gov.wales/possession-claim-ground-serious-rent-arrears-standard-contract-other-introductory-standard-contract

Termination of Periodic Standard Occupation Contracts

By a contract-holder

The contract-holder may end the contract by giving you at least four weeks notice that he or she will give up possession of the dwelling. This is from section 168 of The Act and might be referred to as a section 168 notice.

If the contract-holder continues to live at the dwelling after the date they said in the notice they would give back possession to you, then you can go to court to get the property back. See the next page for this process, which is the same for fixed term contract's with a contract-holder's break clause.

By a landlord

If you wish to end a periodic standard contract:

- The minimum notice period to terminate the contract is six months, and
- You are not able to serve this notice during the first six months of the contract.

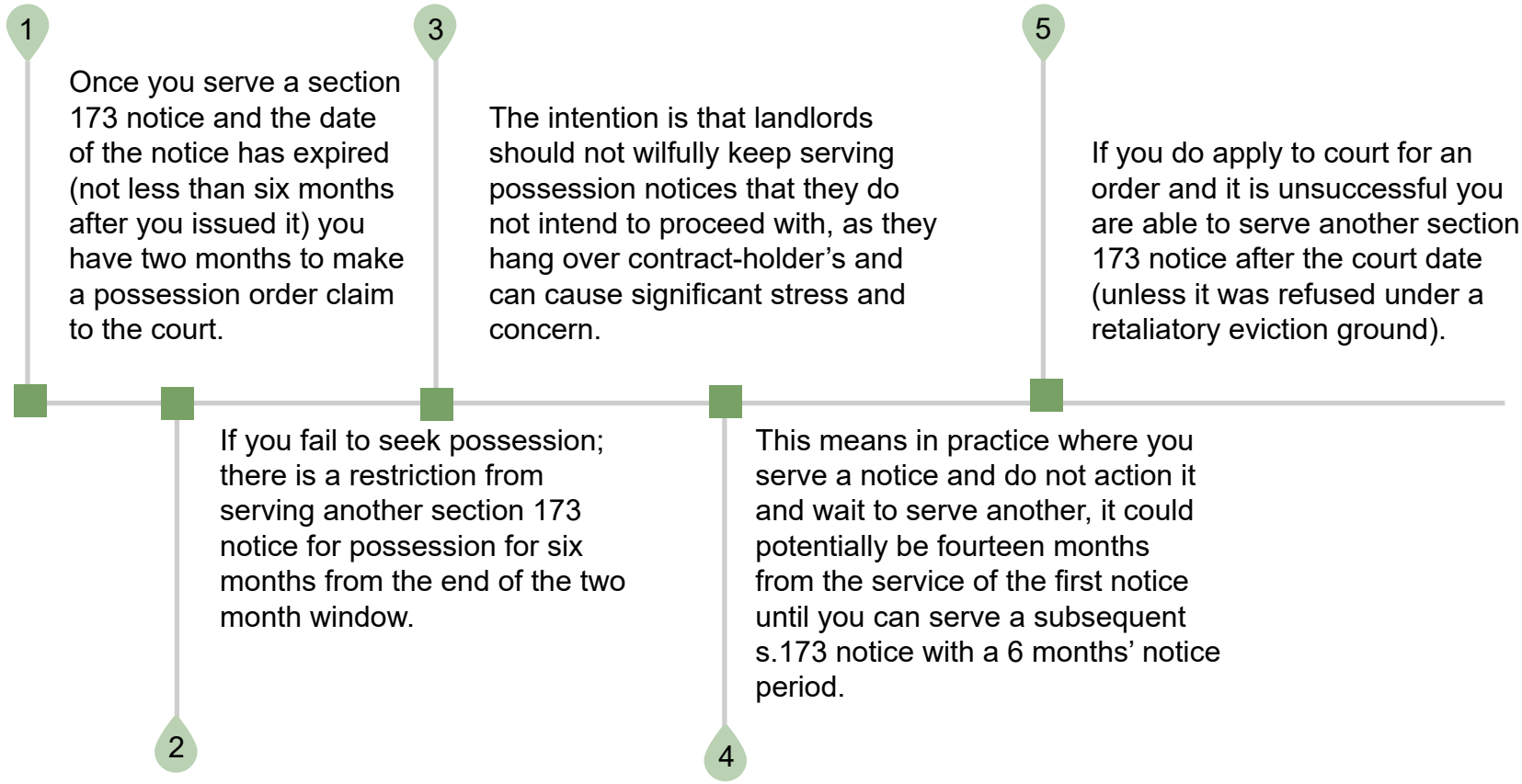
These two requirements combined have the effect of guaranteeing people a minimum twelve month occupancy from the start of their contract (unless they have breached their contract in which case you can follow the process to obtain possession for a breach which the court may allow).

This is from section 173 of The Act and might be referred to as a section 173 notice.

A six month notice period will give people a realistic period of time to find and secure a new home.

You must use prescribed form RHW16 produced by Welsh Government to give notice to terminate a periodic standard contract with six months notice.

Available at:
gov.wales/notice-termination-periodic-standard-contract-six-month-minimum-notice-period-other-introductory



The practice of issuing open ended possession notices is now a thing of the past. It is very important to only issue a section 173 notice in situations where you definitely want possession of the property, not just cases where you might.

Served a section 173 notice and then changed your mind or noticed a mistake?

You can withdraw the notice; however The Act prescribes the way in which you can do this. If within the first 28 days of serving the section 173 notice:

- You can give the contract-holder a notice to withdraw (RHW19) which comes into effect immediately.
- You can then serve a new section 173 notice (RHW16) without waiting a further 6 months (section.177(3)).

If after 28 days, including the day you served the notice you must give notice (RHW19) to withdraw the section 173 notice and request the contract-holder remains at the dwelling. If they object however, in writing and within a reasonable timescale, the initial notice will stay in place. If you do withdraw the notice successfully, you then must wait an additional 6 months before you can serve a possession notice under section 173.

If you follow the correct process and the contract-holder does not give back possession of the property on the said date, you can make a claim to the court. If the court is satisfied everything has been done correctly, because possession in this way is an 'absolute ground', it must make an order for possession. This will still be done via a route which in most cases should only involve court papers and procedures not attendance at court. **Remember you have two months to make this claim otherwise the notice expires.**

The only time a notice under this section could be served without waiting 6 months from the occupation date, is if the standard contract would not be an occupation contract but for a notice under paragraph 3 of Schedule 2 (e.g. holiday accommodation or properties with an owner occupier and a lodger).

You must use prescribed form RHW19 produced by Welsh Government to withdraw a landlord's notice of termination.

Available at: gov.wales/withdrawal-landlords-notice-termination-periodic-standard-contract-form-rhw19

Termination of Fixed Term Occupation Contracts

By a contract-holder

This can only occur if there is a ‘contract-holder’s break clause’ in the fixed term contract. If there is, then the contract-holder must give notice with a minimum of **4 weeks** before they intend to give back possession of the dwelling.

If the contract-holder continues to live at the dwelling after the date they said in the notice they would give back possession to you, then you can go to court to get the property back.

You must:

- Give the contract-holder a possession notice (RHW23 - Notice Before Making a Possession Claim) **within 2 months of the date which the contract-holder said they would leave**, specifying why you intend to make a possession order
- Make the possession claim on or after the day, but no later than 6 months after the day on which you give the contract-holder the possession notice.

If after this process you take the possession order to court and you have followed the process correctly, the court must **grant you a possession order.**

The Act allows the tenant, unless the landlord gives a written objection, to change their mind about the date that they intend to leave the contract, **as long as this is done before the date they intended to move out**. If they did move out earlier, you could still pursue them for any outstanding rent or other obligations under contract to cover the period after they moved out until the date on which they were meant to move out (from their original notice). Equally, if they do not move out on the date they said they would, and then you serve a notice and they subsequently move out, the date they move out is the date the contract ends.

These provisions are contained in sections 189 to 193 of The Act.

By a landlord

A fixed term standard contract cannot be ended by notice from a landlord. The only time it can, is if:

- The fixed term contract is **more than two years**, and
- The contract has a **'landlord's break clause'**.

These provisions are contained in sections 194 to 201 of The Act.

The only time a notice could be used in a contract which has a 'landlord's break clause' for a fixed term less than two years would be where the occupation contract would not be an occupation contract but for a notice under paragraph 3 of Schedule 2 (e.g. holiday accommodation or properties with an owner occupier and a lodger).

If you are involved with fixed term contracts over two years, or for specific type of tenancies, you should **seek independent legal advice** and check whether any notices you might need to serve are prescribed by Welsh Government or not. This training does not cover this topic.

Just like before the 1 December 2022, if you and your contract-holder want to end a contract, you can do this at any time, if by mutual agreement. If you do need to go down a more formal route, Renting Homes should make this process easier than it was under previous legislation, as you have downloadable prescribed forms to use which have detailed notes for both you and the contract-holder.

Scenario

Tenant Kayleigh lives in a small house on the outskirts of Wrexham. She took the house in July 2021 as it is close to the primary school she wanted her 4 year old daughter to go to. She looked for a long time but this was the only property available. She had recently changed jobs and had a little time out of work, so had trouble getting a deposit together.

Due to looking after her daughter until of school age she was unable to find a role which paid her full potential. When she moved in, the landlord Rhys only offered a 6 month fixed term contract, but said he thought it would be fine for her to stay after the 6 months. However on the day she moved in, he also served her with a section 21 notice for possession saying he was just covering his back in case anything went wrong, but again said he was sure it would all be fine as long as she paid her rent and he expected Kayleigh to be there for the foreseeable.

When Rhys left, Kayleigh felt vulnerable and anxious. She had only just got her daughter into school and the landlord was already looking for her to move out again before the end of the school year.

Exercise

Based on the scenario above, do you think the landlord must change his business practices for new contracts issued after the 1 December 2022? Check your answer on page 92.

Yes No

Retaliatory Eviction

All contract-holders have a right to have a home which is free from disrepair and fit to live in. This includes having working compliant smoke alarms, a safe electrical installation and carbon monoxide detectors.

If the contract-holder complains to the landlord about the property conditions and the landlord decides to ignore their obligations and opt to end the contract, this is termed ‘retaliatory eviction’.

In section 217 of The Act, when a landlord tries to issue a ‘no fault’ possession notice in response to a request to repair, the court can refuse to make a possession order. This will happen if the contract-holder relies on a defence to possession based on the failure of the landlord to meet their obligations relating to repair or FFHH (s. 91 or 92 of The Act) and the court is satisfied that the landlord has made the possession claim to avoid complying with those obligations. If the order is **refused**, the landlord cannot issue a further ‘no fault’ possession notice for **another six months.**

This applies to possession claims under section 173 (periodic contracts) and 194 (break clauses in fixed term contracts allowable where the fixed term is two years or more).

There is no legal way to gain possession of your property if there are outstanding repair obligations or if it is not fit for human habitation (unless by mutual agreement with the contract-holder or by an order made by a court). This is why it is so important to keep on top of maintenance at your rental, undertake good quality repairs and have an open dialogue with the tenant about concerns they might have.

This provision does not apply in relation to fixed term standard contracts for a term of seven years or more, as sections 91 and 92 are not automatically incorporated into such contracts.

If the contract-holder tells you about a defect, damage or disrepair in the dwelling which they believe is your responsibility, you should respond and confirm:

a. Whether you consider the repair to be necessary
b. Whether the repair is your responsibility or the contract-holder’s, and
c. If the repair is your responsibility when it will be undertaken and completed.

This process will help you and the contract-holder understand each other’s expectations and intentions.

Abandonment

The Act brings in an easier process to take back possession of your rental when you believe it has been abandoned by the contract holder. You must still carry out investigations to satisfy yourself the property is abandoned, but if it has been, you can simply serve a four week warning notice before you take back control of the property. You do not need to go to court to obtain a court order.

As with all notices under The Act, it would be sufficient to serve the warning notice by posting it to the rental in question for the contract holders attention. If they have indicated they would receive documentation via electronic means, you should send it to them that way too.

You must be sure the contract holder has actually abandoned the property. Even if they have not been home for a few days or weeks, you cannot assume they have abandoned the property; there may be another explanation.

Throughout your investigation, make sure that you are documenting every step in case you need to show your evidence later on. If you are found to have assumed wrongly, you could be taken to court to prove your case.

You must use prescribed form RHW27 produced by Welsh Government to give notice of your intention to end an occupation contract due to abandonment.

Available at: gov.wales/landlords-intention-end-occupation-contract-due-abandonment-form-rhw27

Things to consider:

- Are they paying rent?
- Talk to neighbours and see if they know anything.
- Contact their emergency contacts.
- Can you see through the windows if the tenant's possessions are still in the accommodation?

The warning period starts on the day the notice (RHW27) is given and lasts four weeks. The notice must:

- State why you believe the contract-holder has abandoned the dwelling.
- Inform the contract-holder that he or she must contact you in writing before the end of the 'warning period' to confirm the dwelling is not abandoned, and that if he or she does not do so, you will end the contract.

Once the four weeks are up, and you are sure the dwelling has been abandoned and the contract-holder has not been in touch, you may end the contract. But you must give the contract-holder a further notice (RHW28). At this point, you are able to enter the dwelling at any time, using reasonable force if necessary, to take back control of it and to make it and its contents secure.

If, within six months of recovery of possession, the contract-holder comes forward and believes they had a good reason for not responding to the warning notice, they can contest the action you have taken by applying to the court. This is possible under section 222 of The Act. That is why it is so important to document all efforts you make to decide on the action you took.

You must use prescribed form RHW28 produced by Welsh Government to give notice you are ending an occupation contract due to abandonment.

Available at: end-occupation-contract-due-abandonment-form-rhw28

What if there is anything left at the property by the contract-holder when abandoned?

What you must do has been set out by the Welsh Government in The Renting Homes (Safeguarding Property in Abandoned Dwellings) (Wales) Regulations 2022. The process is:

- You must keep safe all belongings left in the dwelling which are the contract-holders for four weeks from the day on which the contract ends.
- After four weeks you can dispose of the belongings.

However, if the contract-holder (or a person who owns the belongings) arranges for its collection, you must keep it safe until it is collected and you must give it to them when someone arrives to collect it. You are able to charge for expenses incurred; and can require some or all of this to be paid before you hand over the belongings.

If you do dispose of belongings in a permitted way, you can deduct your expenses (and any rent arrears due under the contract after 4 weeks) from the proceeds of sale of the items.

There are certain items which you can dispose of as soon as the contract ends. **These are:**

- Perishable items
- Items which would be unreasonably expensive or inconvenient to keep safe
- Items the value of which would not, in your opinion, exceed the amount which you may make from proceeds of sale.

There is a similar process to follow if a joint contract-holder is not using the property as their only or principal home. This process includes specific prescribed forms **RHW29** - Notice of landlord's intention to end rights and obligations of a joint contract-holder due to non-occupation and **RHW30** - Notice of end of rights and obligations of a joint contract-holder due to non-occupation.

There is WG issued guidance in relation to Abandonment and Safeguarding Property Left Possession of abandoned dwellings and safeguarding of property at:
gov.wales/possession-abandoned-dwellings-and-safeguarding-property-guidance

Course Reflection and Further Information

Contract termination and re-possession arrangements have changed significantly to achieve the Welsh Government aim of providing contract holders with peace of mind that they have a place to live for at least a year following occupation. This is a complex area of law with costly and time consuming consequences for you if procedures are not followed correctly and in accordance with statutory time limits and using the information contained in prescribed forms. We always recommend you seek advice from a reputable source if action to re-possess becomes necessary.

We hope this and the other resources referenced throughout the course will assist you with the more complex processes on an ongoing basis.

Further information can be found on our website at: **rentsmart.gov.wales/en/rentinghomes/**

Please be aware, if you have a query about Renting Homes and how it applies to your rental, Rent Smart Wales are not able to offer you specific advise. Instead, you should visit the Welsh Government website at **gov.wales/retinghomes** for detailed guidance and further information, or get independent legal advice.

Working together
for a safe home for all

Answers

Module One: Scenarios (page 11)	
Question 1	**Answer:** No, he doesn't. There is a specific exemption in Schedule 2 for people who are living in accommodation with the landlord and 'sharing' living space or amenities not just access routes in a dwelling (and it is the landlord's main or principle home). However, Mike could follow the notice procedure set out in The Act to issue an occupation contract if he so wished.
Question 2	**Answer:** B **-** The property rented to a Limited Company cannot be an occupation contract under The Act because the person contracted with is not an individual but a Body Corporate. The property rented by Gwyneth to private tenants on an AST will convert to a standard occupation contract on the 1 December 2022.

Module Four: Property Conditions Exercise (page 52)	
Question 1	**Answer:** B - Possibly yes; however you would need to visit the property first, maybe with a qualified contractor, to assess the mould growth, check for any contributing disrepair at the dwelling and to see if there was anything else which could be installed in the property to reduce the problem (for instance a humidistat extractor fan or air brick in the bedroom).
Question 2	**Answer:** B - Contact your plumber and ask for an emergency response. Advise the tenant the contractor can attend that day, to which they agree. The plumber attends but cannot fix the problem until the next day. You therefore buy electric heaters and an extra kettle for the tenant and drop them around to tide them over.

Module Six: Ending a Contract Scenario (page 85)	
Question 1	**Answer:** Yes, the landlord will no longer be able to act as they did previously. A landlord cannot issue a notice for possession during the fixed term of the contract. All grounds for possession are subject to an available defence of the contract-holder's human rights.