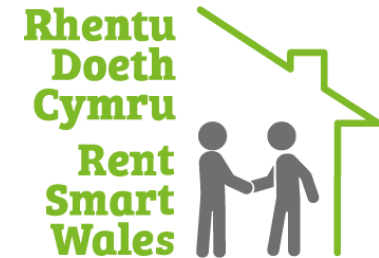


Possession under the Renting Homes (Wales) Act 2016 - Overview

This is a quick guide for standard occupation contracts under the Renting Homes (Wales) Act 2016 (The Act) created by RSW. It covers both converted contracts and new contracts under The Act.

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



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Type of Contract:	Section of Act	Prescribed Form	Timescales	Expiry and re-serving
Periodic Contracts – no fault possession				
Converted Periodic Contract – section 21 of HA88 notice served before 01/12/2022	n/a	n/a	2 months' notice period as served before 01/12/2022	The possession claim to court must be made by the 31 January 2023 or within two months of the notice expiring (whichever is later) otherwise it is no longer valid.
Special Circumstances:	Once notice no longer valid; normal possession under a converted contract must be followed. Can serve straight away using process below – no period needed to wait.			
Converted Periodic Contract	Schedule 12 – 25A	RHW17 (until 31 May 23). From 1 June 2023 use RHW16)	2 months' notice (*until 31 May 2023; from that date changes to a 6 month notice period). Cannot be served in the first 4 months starting with the day on which the contract-holder became entitled to occupy the dwelling under the original tenancy or licence (e.g. AST)	The possession claim to court must be made within two months of the notice for possession expiring, otherwise it is no longer valid. If the notice for possession expires, a landlord is required to wait six months to serve another no-fault notice under s173.

Type of Contract:	Section of Act	Prescribed Form	Timescales	Expiry and re-serving
Special Circumstances:	<p>In accordance with section 176 of the Renting Homes (Wales) Act 2016, this notice may not be given at a time when there is a breach of any statutory obligations listed in Schedule 9A to that Act (only those relevant to converted contracts):</p> <ol style="list-style-type: none"> 1. Failure to provide written statement (comes in 01/06/2023 – From Schedule 12) 2. Six-month restriction following failure to provide written statement within the period specified in section 31 (comes in 01/06/2023 – From Schedule 12) 3. Failure to provide information on landlord’s address (comes in 01/06/2023 – From Schedule 12) 4. Failure to provide valid energy performance certificate 5. Breach of security and deposit requirements 6. Prohibited payments and holding deposits under the Renting Homes (Fees etc.) (Wales) Act 2019 7. Failure to ensure that working smoke alarms are installed (comes in 01/12/2023 – from Fitness Regs - 7) 8. Failure to supply electrical condition report etc (comes in 01/12/2023 – from Fitness Regs - 7) 9. Failure to provide gas safety report to contract-holder 10. Failure to install carbon monoxide alarms where needed. <p>If notice does get to court, and it appears the landlord is asking for possession to avoid their obligations under sections 91 or 92 of the Act in relation to fitness for human habitation or keeping the property in repair, the court might uphold a defence from the contract-holder of ‘Retaliatory Eviction’ and refuse the possession claim. The landlord would then be unable to serve a subsequent possession notice for 6 months.</p>			
‘Substitute Contract’ (Periodic)	s.184 covers substitute contracts. Schedule 12, 25A to the 2016 Act covers possession for these new ‘substitute’ contracts	RHW16	6 months’ notice	<p>Once notice expired – two months to take it to court. If don’t take it to court, have to wait further 6 months before can serve again following the two months window.</p> <p>If landlord does apply to court for an order and it is unsuccessful, they are able to serve another section 173 notice after the court date (unless it was refused under a retaliatory eviction ground).</p>

Type of Contract:	Section of Act	Prescribed Form	Timescales	Expiry and re-serving
Special Circumstances:	<p>Due to the unique circumstances where the contract-holder is an original contract-holder who was once on an AST and they are the same people in occupation, the landlord still has until the 30 November 2023 to install compliant smoke alarms and to obtain a suitable Electrical Condition Report (ECR) – so can seek possession up to this date even if these are not in place. Any security deposit taken remains protected.</p> <p>Otherwise, normal requirements apply:</p> <p>In accordance with section 176 of the Renting Homes (Wales) Act 2016, this notice may not be given at a time when there is a breach of any statutory obligations listed in Schedule 9A to that Act:</p> <ol style="list-style-type: none"> 1. Failure to provide written statement 2. Six-month restriction following failure to provide written statement within the period specified in section 31 3. Failure to provide information on landlord's address 4. Failure to provide valid energy performance certificate 5. Breach of security and deposit requirements 6. Prohibited payments and holding deposits under the Renting Homes (Fees etc.) (Wales) Act 2019 7. Failure to provide gas safety report to contract-holder 8. Failure to install carbon monoxide alarms where needed 9. Failure to ensure that working smoke alarms are installed (comes in 01/12/2023 – from Fitness Regs - 7) 10. Failure to supply electrical condition report (comes in 01/12/2023 – from Fitness Regs - 7). <p>If notice does get to court, and it appears the landlord is asking for possession to avoid their obligations under sections 91 or 92 of the Act in relation to fitness for human habitation or keeping the property in repair, the court might uphold a defence from the contract-holder of 'Retaliatory Eviction' and refuse the possession claim. The landlord would then be unable to serve a subsequent possession notice for 6 months.</p>			
Periodic Contract (new)	s.173	RHW16	6 months' notice. Cannot be served in first 6 months of occupation contract starting	Once notice expired – two months to take it to court. If landlord doesn't take it to court to claim the possession order, they must wait further 6 months (from last day of the period before the end of which the landlord could have made the claim) before

Type of Contract:	Section of Act	Prescribed Form	Timescales	Expiry and re-serving
				<p>they can serve again following the two months window (s. 177(5)).</p> <p>If landlord does apply to court for an order and it is unsuccessful, they are able to serve another section 173 notice after the court date (unless it was refused under a retaliatory eviction ground).</p> <p>Landlord can withdraw (using form RHW19). If withdrawn within 28 days of the first notice of termination under section 173 of that Act the landlord can give the contract-holder(s) one further notice of termination without waiting. However, if after 28 days and in accordance with section 177 of the Renting Homes (Wales) Act 2016, the landlord may not give the contract-holder(s) a further notice of termination under section 173 of that Act within six months of the date that the notice was withdrawn.</p>
Special Circumstances:	<p>In accordance with section 176 of the Renting Homes (Wales) Act 2016, this notice may not be given at a time when there is a breach of any statutory obligations listed in Schedule 9A to that Act:</p> <ol style="list-style-type: none"> 1. Failure to provide written statement 2. Six-month restriction following failure to provide written statement within the period specified in section 31 3. Failure to provide information on landlord's address 4. Failure to provide valid energy performance certificate 5. Breach of security and deposit requirements 6. Prohibited payments and holding deposits under the Renting Homes (Fees etc.) (Wales) Act 2019 7. Failure to provide gas safety report to contract-holder 8. Failure to install carbon monoxide alarms where needed 			

Type of Contract:	Section of Act	Prescribed Form	Timescales	Expiry and re-serving
	9. Failure to ensure that working smoke alarms are installed 10. Failure to supply electrical condition report. If notice does get to court, and it appears the landlord is asking for possession to avoid their obligations under sections 91 or 92 of the Act in relation to fitness for human habitation or keeping the property in repair, the court might uphold a defence from the contract-holder of 'Retaliatory Eviction' and refuse the possession claim. The landlord would then be unable to serve a subsequent possession notice for 6 months.			
Fixed Term Contract – no fault possession				
Converted Fixed Term Contract – section 21 of HA88 notice served before 01/12/2022			2 months' notice period as served before 01/12/2022	The possession claim to court must be made by the 31 January 2023 or within two months of the notice expiring (whichever is later) otherwise it is no longer valid.
Special Circumstances:	Once notice no longer valid; normal possession under a converted contract must be followed. Can serve straight away using process below – no period needed to wait.			
Converted Fixed Term Contract	Schedule 12 – 25B	RHW38	2 months' notice minimum	<ol style="list-style-type: none"> 1. The notice must be given before or on the last day of the fixed term contract and must give at least 2 months' notice 2. The date to require possession by cannot be less than six months after the original occupation date of the fixed term. 3. The notice cannot require possession before the last day of the fixed term.
Special Circumstances:	Notice may not be given at a time when there is a breach of any statutory obligations listed in Schedule 9A to that Act: <ol style="list-style-type: none"> 1. Failure to provide written statement (comes in 01/06/2023 – From Schedule 12) 			

Type of Contract:	Section of Act	Prescribed Form	Timescales	Expiry and re-serving
	<p>2. Six-month restriction following failure to provide written statement within the period specified in section 31 (comes in 01/06/2023 – From Schedule 12)</p> <p>3. Failure to provide information on landlord’s address (comes in 01/06/2023 – From Schedule 12)</p> <p>4. Failure to provide valid energy performance certificate</p> <p>5. Breach of security and deposit requirements</p> <p>6. Prohibited payments and holding deposits under the Renting Homes (Fees etc.) (Wales) Act 2019</p> <p>7. Failure to ensure that working smoke alarms are installed (comes in 01/12/2023 – from Fitness Regs - 7)</p> <p>8. Failure to supply electrical condition report etc (comes in 01/12/2023 – from Fitness Regs - 7)</p> <p>9. Failure to provide gas safety report to contract-holder</p> <p>10. Failure to install carbon monoxide alarms where needed.</p> <p>If notice does get to court, and it appears the landlord is asking for possession to avoid their obligations under sections 91 or 92 of the Act in relation to fitness for human habitation or keeping the property in repair, the court might uphold a defence from the contract-holder of ‘Retaliatory Eviction’ and refuse the possession claim. The landlord would then be unable to serve a subsequent possession notice for 6 months.</p>			
‘Substitute Contract’ (Fixed)	s.184 covers substitute contracts. Schedule 12 to the 2016 Act covers possession for these new ‘substitute’ contracts	n/a	Cannot serve no fault notice during fixed term.	n/a
Special Circumstances:	<p>A fixed term standard contract cannot be ended by notice from a landlord. The only time it can, is if:</p> <ul style="list-style-type: none"> • The fixed term contract is more than two years, and • The contract has a ‘landlord’s break clause’. <p>These provisions are contained in sections 194 to 201 of The Act.</p>			
Fixed Term Contract (new)	n/a	n/a	Cannot serve no fault notice during fixed term	n/a

Type of Contract:	Section of Act	Prescribed Form	Timescales	Expiry and re-serving
Special Circumstances:	<p>A fixed term standard contract cannot be ended by notice from a landlord.</p> <p>The only time it can, is if:</p> <ul style="list-style-type: none"> • The fixed term contract is more than two years, and • The contract has a 'landlord's break clause'. <p>These provisions are contained in sections 194 to 201 of The Act.</p>			
Fixed Term Contract with landlord break clause – no fault possession				
Converted Fixed Term with break clause Contract – section 21 of HA88 notice served before 01/12/2022			2 months' notice period as served before 01/12/2022	The possession claim to court must be made by the 31 January 2023 or within two months of the notice expiring (whichever is later) otherwise it is no longer valid.
Special Circumstances:	If notice no longer valid, normal possession for a converted contract kicks in.			
Converted Fixed Term with break clause Contract	Schedule 12 – 25D	RHW25	Two months' notice Cannot be served in the first 4 months starting with the day on which the contract-holder became entitled to occupy the dwelling under the original	Break clauses are agreed between the parties and the RHA does not make provision for these contracts relating to this matter.

Type of Contract:	Section of Act	Prescribed Form	Timescales	Expiry and re-serving
			tenancy or licence (e.g. AST)	
Special Circumstances:	These are the same as for converted periodic contracts			
Fixed Term Contract with break clause (only if contract over 2 years – this guide does not cover Sch 9C contracts)	s.194	RHW24	6 months' notice but not within first 18 months.	The possession claim to court must be made within two months of the notice for possession expiring, otherwise it is no longer valid. Withdrawal is RHW26. Can serve again at any time, unless considered retaliatory by the court.
Special Circumstances:	<p>Notice may not be given at a time when there is a breach of any statutory obligations listed in Schedule 9A to that Act:</p> <ol style="list-style-type: none"> 1. Failure to provide written statement 2. Six month restriction following failure to provide written statement within the period specified in section 31 3. Failure to provide information on landlord's address 4. Failure to provide valid energy performance certificate 5. Breach of security and deposit requirements 6. Prohibited payments and holding deposits under the Renting Homes (Fees etc.) (Wales) Act 2019 7. Failure to provide gas safety report to contract-holder 8. Failure to install carbon monoxide alarms where needed 9. Failure to ensure that working smoke alarms are installed) 10. Failure to supply electrical condition report. <p>If notice does get to court, and it appears the landlord is asking for possession to avoid their obligations under sections 91 or 92 of the Act in relation to fitness for human habitation or keeping the property in repair, the court might uphold a defence from the contract-holder of 'Retaliatory Eviction' and refuse the possession claim. The landlord would then be unable to serve a subsequent possession notice for 6 months.</p>			

Type of Contract:	Section of Act	Prescribed Form	Timescales	Expiry and re-serving
Serious Rent Arrears				
All standard contracts	Section 181 and section 187 for periodic and fixed term contracts respectively.	RHW20	14 days' notice minimum, but must be taken before 6 months to court	Expires 6 months after service. Do not have to wait further to serve another if expires as this is a fault ground.
Special Circumstances:	<p>'Serious rent arrears' is defined in The Act, and arises where:</p> <ul style="list-style-type: none"> • 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. <p>Section 216 provides that the court must (subject to any available defence based on the contract-holder's Convention rights) make an order for possession of the dwelling if it is satisfied that the contract-holder—</p> <p>(a) was seriously in arrears with his or her rent on the day on which the landlord gave the contract-holder the possession notice, and</p> <p>(b) is seriously in arrears with his or her rent on the day on which the court hears the possession claim.</p>			
Breach of Contract				
All standard contracts	s.157	RHW23	1 month minimum notice, but must be taken to court within 6 months of service date	Expires 6 months after service. Do not have to wait further to serve another if expires as this is a fault ground.
Special Circumstances	<p>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:</p> <ul style="list-style-type: none"> • 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. 			

Type of Contract:	Section of Act	Prescribed Form	Timescales	Expiry and re-serving
	<p>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.</p> <p>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.</p> <p>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.</p>			
Anti-social behaviour				
All standard contracts	s.157	RHW23 (or RHW 32 and 33 if joint contract-holder's)	Same day as service can take to court	Expires 6 months after service. Do not have to wait further to serve another if expires, as this is a fault ground.
Special Circumstances	No notice period to expire. The court will make an order for possession if they consider it reasonable to do so.			
Abandonment				
All standard contracts	s.220	RHW27 and RHW28	4 weeks warning notice then service of main notice and possession on same day	n/a
Special Circumstances	<p>The warning period starts on the day the notice (RHW27) is given and lasts four weeks. The notice must:</p> <ul style="list-style-type: none"> State why the landlord believes the contract-holder has abandoned the dwelling. 			

Type of Contract:	Section of Act	Prescribed Form	Timescales	Expiry and re-serving
				<ul style="list-style-type: none"> Inform the contract-holder that he or she must contact the landlord 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, the landlord will end the contract. <p>Once the four weeks are up, and the landlord is sure the dwelling has been abandoned and the contract-holder has not been in touch, they may end the contract by giving the contract-holder a further notice (RHW28). At this point, the landlord can 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.</p> <p>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 the landlord has taken by applying to the court. This is possible under section 222 of The Act.</p> <p>There is a similar process to follow if a joint contract-holder is not using the property as their only or principal home.</p> <p>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.</p> <p>There is WG issued guidance in relation to Abandonment and Safeguarding Property Left Possession of abandoned dwellings and safeguarding of property at: www.gov.wales/possession-abandoned-dwellings-and-safeguarding-property-guidance</p>