

Guidance on converting an existing tenancy or licence into an occupation contract under Renting Homes (using a periodic standard contract as an example).

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Introduction

Nearly all tenancies and licences which exist prior to the appointed day (the day the Act comes into force) of the Renting Homes (Wales) Act 2016 (the Act) will convert to occupation contracts. The type of occupation contract they convert to will depend on the type of tenancy or licence they were prior to the appointed day. For example, a secure tenancy held by a local authority tenant will convert into a secure occupation contract, and an assured shorthold tenancy held by a tenant of a private landlord will convert to a standard occupation contract. As an example, this guidance focuses on a periodic assured shorthold tenancy (AST) which will convert to a periodic standard occupation contract.

Unlike new occupation contracts issued after the Act comes into force, where the default terms of the contract will be those set out in the Act and any accompanying regulations, the conversion process recognises there are certain terms which exist within current tenancies and licences where it would be unfair to the landlord or contract-holder to replace them. Schedule 12 is the mechanism for the conversion of contracts and sets out the special rules which apply to the conversion process, some of which will be covered later in this guidance.

Conversion strikes a balance between the required terms necessary for the occupation contract to operate under the Act, whilst making specific provision for some existing terms to be maintained within the converted contract.

This guidance sets out the changes that would be required to the terms included in the model written statement of a periodic standard contract (as set out in the Renting Homes (Model Written Statements of Contract) (Wales) Regulations 2022 [Model written statement for periodic standard contracts | GOV.WALES](#) in order to convert a periodic AST to a periodic standard contract. Under the Act landlords are required to provide the contract-holder with a written statement and whilst there is no obligation on any landlord to use the model written statement (MWS) as a template for conversion, it is likely to be the most straightforward starting point for converting an existing AST.

A landlord will also need to consider The Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022 for any explanatory information which may apply to the converted contract.

[SL\(6\)132 - The Renting Homes \(Explanatory Information for Written Statements of Occupation Contracts\) \(Wales\) Regulations 2022 \(senedd.wales\)](#)

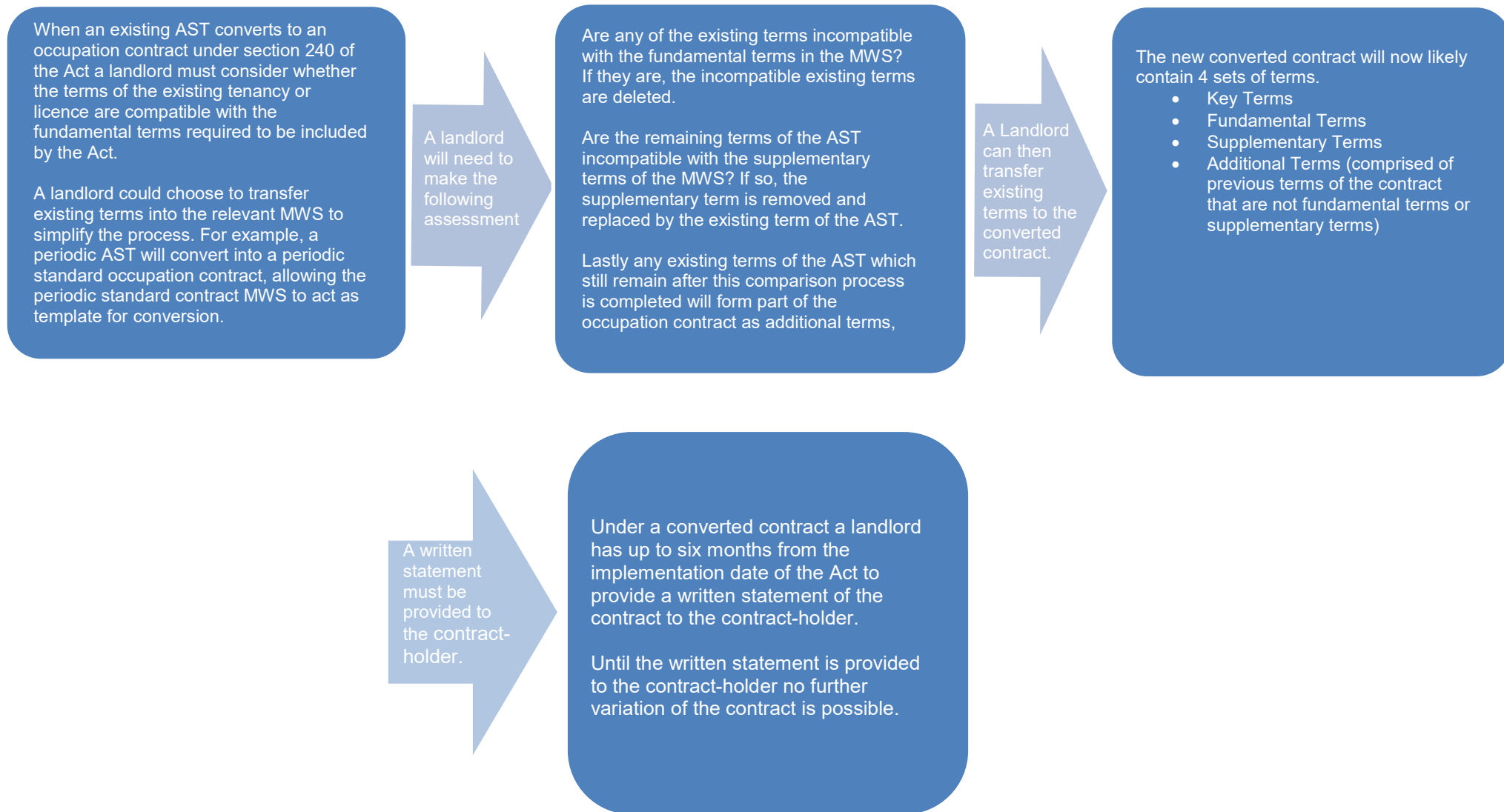
Figure 1 below sets out the process a landlord might follow when comparing the AST to the periodic standard contract MWS. As set out, a landlord will need to review each of the existing terms of the AST to decide whether that term will, or will not, form part of the converted contract.

Together with this review a landlord will also have to consider the impact of Schedule 12 to the Act on the terms of the contract.

Other guidance documents available at: [Renting Homes: housing law is changing | Sub-topic | GOV.WALES](#) will also provide helpful advice for landlords, however, as a reference for this guidance an occupation contract will consist of four different types of term.

- **Key matters:** Which for example include the names of the parties, rent payable and address of the property. These must be inserted in every contract.
- **Fundamental Terms:** Cover the most important aspects of the contract, including the possession procedures and the landlord's obligations regarding repair.
- **Supplementary Terms:** Deal with the more practical, day to day matters applying to the occupation contract, for example, the requirement for a contract-holder to notify the landlord if the property is going to be empty for four weeks or more.
- **Additional Terms:** Addresses any other specifically agreed matters, for example a term which relates to the keeping of pets. Any additional terms must be fair, as required by the Consumer Rights Act 2015 and must not conflict with a key matter, fundamental term or supplementary term.

Fig 1. Existing AST conversion using the MWS as template



Conversion of existing tenancy or licence

Following the flow chart at *fig 1* a landlord will consider the existing terms of their current AST and their compatibility with the MWS. The first determination will be whether any of the existing terms are incompatible with the fundamental terms of the MWS, fundamental terms are denoted by an '(F)' or '(F+)' within the MWS.

(F) denotes a fundamental term which cannot be modified or omitted.

(F+) denotes a fundamental term which can be modified or omitted where the effect of this would be that the position of the contract-holder is improved.

Once a written statement has been provided to the contract-holder the terms of the converted contract may be varied if agreed.

Examples of current terms which would be incompatible with fundamental terms are as follows:

1. Term 23 of the MWS is a fundamental term (F+) allowing a contract-holder, who suffers any loss, injury or damage to personal property because of a landlord's failure to comply with their obligations under fitness for human habitation or repair, to bring proceedings for such loss, injury or damage against the landlord. Any existing term which places no responsibility on the landlord for any injury, loss or damage as a result of disrepair would be incompatible with the fundamental term. As a result of this incompatibility the existing term will be removed and will not form part of the occupation contract.
2. Term 41 of the MWS is a fundamental term (F+) and it allows a contract-holder to end the occupation contract after providing notice to the landlord. Term 42 of the MWS is also a fundamental term (F+) and it sets the minimum notice period required by the contract-holder to end the occupation contract at 4 weeks. Any existing term which prevents a contract-holder from ending the occupation contract through the giving of a notice or which sets such a notice period longer than 4 weeks would be incompatible with the fundamental term/s. As a result of this incompatibility the existing term/s will be removed and will not form part of the occupation contract.
3. Term 82 of the MWS is a fundamental term (F) and requires that *any notice, statement or other document required or authorised to be given or made by an occupation contract must be in writing*. Any existing term which allows, for example a landlord to provide any statement verbally or issue any notice over the telephone would be incompatible with the fundamental term. As a result of this incompatibility the existing term will be removed and will not form part of the occupation contract.
4. Term 74 of the MWS is a fundamental term (F+) requiring a landlord and contract-holder to *agree to any variation of a contract term*. Any existing term

which allows, for example a landlord to vary any term unilaterally would be incompatible with the fundamental term. As a result of this incompatibility the existing term will be removed and will not form part of the occupation contract.

Having completed the comparison of existing terms against the fundamental terms of the MWS, a landlord can go on to compare the remaining terms of their AST against the supplementary terms of the MWS. Supplementary terms are denoted by an '(S)' within the MWS. Unlike fundamental terms which supersede any incompatible existing terms, a supplementary term which is incompatible with an existing term is itself removed from the MWS and replaced by the pre-existing term.

Examples of a current terms which would be incompatible and as a consequence replace the supplementary term within the MWS.

1. Term 9 of the MWS is a supplementary term which prevents the contract-holder carrying out any form of business from the dwelling without the landlord's consent. However, such a term would be incompatible with any existing term which currently permits a business to be carried out from the dwelling. As a result of this incompatibility the supplementary term will be removed and replaced by the existing term in the converted contract.
2. Term 24 of the MWS is a supplementary term which deals with changes to the dwelling without the consent of the landlord. Under this term a contract-holder is, for example, prevented from erecting a satellite dish or shed without first obtaining consent of the landlord. However, such a term would be incompatible with any existing term which permits any such change without the need for consent. As a result of this incompatibility the supplementary term will be removed and replaced by the existing term.
3. Term 26 of the MWS is a supplementary term which deals with the security of the dwelling and requires the contract-holder to notify the landlord if the dwelling has or will be unoccupied for 28 or more consecutive days. However, such a term would be incompatible with any existing term which sets a different requirement, such as a shorter or longer period, around notifying the landlord should the dwelling be vacant. As a result of this incompatibility the supplementary term will be removed and replaced by the existing term.
4. Term 83 of the MWS is a supplementary term which requires the contract-holder to keep safe and pass on any notices, orders or documents addressed to the landlord within a reasonable time. However, such a term would be incompatible with any existing term which sets a different requirement, such as a postal redirect or the landlord collecting such documents from a safe place. As a result of this incompatibility the supplementary term will be removed and replaced by the existing term.

Having completed the comparison of all existing terms with the fundamental and supplementary terms, it is likely there will still be some existing terms of the AST remaining. In such cases those terms which remain, provided they are not incompatible with any fundamental or supplementary term, will form part of the new occupation contract as *additional terms*. Examples of current terms which would convert to additional terms of the occupation contract include terms relating to:

- the keeping of pets;
- the upkeep of garden areas;
- the payment of community charges within an HMO; or
- parking restrictions at the dwelling.

Schedule 12 to the Renting Homes (Wales) Act 2016

Schedule 12 to the Act makes special provision in relation to tenancies and licences which existed before the Act came into force. Specifically, within the context of this guidance, Schedule 12 overrides some of the outcomes which would arise when a landlord undertakes the conversion process previously set out.

For example:

Terms 55 of the MWS is a fundamental term (F+) and allows a landlord to serve a possession notice on the contract-holder, even where the contract-holder has not breached the contract. Term 56 is also a fundamental term (F+) and requires the notice period of a notice served under term 55 to be a minimum of six months. These terms are incompatible with existing notice provisions under section 21 of the Housing Act 1988. For example, section 21 of the 1988 Act requires the landlord to serve a minimum of only two months' notice. Following the conversion process set out above, any existing terms relating to section 21 within the current contract would be incompatible with terms 55 and 56 and would be removed on conversion. However, Schedule 12 of the Act makes specific provision preserving the two-month notice period under section 174 of the Act (reflected in term 56 of the MWS) for converted contracts. This is described further in the example comparison below. See also *Table 1 – The Application of Schedule 12*.

Example A - Terms 55 and 56 for new occupation contracts:

Termination by the landlord: landlord's notice

55. Landlord's notice (F+)

The landlord may end this contract by giving you notice that you must give up possession of the dwelling on a date specified in the notice.

56. Minimum notice period (F+)

The date specified in any notice given under term 55 may not be less than **six** months after the day on which the notice is given to you.

Example B - Terms 55 and 56 for converted occupation contracts:

Termination by the landlord: landlord's notice

55. Landlord's notice (F+)

The landlord may end this contract by giving you notice that you must give up possession of the dwelling on a date specified in the notice.

56. Minimum notice period (F+)

The date specified in any notice given under term 55 may not be less than **two** months after the day on which the notice is given to you.

Table 1 – The Application of Schedule 12.

Provisions contained within Schedule 12 which are relevant to the conversion of an AST are set out below. This table does not include all the provisions of Schedule 12, some of which may be relevant after the conversion process has been completed. Landlords should also review this guidance and Schedule 12 for any further additions or clarifications made prior to implementation of the Act.

Schedule 12 provision	Application
<p>11</p> <p>(1) The landlord must give the contract-holder under a converted contract a written statement of the contract before the end of the period of six months starting with the appointed day (“the information provision period”).</p> <p>(1A) Section 31(2) (provision of written statement to new contract-holder) does not apply in relation to a converted contract during the information provision period.</p> <p>(2) Any references in this Act to the landlord's obligation under section 31(1) are to be read, in relation to converted contracts, as references to the landlord's obligation under sub-paragraph (1).</p>	<p>Provides a period of six months*, from the date the Act comes into force, for a landlord to provide a written statement to the contract-holder, including where there is a change of contract-holder.</p> <p>*This six month period is referred to as the information provision period.</p>
<p>12</p> <p>Sections 36 and 37 (applications to court) apply in relation to a written statement provided because of paragraph 11(1) as if for the words in section 36(3) and 37(3)* there were substituted—</p>	<p>The contract-holder may not make an application to the court in relation to a landlord’s breach of section 36 or 37 until after the end of the information provision period (6 months). However, where the landlord has provided the</p>

<p>“If the landlord was required to provide the written statement under paragraph 11(1) of Schedule 12, the contract-holder may not apply to the court under subsection (1) before—</p> <ul style="list-style-type: none"> (a) the end of the information provision period (within the meaning of Schedule 12), or (b) if earlier, the period of 14 days starting with the day on which the landlord gave the contract-holder the written statement.” 	<p>written statement before the end of the information provision period a contract-holder may make an application to the court after 14 days of receipt of the written statement.</p>
<p>12A</p> <p>(1) Schedule 9A (restrictions on giving notice under section 173, under section 186, and under a landlord's break clause) applies in relation to a converted contract as if—</p> <ul style="list-style-type: none"> (a) paragraph 1 were omitted, and (b) for paragraph 2 there were substituted— <p><i>“Failure to provide written statement within the specified period</i></p> <p>2</p> <p>If—</p> <ul style="list-style-type: none"> (a) a landlord is required to provide a written statement of the contract under paragraph 11(1) of Schedule 12, or under section 31(2) (where it is not disapplied by paragraph 11(1A) of that Schedule), and 	<p>A landlord who fails to provide a written statement under a converted contract within the specified time is prevented from issuing a notice under section 173 for a period of six months. This six month period begins on the day the written statement is provided to the contract-holder.</p>

<p>(b) the landlord has failed to comply with paragraph 11(1) or section 31(2),</p> <p>the landlord may not give notice before the end of the period of six months starting with the day on which the landlord gave the written statement to the contract-holder.”</p>	
<p>13</p> <p>(1) Section 39(1) (information about landlord's address) applies in relation to a converted contract as if for “the period of 14 days starting with the occupation date of the contract” there were substituted “the information provision period (within the meaning of Schedule 12)”.</p> <p>(2) Section 40(2) (compensation) applies in relation to section 39(1), as modified by sub-paragraph (1), as if the relevant date were the first day of the period of 14 days ending with the last day of the information provision period (and accordingly section 40 is to be read as if subsection (5) were omitted).</p>	<p>A landlord has until the end of the information provision period to comply with section 39(1) and give notice to the contract-holder of an address to send documents to the landlord. The information provision period does not apply to section 39(2) or 39(3).</p> <p>Paragraph 13(2) clarifies that any compensation due to the contract-holder because of a landlord’s failure to comply with section 39(1) is calculated 14 days after the end of the information provision period has ended.</p>
<p>Variation</p> <p>14</p> <p>(1) A converted contract may not be varied before the landlord has given the contract-holder a written statement of the contract.</p> <p>(2) Sub-paragraph (1) does not apply to a variation under section 104 or 123 (variation of rent).</p>	<p>Except for the variation of rent no term of the contract may be varied until the written statement has been provided to the contract-holder.</p>

<p>16</p> <p>Section 101 does not apply to a converted contract; accordingly—</p> <p>(a) a contract-holder under a converted contract is subject to the same liability for waste in respect of the dwelling as he or she was subject to immediately before the appointed day, and</p> <p>(b) the rule of law under which a tenant has an implied duty to use demised premises in a tenant-like manner applies to a contract-holder under a converted contract as it applied to him or her immediately before the appointed day.</p>	<p>Ensures liability for the contract-holder in relation to waste operates as it did before the contract converted and ensures the continued application of the current rule of law relating to tenant-like manner.</p>
<p><i>Dealing</i></p> <p>18</p> <p>(1) This paragraph applies in relation to a converted contract—</p> <p>(a) which is a secure contract or periodic standard contract, and</p> <p>(b) under which there are joint contract-holders who were tenants in common in equity immediately before the appointed day.</p> <p>(2) The provisions of fixed term standard contracts mentioned in subsection (1) of each of sections 140, 141 and 142 (transfers) are terms of the contract, and subsections (2) and (3) of each of those sections apply accordingly.</p>	<p>Applies the provisions applicable to fixed term standard contracts, namely sections 140, 141 and 142 to a converted contract which prior to conversion was an AST relating to tenants in common in equity.</p>

<p>Termination of contract by landlord</p> <p>25A</p> <p>(1) This paragraph applies to a periodic standard contract which immediately before the appointed day was an assured shorthold tenancy.</p> <p>(2) This Act applies as if—</p> <p>(a) in section 174 (landlord's notice: minimum notice period), the reference in subsection (1) to “six months” were a reference to “two months”, and</p> <p>(b) in section 175 (landlord's notice: notice may not be given until after first six months of occupation), the references in subsections (1) and (2) (and the heading) to “six months” were references to “four months”.</p>	<p>See example B above.</p>
<p>The occupation date</p> <p>31</p> <p>The occupation date, in relation to a converted contract, is the day on which the contract-holder became entitled to occupy the dwelling under the tenancy or licence which became an occupation contract on the appointed day.</p>	<p>The occupation date of a converted contract is the date upon which the contract-holder was originally entitled to occupy the dwelling under the previous AST.</p>

*subject to forthcoming amendment, 37(2) will be amended to read 37(3).