



Llywodraeth Cymru
Welsh Government

Guidance

Renting Homes (Wales) Act 2016 Supported Accommodation: Temporary Exclusion Procedures Statutory Guidance

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Guidance for landlords of supported accommodation

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Summary

This statutory guidance is issued under section 146(1) of the Renting Homes (Wales) Act 2016 (“the Act”). Section 146(2) provides that landlords must have regard to it and if they decide to depart from it, they should have cogent reasons for doing so. This guidance is also relevant to Support Providers as defined in the glossary on page 10.

This guidance is intended to assist landlords under supported accommodation contracts in exercising their ability to temporarily exclude the contract-holder from the property for up to 48 hours at a time, and no more than three times in a six-month period.

The Introduction (page 3) sets out the legislative framework which underpins this guidance.

Pages 4 – 9 set out the process the landlord is expected to follow when temporarily excluding a contract-holder, and details the ‘lessons learned’ review arrangements that should be instigated following a temporary exclusion.

1. Introduction

- 1.1 A landlord of supported accommodation can choose initially to provide a tenancy or licence agreement that is not an occupation contract. However, the landlord can issue a 'secure contract or a 'supported standard contract' immediately if they prefer. However, if the initial tenancy or licence continues beyond the 'relevant period' then it will become an occupation contract automatically at the end of the relevant period (see para 1.5 below).
- 1.2 The 'relevant period' is six months starting from the date of the tenancy or licence. A landlord may extend the relevant period if they have good reason (refer to para 15 of Schedule 2 to the 2016 Renting Homes (Wales) Act), however the period cannot be extended by more than three months on any separate occasion. In addition, the landlord cannot extend the relevant period without the consent of the local housing authority (unless the landlord is a local housing authority).
- 1.3 The landlord must give the tenant or licensee a notice of extension before the relevant period can be extended, and this must be issued at least four weeks before the date that the relevant period would be due to end. We would not expect landlords to make regular use of the power to extend the relevant period, in place of issuing a written statement and occupation contract, and Welsh Government has the power (Schedule 2, Part 5 para 15 (10)) to make regulations about the procedure to be followed in relation to obtaining the consent of the local housing authority.
- 1.4 If the tenant or licensee does not agree with the landlord's decision to extend the relevant period, they may apply to the county court for a review. The application to the court must be made within 14 days of the tenant or licensee receiving the written notice to extend the relevant period.
- 1.5 At the end of the relevant period, the landlord is required to issue an occupation contract, which must be either a 'supported standard contract' or a 'secure contract' if this is preferable, for example, in respect of sheltered accommodation. The supported standard contract is based on the standard contract with the addition of a statutory power relating to temporary exclusion and, if the landlord chooses, a mobility clause.
- 1.6 Where included in a supported standard contract, the mobility clause allows landlords to relocate an individual within a building (see Section 5 below). This may, for example, be used to avoid conflict with the occupier of a neighbouring flat. This can be done without needing to end one contract and start another.
- 1.7 The temporary exclusion power enables landlords, in specific circumstances, to exclude an individual from their accommodation for up to 48 hours, on no more than three occasions in a (rolling) six-month period. This power should only be utilised as a last resort and, wherever possible, the temporary exclusion should be for less than 48 hours (see S145 of the Renting Homes (Wales) Act 2016).

- 1.8 A landlord may consider it unnecessary or inappropriate to include a mobility clause and a term relating to temporary exclusion(s) within the supported standard contract, for example, for sheltered housing settings.
- 1.9 Whilst the temporary exclusion term provided for by section 145 of the Act is a fundamental term, the landlord and contract-holder can agree not to incorporate this in the supported standard contract (as its omission would improve the position of the contract-holder, in accordance with section 20 of the Act).
- 1.10 Should the temporary exclusion term be included in a supported standard contract, this guidance provides details of the procedure a landlord should follow to temporarily exclude an individual. In considering a temporary exclusion a landlord should also have regard to any other duties owing to the individual under any relevant law (for example, the Social Services and Wellbeing (Wales) Act 2014).

2. Statutory arrangements

- 2.1 This guidance applies to the powers set out in section 145 of the 2016 Act.
- 2.2 Section 145 provides that if the landlord of a supported standard contract reasonably believes a contract-holder has behaved in a manner set out in paragraph 2.3 below, the landlord may require the contract-holder to leave the dwelling and not return for a period of up to 48 hours.
- 2.3 The behaviours are:
 - using violence against any person in the dwelling;
 - doing something in the dwelling which creates a risk of significant harm to any person; and
 - behaving in the dwelling in a way which seriously impedes the ability of another resident of supported accommodation provided by the landlord to benefit from the support provided in connection with that accommodation.
- 2.4 The Act provides that the landlord must give the contract-holder a notice setting out the reasons why he or she is required to leave the dwelling, and must do so when requiring him or her to leave or as soon as is reasonably practicable afterwards. A prescribed notice has been developed for this purpose.
- 2.5 The temporary exclusion would also relate to any common parts of the dwelling.
- 2.6 This guidance addresses:
 - the seniority of the person making the decision to exclude;
 - the need to carry out a review of all temporary exclusions made under section 145 and the nature of that review; and
 - the steps the landlord should take to mitigate the potential for the excluded individual to become street homeless for the period of the temporary exclusion.

3. Use of temporary exclusions

- 3.1 Temporary exclusions are not intended to be used as a punitive action against a contract holder. They are intended to be used to ensure the safety of fellow residents and staff of a project or to prevent an eviction and allow a contract holder to reflect on their behaviour which has led to the temporary exclusion.
- 3.2 Landlords intending to make use of the temporary exclusion power should have a policy in place regarding its use before the temporary exclusion power can be used. The policy should include the steps landlords will take to avoid the use of temporary exclusions, as well as the arrangements they will put in place to prevent street homelessness in the event of a temporary exclusion.
- 3.3 Landlords must document all steps taken to avoid the need to exercise the temporary exclusion power in order to evidence that the power has in fact been used as a last resort. This documentation will form part of the review process.
- 3.4 The temporary exclusion can take place with immediate effect and the contract-holder(s) must leave the dwelling when asked to do so.
- 3.5 By nature of the fact that they are in Supported Accommodation, the contract-holders affected by this Guidance are likely to experience a degree of vulnerability. When considering a temporary exclusion, landlords and their representatives should, as far as they are reasonably able, have regard to the housing and support needs of the contract-holder facing temporary exclusion and any risks to their safety, health and wellbeing.

4. The Decision Maker

- 4.1 The decision to temporarily exclude an individual should be made by a manager or someone who is suitably experienced and senior with responsibility for operational management of the Supported Accommodation. The landlord's temporary exclusion policy should reference the grade or job title which should be held by the person that can make the temporary exclusion decision, bearing in mind that an independent and more senior member of staff should be involved in the review process (see the Lessons Learned Review section for further details).
- 4.2 If a suitably experienced and senior member of staff (as provided for in the landlord's policy) is not available on site when the decision needs to be taken (for example if disturbances occur in the middle of the night or weekends), such a person should remain contactable by staff members using an on call arrangement or be on duty in order to make the decision.
- 4.3 The decision maker should record the temporary exclusion, and the reason for it, in the contract-holder's Support Plan and file an Incident Log at the time of the temporary exclusion as this will be required to inform the 'lessons learned' review. This can be completed by a member of staff on site if the decision maker's authorisation was obtained remotely (e.g. by telephone if the decision

maker was off site) and checked and signed by the decision maker upon return. Organisations that do not currently complete Incident Logs routinely should adopt good practice from others within the sector.

5. Preventing Homelessness

- 5.1 Before exercising the temporary exclusion power, the landlord should first consider whether it is possible / appropriate to relocate the contract-holder within the Supported Accommodation, using the mobility clause (where the occupation contract includes one). This may avoid a temporary exclusion. However, care needs to be taken to ensure that other residents in that vicinity are not likely to be adversely affected by the behaviour of the contract-holder being relocated.
- 5.2 Landlords across the sector should develop strong reciprocal arrangements on a regional basis which would enable individuals who are temporarily excluded to be accommodated by another landlord. These arrangements should be recorded in the landlord's temporary exclusion policy and should also state if provision would be for accommodation only or also the continuation of support services. Such reciprocal arrangements will help to avoid an individual becoming street homeless for the period of the temporary exclusion. Local housing authorities should work with landlords and Support Providers within their area to encourage and facilitate cooperation.
- 5.3 Landlords should also ensure there are good referral systems in place with named contacts in the local authority's Homelessness Advice Service and should establish agreed arrangements with their local Housing Solutions teams on managing temporary exclusions locally. Landlords should alert the Homelessness Advice Service when a contract-holder is excluded. Landlords should also inform, where appropriate, an allocated social worker or support worker, the contract-holder's next of kin and/or probation officer.
- 5.4 An individual being excluded should be provided with written information to enable him or her to access the Homelessness Advice Service and local shelters/hostels. This information should also be explained orally in case of literacy difficulties or should be provided in a format appropriate to the needs of the contract-holder. This information should be regularly reviewed to ensure it remains up to date.
- 5.5 Landlords should develop and establish relationships with named contacts in local hostels and other organisations in order to try to avoid the contract-holder being made homeless for the period of the temporary exclusion.
- 5.6 Landlords should ensure they are aware of how a temporary exclusion, and any subsequent alternative accommodation provision, will impact on the contract-holder's housing benefit claim (where applicable). Such information is outside of the remit of this guidance, however further details can be found at www.gov.uk/housing-benefit/overview.

- 5.7 It is recognised that, despite best efforts by the landlord and often as a direct result of the behaviour of the contract-holder, there may be instances where it is not possible to arrange for the contract-holder to be temporarily accommodated for the temporary exclusion period. In such instances, the contract-holder may end up being street homeless during the temporary exclusion period. The landlord should provide details in the Support Plan and Incident Log of the efforts made to avoid this situation.
- 5.8 Contract-holders should be advised of the landlord's temporary exclusion policy as soon as they occupy the accommodation. This will help ensure contract-holders are aware of the landlord's policy at the earliest opportunity.
- 5.9 Risk assessments should be undertaken with all contract-holders (before or shortly after moving in) and, where sufficient risk (as determined by the landlord) is identified, this should include the identification of safe place(s) the individual can go to in the event of a temporary exclusion.

6. The 'lessons learned' review of the temporary exclusion

- 6.1 A review of all temporary exclusions should be carried out within 14 days of the temporary exclusion taking place. This will help ensure the circumstances of the incident remain clear in the minds of those concerned but should also allow sufficient time for those involved to consider the matter, in preparation for the review.
- 6.2 The purpose of the review is: to consider the decision to ensure it was appropriate and procedurally correct; to inform future practice; and identify areas where the landlord's temporary exclusion policy may be improved. The review will also provide an opportunity for the excluded individual to contribute any information regarding his or her experience of the temporary exclusion. It should be noted that the review is not an appeals process, and the temporary exclusion cannot be removed from a contract-holder's record.
- 6.3 The review should be a face-to-face meeting. The contract-holder should be offered the opportunity to attend the review (for example, to present his or her case if he or she believes the temporary exclusion was not justified), and must be provided with at least one week's notice of the date of the review meeting. The contract-holder should be allowed to present oral or written evidence to the review panel and should be signposted to advocacy services (e.g. Citizens Advice Cymru, Shelter Cymru, support workers not connected with the accommodation or drug or alcohol charities) to help him or her submit such evidence. The contract-holder should also be informed that he or she can be accompanied at the review meeting by a friend, family member or other person (e.g. Citizens Advice Cymru or Shelter Cymru adviser).
- 6.4 The membership of the review panel is not prescribed in this guidance but should be set out in the landlord's temporary exclusion policy. However, it should include:

- a person (A) who is more senior than the person who took the temporary exclusion decision, who has the authority to change or update the landlord's temporary exclusion policy and practices and who was not involved in the decision-making process;
- another independent person (B) from within the organisation who was not involved in the decision-making process; and
- a representative (C) from the local housing authority wherever possible.

6.5 The review should consider the following matters, as appropriate:

- who made the temporary exclusion decision and his or her seniority and training/experience to do so;
- whether there is evidence of unacceptable behaviour by the contract-holder;
- whether the behaviour was serious enough to justify the temporary exclusion;
- whether the contract-holder was informed of the temporary exclusion policy at the start of the occupation contract;
- whether it was reasonable to exclude and whether all circumstances were taken into account, including appropriate alternative measures;
- whether consideration was given to relocate the contract-holder elsewhere within the supported accommodation scheme (if the occupation contract contains a mobility clause) as a means of avoiding a temporary exclusion;
- after taking the decision to temporarily exclude the contract-holder, whether consideration was given to placing the contract-holder in another suitable supported accommodation scheme, for the period of the temporary exclusion, as a means of preventing the contract-holder from being homeless;
- what, if any, threat was posed to other residents and staff;
- the number and details of any previous temporary exclusions relating to the same contract-holder;
- whether the police were called;
- whether the contract-holder was able to be rehoused by the landlord, or another Support Provider during the period of the temporary exclusion;
- whether the contract-holder was referred to the local authority's Homelessness Advice Service;
- whether emergency accommodation was provided;
- where the contract-holder resided for the temporary exclusion period;
- whether, and when, the contract-holder was provided with a notice detailing the reasons for the temporary exclusion;
- whether the Incident Log was properly completed;
- whether the landlord's policy on temporary exclusions was correctly followed; and
- whether there is an opportunity to improve the landlord's policy following the incident.

6.6 A standard form (see annex one) should be completed to record the review meeting and this should be signed off by the person chairing the review. The completed form should provide full details about the outcome of the review and

whether the landlord's temporary exclusion policy or practices have been changed or updated as a result of the review. It should also record the number of previous temporary exclusions relating to the contract-holder and when they took place.

- 6.7 Where the number of temporary exclusions has reached the maximum of three within a six month period, this should be recorded on the contract-holder's Support Plan. No further temporary exclusions can be made until the passage of time means the maximum of three temporary exclusions in any six month period would not be breached.
- 6.8 Equality and diversity information should also be recorded on the form. The landlord should periodically review all temporary exclusions to help ensure equality principles are not being breached.
- 6.9 The form should be held on file in accordance with the retention policy of each organisation. However, this period should be at least twelve months, in order to help ensure the maximum number of temporary exclusions is not breached.
- 6.10 A copy of the form or, subject to agreement with the relevant local authority, a summary version of it, should be sent to the local authority's Supporting People Team and Homelessness Advice Team. The Local Authority is responsible for monitoring trends from the information provided and taking action as and when deemed appropriate. This intervention process is not specified in this guidance but Local Authorities should have a monitoring and engagement policy in place to intervene should it have any concerns regarding any emerging trends. Supporting People teams should also be making use of temporary exclusions monitoring data when commissioning services.
- 6.11 A copy of the form should also be issued to the contract-holder. The behaviour that resulted in a temporary exclusion and the outcome of the subsequent review meeting should be picked up in future support sessions so that individuals have support to address the behaviour and avoid the potential for further temporary exclusions.
- 6.12 A quarterly statistical return should be submitted to the local authority. This should set out the total number of temporary exclusions and the reasons for them, categorised according to the behaviours set out at section 2.3. The return should include a breakdown of the equality and diversity characteristics of those contract-holders excluded. The format of the quarterly return is not prescribed and is for each landlord to agree with the local authority. The Supporting People Information Network and the Homelessness Network may wish to develop a Wales wide form.

7. Glossary

Supported Accommodation	<p>Accommodation is Supported Accommodation if:</p> <ul style="list-style-type: none">• it is provided by a community landlord or a registered charity,• the landlord or charity (or a person acting on behalf of the landlord or charity) provides support services to a person entitled to occupy the accommodation, and• there is a connection between provision of the accommodation and provision of the support services.
Support Services	<p>Support Services include:</p> <ul style="list-style-type: none">• support in controlling or overcoming addiction,• support in finding employment or alternative accommodation, and• supporting someone who finds it difficult to live independently because of age, illness, disability or any other reason. <p>“Support” includes the provision of advice, training, guidance and counselling.</p>
Support Provider	<p>The Landlord of the Supported Accommodation, or a person acting on behalf of the Landlord, who provides Support Services to a person entitled to occupy the accommodation.</p>
Managing Partner	<p>An organisation, usually the Support Provider, receiving funding from the Landlord to provide a housing management service to residents living in in the Supported Accommodation.</p>
Support Plan	<p>Record of each resident’s support needs and the support objectives / actions required to meet those needs. The Support Plan also includes a record of progress against support objectives.</p>
Incident Log	<p>A management system recording major incidents and actions taken by staff to address them.</p>
Homelessness Advice Service	<p>Local authority Housing Options / Housing Solutions team</p>