

# Renting Homes (Wales) Act 2016 FAQ

Last updated: 8th July 2022

## Background

In 2016, the Senedd passed the Renting Homes (Wales) Act 2016 with the aim of making it simpler and easier for landlords and tenants to rent a home in Wales. It introduces many changes to tenancy laws and will apply to both social and private rented sectors.

To support members on specific areas of the Act, we have produced an FAQ based on recurring questions over the past few months and answers received by the Welsh government during our implementation group meetings. We have also included some answers to questions posed during our training sessions delivered by Hugh James.

This will be an ongoing 'live' document that will be frequently reviewed and updated in light of new and emerging information.

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## FAQ

### 1. Implementation

**Q: When will the Act be implemented?**

**A:**

The Minister for Climate Change issued a [written statement](#) on 30 May to announce the delay of the implementation of the Act until 1 December 2022. As set out in the statement, the decision was taken in the light of the unprecedented pressures that landlords, (particularly social landlords) face, including Covid recovery.

**Q: What remaining regulations and guidance are still due to be released?**

**A:**

**Final part of tranche 3 Regs – June 2022:**

- The Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022
- The Renting Homes (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2022
- The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022.

### 2. Contracts

**Q: What happens to new and existing contracts after the implementation date?**

**A:** From the implementation date, all occupation of dwellings will be subject to the Renting Homes legislation. A written statement of the occupation contract needs to be issued within 14 days of a contract-holder moving into a property.

Tenancies and licences in existence before the implementation date will convert to a Renting Homes 'occupation contract'. Landlords will have up to 6 months *from* the implementation date to issue written statements in respect of converted contracts (see Schedule 12 for more information on conversion).

For existing tenancies, there is therefore a minimum 6-month preparatory period before implementation and a maximum period of 6 months to issue new contracts following implementation.

**Q: What are the new types of contracts defined in the Act?**

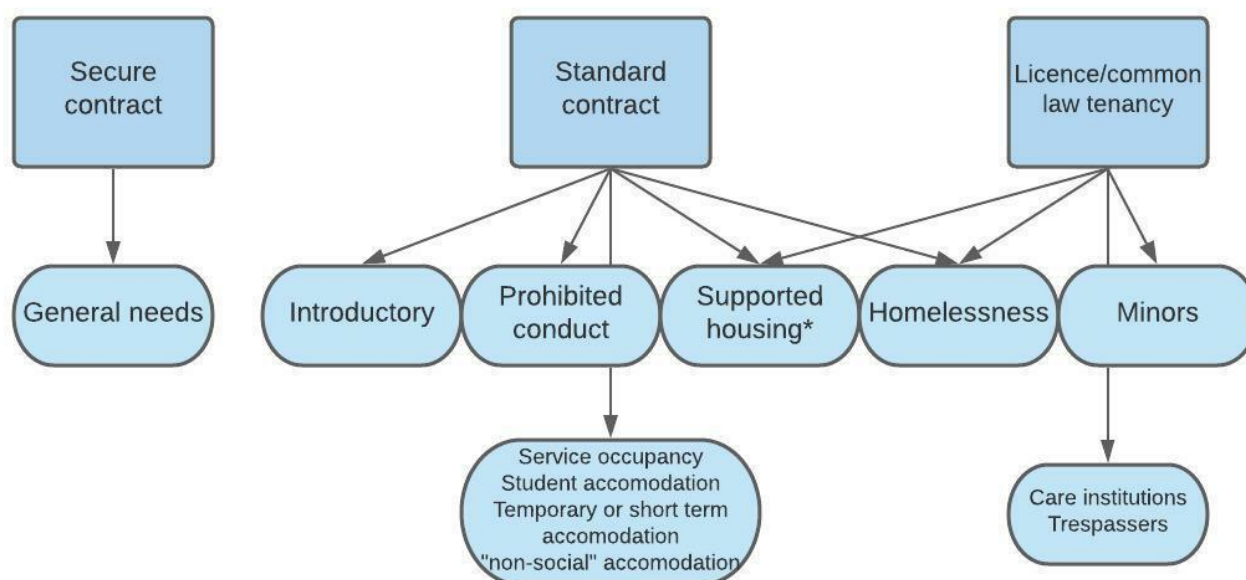


**A:** The Act creates a 'Single Social Tenancy', which means that local authority (LA) and registered social landlord (RSL) contract-holders will have the same rights and responsibilities. LAs and RSLs are 'community landlords' under the Act.

The vast majority of current tenancies and licences will be replaced with one of two kinds of 'occupation contract':

- **Secure:** This is a periodic contract and will be the default for RSLs and LAs.
- **Standard:** The default for the private rented sector (PRS), but can be used by RSLs in a list of circumstances. For example, under the Act, there is a specific type of contract for supported accommodation. This is the 'Supported standard contract' and is a type of standard contract. RSLs will need to serve a Section 13 notice if they want to issue a standard contract. See Schedule 3 for more information on when a standard contract can be issued.

The below diagram modelled by Hugh James provides a summary of the contracts under the Act.



\*As defined in the Act

### Q: What are the terms of the new contracts under the Act?

**A:**

- **Key matters:** such as the names of the parties and address of the property. These must be inserted in every contract.
- **Fundamental terms:** Set out the fundamental rights and obligations of both the landlord and contract-holder, including the possession procedures and the landlord's obligations regarding repairs. The default position is that they are all inserted in every contract. However, some can be omitted or modified if it benefits the contract-holder and the



contract-holder agrees. Some fundamental terms must be included as set out in the Act and cannot be modified.

- Supplementary terms: These terms are automatically included in the contract and deal with the more practical day to day matters applying to the occupation of the dwelling. For example, the contract-holder taking care of the dwelling. They can be removed to either benefit the landlord or the tenant if both the landlord and tenant agree to it.
- Additional terms: these can address other matters, for example, the keeping of pets. These are not automatically inserted but provide a way for the landlord and contract-holder to cover specific issues within a contract.

**Q: To what extent can landlords add additional terms for what they deem to be missing?**

**A:** Landlords need to be careful that any additional terms they choose to include are not inconsistent with the fundamental terms. For example, anti-social behaviour (ASB) under Section 55 of the Act is a fundamental term and cannot be modified. Landlords should set out in guidance, such a contract-holders' handbook, what they consider would be a breach of the ASB term, and not seek to include specific terms separate to the ASB term. The model written statements include a footnote in respect of domestic abuse being a breach of the ASB term.

**Q: Are service charges included as a fundamental or supplementary term within the new contracts?**

**A:** No. However, whilst there is not a fundamental or supplementary term relating to service charges, there is nothing preventing a service charge being included as an additional term, subject to the Renting Homes (Fees Etc.) (Wales) Act 2019.

**Q: How does enforcement vary between the different terms of the contract?**

**A:** There is no difference in enforcement between the different terms of the contract. A contract-holder breaching an additional term (for example, a term on service charges) is no more or less significant than if they breached a fundamental or supplementary term.

**Q: What happens to the terms in existing contracts on implementation day?**

**A:** Fundamental terms will override what is in existing contracts. For example, a term in the existing contract on anti-social behaviour (ASB) would be replaced by the new fundamental term on ASB.

If a term in an existing contract conflicts with a supplementary term, the existing term will override the supplementary term.



Any remaining terms with current tenants not impacted by the fundamental and supplementary terms must remain and will carry over.

**Q: What is the purpose of the written statement?**

**A:** The purpose of the written statement is to provide the contract-holder with written confirmation of the terms of their contract together with information that explains the meaning and importance of the contract. The Act places an obligation on the landlord to provide a written statement.

**Q: Is there a model written statement for each existing contract that needs to be converted under the Act?**

**A:** The Welsh government has produced model written statements for the [secure contract](#), the [periodic standard contract](#) and the [fixed term standard contract](#). These will cover the vast majority of current tenancies. [Guidance](#) has been provided for creating contracts to which model written statements do not apply, for the introductory standard contract, prohibited conduct standard contract and supported standard contract.

**Q: When issuing an occupation contract, does a prescribed notice also need to be provided for the landlord's contact details?**

**A (Hugh James):** The landlord's details will be in the contract itself, the Act does provide for a prescribed form for those details. Practically speaking, the safest thing to do is to ensure the occupation contract includes the prescribed form. When serving a written statement of the contract, there are three notices. One at the outset, one if the landlord's identity changes or if the landlord's address changes there are further prescribed forms.

**Q: Does the legislative language in the new contracts need to be the same as in the draft model written statement of contract?**

**A:** Written statements have to reflect the legislation. There are limitations in the Act on the ability to change the wording. RSLs will only have the ability to make minor editorial changes to things such as the name of the landlord. Editorial changes cannot, however, change the substance of the term in any way. However, the Welsh government is planning to have a plain English and easy read version of the contract for landlords and contract-holders.

**Q: What are the guidelines around digital communication e.g. sending contracts electronically?**



**A:** The legislation says that any notice required under the legislation can be sent electronically provided the person has consented to it.

In principle, you could continue to communicate certain things digitally as long as it is not related to the act. There is no definition within the Act on how a contract holder agrees to this; however, it is recommended that there is documented evidence indicating that the contract holder has agreed to receive such documentation from the RSL electronically.

**Q: Do the new contracts need to be signed by the contract holder?**

**A:** The Act does not require the contract holder to sign a new contract, just that the landlord must issue the written statement of the contract (it would be for the landlord to evidence this). Requesting a signature is good practice. However, the Act does not require a contract-holder to sign the contract in order for it to be enforced.

Joint contract-holders are each entitled to a copy of the contract.

**Q: What is the guidance/expectations around providing contracts in Welsh?**

**A:** Landlords should follow their own Welsh language policies. Welsh government has an obligation to produce Welsh versions of documents, such as the model written statement.

**Q: How is a minor defined?**

**A:** A minor is a person under 18 years of age. A minor cannot hold an occupation contract.

**Q: Do special rules apply to homelessness tenancies and licences?**

**A (Hugh James):** Homelessness will largely be treated the same as before. A homeless person will not be a contract holder unless the LA has determined that the Section 75 duty applies. RSLs need to be sure on what basis a homeless applicant is being referred to them to determine whether they will qualify for an occupation contract. Any tenancy or licence granted by that landlord will not be an occupation contract until after the end of the notification period. The notification period is 12 months starting with:

- The day on which the person was notified of the outcome of the LAs assessment under section 62, or decision under the section 85 of the Housing (Wales) Act 2014 (or equivalent in the 1996 Housing Act if appropriate).
- Or the day on which they are notified of the outcome of the review.

**Q: How is supported accommodation defined in the Act?**



**A:** Accommodation is supported accommodation if:

- 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.

Accommodation in a care institution (within the meaning of paragraph 4 of [Schedule 2](#)) is not supported accommodation.

“Support services” include:

- 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.

“Support” includes the provision of advice, training, guidance and counselling.

### **Q: Do special rules apply to supported accommodation tenancies and licences?**

**A:** A tenancy or licence which relates to supported accommodation is not an occupation contract in the initial period of 6 months or less. The tenancy or licence becomes an occupation contract immediately after the end of that period unless it is extended. An RSL can extend the tenancy or licence on one or more occasions, but cannot extend it for longer than 3 months on any separate occasion.

Before giving a notice of extension, the landlord must consult the tenant or licensee. An RSL will then need the consent of the local authority before a notice of extension is issued. [Schedule 2 part 5, section 15](#) of the Act sets out further detail on the special rules applying to supported housing tenancies and licences.

RSLs are advised to liaise with any managing agents or support providers to determine whether the property is regarded as supported accommodation in line with the Act's definition, as well as under which circumstances contracts will or won't be an occupation contract.

### **Q: Is the definition of dwelling and common parts consistently applied across general needs and supported housing?**

**A:** Yes

### **Q: Are almshouses covered by the Act?**



**A:** Whilst there is no specific reference to almshouses in the Act, the Act is based on the Renting Homes recommendations from the Law Commission. Paragraph 6.25 of the [Law Commission's 2003 Renting Homes report](#) states that:

Residents in almshouses are currently excluded from the Housing Act 1985 by special provision to that effect. There is, however, doubt as to whether this exclusion is necessary following the decision in *Gray v Taylor*. In that case, the almshouse landlord successfully argued that residents in an almshouse were excluded from statutory protection because the residents were not regarded as tenants, but as beneficiaries under a trust, and the payments they made for this privilege were not rent. On this analysis, residents in almshouses are not in a contractual relationship with the trustees of the almshouse.

Ultimately, it will depend on individual occupation arrangements. The Welsh Government cannot provide legal advice on this. A copy of the letter sent from the Welsh Government to the Almshouse Association setting this out can be found [here](#).

**Q: Has any regard been given to Fair Rent tenancies?**

**A:** These tenancies will be brought within the scope of the Act under a type of secure contract and the rent protection element will be preserved.

**Q: What happens with joint contracts?**

**A (Hugh James):** A joint contract-holder can withdraw from a contract without ending it in its entirety, and a sole contract-holder can add a joint contract-holder to their existing contract with the RSL's consent (the landlord must not withhold the consent unreasonably). In the event of the RSL refusing consent, the occupier has the right to apply to the court to have the decision scrutinised if they feel it is unfair. Under Section 86, this applies in any scenario where a landlord's consent is required.

### **3. Housing management policies/procedures**

**Q: How is anti-social behaviour (ASB) defined in the Act?**

**A:** ASB is defined as when the contract holder has "engaged or threatened to engage" in conduct "capable of causing a nuisance or annoyance" to others living or engaged in lawful activity in the dwelling or in the locality or to the landlord or any person acting in connection with the landlord's housing management functions.

The contract-holder is responsible for any anti-social behaviour of anyone else living with, or visiting them as they must not, by any act or omission, allow such behaviour.





**Q: Transfers: Could a contract-holder choose to instead of ending a tenancy, transfer their contract to a nominated person? If this is possible, what implications would the outgoing contract-holder have regarding future homelessness applications?**

**A (Hugh James):** A contract-holder has the right to ask for consent to transfer a contract to any other secure contract-holder of a community landlord. There is also a right in the Act to transfer the contract to someone who would be entitled to succeed if the contract-holder died. The contract itself may allow other types of transfer of the contract (there are several ways in which the contract could be transferred to a new contract-holder). The outgoing contract-holder may be deemed to be intentionally homeless if they later present as homeless and the property was an appropriate property for them to be living in. If they do apply to transfer and walk away, they need to be aware that there are future implications for the future.

**Q: What are the new succession rights?**

**A (Hugh James):**

- There are 2 types of successors:
  - Priority: This is a spouse or a partner. There is no need in the latter to provide proof of 12 months' cohabitation, but they must have been living as if they were spouses or civil partners.
  - Reserve: Family member and/or carer. This requires proof of residence for 12 months.
- The successor must be at least 18 years of age to succeed.
- There may be up to 2 successions if the first succession is a priority successor.
- A former joint contract-holder who became a sole contract-holder on the death of the other joint contract-holder is not counted as a successor.
- If the successor ends up under-occupying, or the property has been adapted, the landlord may consider whether it needs to be repossessed under the relevant estate management ground.
- If there is no successor, the contract will end 1 month after the contract holder's death.

**Q: In relation to persons under 18, can a deed of trust/guarantor be considered for an occupation contract until they get to the age of 18?**

**A (Hugh James):** Yes, it is a trust not a guarantor. Automatic succession cannot happen for a minor. If there is someone else who is entitled to succeed, it will go to them. If there is a situation where there is no one else entitled to succeed but there is a minor and the landlord would like them to occupy the property, the occupation contract can be granted to a trusted holder on behalf of the minor, but only if there is not a successor.



**Q: Does survivorship qualify as a successor?**

**A (Hugh James):** No.

**Q: Is rent payable in the 4 weeks following the death of a soul contract-holder? Could the landlord try to recover the rent from the deceased's estate?**

**A (Hugh James):** Yes, rent continues to be payable and the liability to pay rent falls under the deceased's estate and so if there are any assets, these can be used to pay the rent.

**Q: Does Schedule 10 replace pre-action protocols for arrears?**

**A (Hugh James):** No. The pre-action protocol will still exist. The point of these is to regulate conduct prior to any claim being issued. The aim is to try and resolve the issue before it gets to court in the first place. Schedule 10 applies when you are in court and the court is determining whether it is making a possession order or not and whether it is reasonable to do so.

**Q: What happens if there are arrears on a tenancy that a joint contract-holder is removed from via abandonment. Does the remaining contract-holder take on the debt or is half of the debt not recoverable?**

**A (Hugh James):** Wherever there is a joint tenancy/contract, both contract-holders are jointly and severally liable for the whole debt, which means that either of them can be responsible for the whole of debt. This means that the contract-holder who has departed is responsible for the entirety of any rent arrears which were there when they departed, but the remaining contract-holder is also responsible for its entirety.

**Q: Is reasonableness under the Act (Section 84) similar to the existing proportionality consideration?**

**A (Hugh James):** These are 2 different things. There is a current requirement for reasonableness, and although it is not codified anywhere, it is drawn on principles of many senior court decisions. Proportionality exists alongside this in the context of human rights and equality. That position will remain the same under the Act. AKA reasonableness will still be a factor that the courts have to consider in determining whether to make a possession order, but the difference will be that the criteria they now apply will be set out squarely in the Act. There is a prescribed list of it and proportionality will still exist as well as the Human Rights Act and equality defences. Landlords will need to ensure that whatever action they decide to take is both reasonable and proportionate, particularly when dealing with disabled tenants.



**Q: When Section 84 comes into play, would any inspections of property have to be carried out within the 14 days. If the contract-holder fails to give access or information needed to make a decision, does the 1-month extend and for how long for?**

**A Hugh James):** If the landlord wants further information to make a decision, this has to be requested within 14 days and then the 1-month begins once the information is provided. The inspection should be done if a landlord is not looking for information within the month. If a contract-holder is failing to give access for the inspection and it is reasonable to carry out the inspection, the sensible thing to do is to refuse consent on the basis that access wasn't given and that access is needed before it can be considered.

## **Serving notices and other documents**

**Q: Does a Section 13 notice need to be issued for a starter tenancy (introductory standard contract)?**

**A: Yes.**

**Q: Do both of the RHWA 27 and RHWA 28 notices need to be served if abandonment is suspected and the landlord seeks to take possession of the property without going to court?**

**A (Hugh James):** Yes, this is a 2 stage notice process. The first notice is served fairly early on in the process when you believe you have enough information that the property is abandoned, but by no means carrying out a full investigation before that first notice.

Then after 4 weeks a second notice is to be served, but at that point the landlord has to be satisfied that the property is abandoned through carrying out the necessary investigations. However, the second notice can be immediate (a further 4 weeks notice does not need to be given once that is served). The contract comes to an end because it has been stated in the first notice that if the contract-holder does not contact the landlord, then that's what the landlord will do. As long as there is no one living in the property that would have protection from eviction, the landlord can then take possession of the property without going to court (e.g. change locks).

**Q: Will Notice of Seeking Possession (NOSPs) for rent arrears continue to run for 6 months before an application can be made?**

**A:** The 6-month period was only due to COVID-19. In the context of the Renting Homes Act, if it's a discretionary rent arrears claim, then it would be treated as a breach of contract and will be a 1-month notice period. If it's a serious rent arrears claim, then it's a 14-day notice period.



**Q: For converted ASTs, assuming a Section 13 notice has been served to say it will become a periodic standard contract, can it be brought to an end through a 2 months notice, not a 6 month's notice period?**

**A (Hugh James):** For converted contracts that were ASTs prior to implementation (Schedule 12, paragraph 25A), in terms of serving that 2-months notice, it's only a 4 month period to wait rather than the 6 months.

**Q: What are the limitations to serving a Section 173 notice in relation to deposits?**

**A (Hugh James):** There are 2 limitations to serving the Section 173 notice in relation to deposits:

- 1: The deposit that is taken as akin to a bond - provided that is properly protected in accordance with the legislation, then it is fine to serve a notice.
- 2: The holding deposit which is covered by the Renting Homes (Fees Etc.) (Wales) Act 2019. The payment that the tenant makes to secure the property in the first place needs to be returned first before serving a notice.

**Q: Can the property be re-let after service of the second notice or does the landlord have to wait until the 6 months has passed?**

**A (Hugh James):** There is no need to leave the property empty for 6 months. The court has the power if the contract-holder challenges it afterwards to either reinstate the contract or to order that suitable alternative accommodation is provided.

**Q: How does the contract-holder request changes or permission from the landlord (such as a mutual exchange/transfer)? Does a specific email address/contact details need to be given to contract-holders for this so that those types of requests don't get missed?**

**A (Hugh James):** If a notice needs to be served to a contract-holder under the Act, then it needs to be done in writing. This can be sent to their address or it can be sent electronically if the contract-holder agrees. Equally, the provisions apply the other way as well if the contract-holder serves notice on the landlord. Therefore, it is important that it is made clear to contract-holders the process for doing so. If you want a contract-holder to be able to make requests via email, it needs to be made clear on the organisation's website that it goes to a central email address that is always monitored. An out of office procedure should be in place when a member of staff is away to deal with requests.

**Q: When you have a joint tenant that has left the dwelling and you need to serve them a notice and you are unaware of their whereabouts, how would a landlord go about doing that?**



**A (Hugh James):** This is dealt with in Section 237. There's a list of places where a landlord can serve notices, one of which is the dwelling that the contract relates to. As a matter of good practice, it can also be served elsewhere if you know a contract-holder is living elsewhere.

**Q: What is happening about the rent increases and the work around for meeting the regulation on increasing once in a calendar year?**

**A:** The Act allows rent to be increased once per year (no less than 365 days). However, it does not stipulate a date when this rent increase must take place. Under the Act, the period between the day on which the notice is given to the contract-holder and the specified date must not be less than two months.

This no longer needs to take effect on a Monday anymore, but subsequent notices must specify a date which is not less than one year after the last date on which a new rent took effect. E.g. landlords who applied an increase on 4th April in 2022, will not be able to do it on 1st April next year. The earliest in 2023 will have to be 4th April.

**Q: Is the provision to extend introductory contracts six months as there is with introductory tenancies?**

**A (Hugh James):** Yes and there is a prescribed form for doing so (RHWA 34) and it needs to be served 8 weeks before the introductory period ends.

## 4. Fitness for Human Habitation (FFHH) & disrepair

**Q: What are the landlord's obligations for repairs and maintenance?**

**A:** There will now be an obligation for landlords to ensure that the dwelling is fit for human habitation (FFHH). Guidance for landlords [can be found here](#) and is largely based on the housing, health and safety rating system (HHSRS). However, it will also require additional obligations such as carbon monoxide alarms and electrical safety testing every 5 years. In order for RSLs to be compliant with the FFHH regulations, they may need to undertake works to certain properties before the implementation of the Act. FFHH will be enforceable directly by the contract-holder.

The landlord's obligations regarding repairs are largely the same as they currently apply.

**Q: How will the fitness for human habitation (FFHH) standard fit in with the Welsh Housing Quality Standard? (WHQS)?**

**A:** The FFHH is based on the HHSRS and will apply to both social and private landlords, whereas WHQS applies only to social landlords. The higher standard of either FFHH or WHQS will apply to community landlords.



**Q: What electrical certification is required for new installations?**

**A:** Any new installation must have an EICR certificate. Anything other is not acceptable. This decision has been made by the Welsh Government to make the regulations as simple as possible.

**Q: Does a text message suffice as written notification of when a repair will be carried out i.e. text confirmation of an appointment?**

**A:** The Act requires 24 hours notice. If a landlord chooses to communicate the confirmation of an appointment via text message, this is acceptable as long as there is a record of a contract-holder having opted in to receive communication this way.

**Q: Who decides whether a property is unFFHH? Can the contract-holder withhold rent "claiming non FFHH"??**

**A (Hugh James):** This is a matter between the contract-holder and the landlord. The courts only get involved if there is a dispute between the contract-holder and the landlord.

Occupation contract-holders have the right to withhold rent under a supplementary term whereby, "the contract-holder is not required to pay rent in respect of any day or part day during which the dwelling is unfit." For a new contract-holder (post-implementation), there is the option to agree to not include the term. But for existing tenants, this is likely to become the term of an occupation contract on conversion.

If the contract-holder is right that the property is unFFHH, they are not liable to pay rent for the period of unfitness.

**Q: What happens if a tenant refuses to give access to their property to matters falling under FFHH standards and then the property becomes deemed unfit?**

**A (Hugh James):** Landlords need to be seen to be doing as much as possible to keep the property FFHH. Failure for the Contract-Holder to give access is a breach of the contract. The key thing here is for the landlord to keep records/evidence for the refusal of access to show the contract-holder's liability.

**Q: Is there a grace period for which the FFHH standards apply to converted contracts?**

**A:** There is a 12 months' grace period which applies to smoke alarms and EICRs only.

**Q: Does the consent period apply to requests from managing agents in supported accommodation?**



**A (Hugh James):** The Section 84 requirement to deal with it in the month period will apply to any requests for consent for something to do with the occupation contract. If the managing agent is passing on a request from the contract-holder for the permission to do something, then yes the consent period applies. If it is a matter of the relationship between the landlord and the managing agent (aka the managing agent is asking to do something), that doesn't relate to the occupation contract, so it won't be something for which that obligation applies to. But will also need to look at the agreement between the landlord and the managing agent.

**Q: Does imposing rent for a decant licence whilst someone moves into another property whilst their property become FFHH mean it would become a secure contract in its own right. Will a property become automatically unfit for human habitation if a decant licence is used?**

**A (WG response):** Under RHWA, this would be an estate management ground (i.e. reasonable alternative accommodation provided while works are happening). This is fairly straightforward, used regularly by HAs to cover temporary residence elsewhere, where the tenant pays rent and service charge for the main property. This wouldn't automatically make property unFFHH because of a decant licence (this is not mentioned in the regulations). This remains an agreement between the contract-holder and the landlord. WG have not produced anything on a decant licence. The contract continues even under a decant licence. The landlord should use common sense to judge what is a reasonable length of time to use a decant licence (around 3 months or a justification for the delay).

## 5. Communications and awareness

**Q: How is the Welsh government working with the sector to assist in communicating changes to tenants?**

**A:**

- SBW Advertising are supporting the external communications and awareness raising campaign.
- A toolkit has been developed and is on the Welsh Government's [Renting Homes webpage](#). Since the delay in the implementation date, the toolkit has been updated to make accessible the numerous documents that refer to the old implementation date.

**Q: How have the courts been prepared for the implementation of the Act?**

**A:** Training for judges is currently in progress and the court rules and systems will be updated ready for implementation. The Welsh government is not responsible for providing this.