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WLGA Training – 17th May 2022

Homelessness Accommodation

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The Status Quo

- Licence Agreements
 - Through the LHA directly; or
 - Through RSLs (etc)
- Throughout until suitable permanent accommodation is found
- Will no longer be possible under Renting Homes (post 15th July 2022)

The Default Rule – Occupation Contracts

- Section 7 - A tenancy or licence is an **Occupation Contract** if:
 - It is made between a Landlord and an Individual(s) (over the age of 18)
 - Rent or other consideration is payable under it
 - Confers on the individual(s) a right to use a ‘dwelling’ as a ‘home’.
- LHA/RSL(etc) = Community Landlord (s.9); Everyone else = Private Landlord (s.10)
- Default Agreement Community Landlord = Secure Occupation Contract (s.11) unless an exception applies
- There are exceptions for Homelessness and Supported accommodation

- **Homelessness Accommodation**

- a. Licence until:
 - Section 75 Duty (LHA)
 - Relevant Period (RSL etc)
- b. Standard Periodic Contract (on Notice); or
- c. Secure Contract

- **Supported Accommodation**

- a. Only if accommodation meets certain criteria
- b. Licence for 6 months
- c. Subject to extension
- d. Supported Standard Contract (on Notice); or
- e. Secure Contract

'Homelessness Functions'

- In order for the Homelessness Accommodation exemptions to apply the accommodation must be being used to discharge the Local Authority's '*Homelessness functions*' (*Part 4, Schedule 2*)
- Homelessness functions are your functions pursuant to the following sections of the Housing (Wales) Act 2014 (*Part 4, Schedule 2, Para 12(5)*):
 - Section 68 – Interim duty to secure accommodation for those in PN
 - Section 73 – Duty to help secure accommodation for homeless applicants
 - Section 75 – Duty to secure accommodation for applicants in PN when the section 73 duty ends
 - Section 82 – Duty to applicant whose case is considered for referral or referred
 - Section 88(5) – Accommodation pending appeal (68/75/82)

Homelessness Exceptions

- (1) Exceptions to Section 7 – ‘*Licence exemption*’
 - Part 4, Schedule 2 – Special Rules Homelessness
 - Provides the ability to initially provide licences
 - Rules differ depending on who is providing the accommodation (LHA directly/RSL etc)
- (2) Schedule 3 exception – ‘*Contract Exemption*’ (Paragraph 6, Schedule 3):
 - Community Landlord contracts which may be Standard Contracts
 - Where a ‘*Section 13 Notice*’ is given (notice of a standard contract); and
 - No other exception applies

Where Homelessness Accommodation is provided by the LHA

- A tenancy or licence made **by a LHA** because of its homelessness functions is **not** an occupation contract **unless** the LHA is satisfied it owes a duty to the applicant under Section 75(1) *i.e.* – *A duty to secure accommodation where an applicant is eligible, homeless, and in Priority Need.* (Paragraph 11, Part 4, Schedule 2).
- This duty is triggered either:-
 - by the end of the 56 day period; or
 - an earlier acceptance of duty decision.
- Upon a Section 75(1) duty being triggered, the accommodation **can** thereafter provided pursuant to a Periodic Standard Occupation Contract (NB: Section 13 Notice).
- The Section 75 duty can be still be discharged by:-
 - Acceptance of an offer of accommodation
 - Refusal of an offer of accommodation

Where accommodation is provided by a relevant landlord

- Where a LHA makes arrangements with a 'relevant landlord' (a community landlord/an RSL/a PRPSH/Private Landlord) for the provision of accommodation pursuant to your homelessness functions a tenancy or licence will not be an Occupation Contract until:-
 - 12 months after the applicant was notified of a Section 62 decision/Section 80(5) decision or decision under Section 184(3) or 198(5) Housing Act 1996 (*'the notification period'*); or
 - The landlord decides to give the applicant an occupation contract.
- The 12 month period continues throughout the period of the application regardless of whether accommodation is being provided under Section 68, 73 or 75. (*Paragraph 12, Part 4, Schedule 2*)

- If there is:
 - A review under section 85 or an appeal under section 88 Housing (Wales) Act 2014; or
 - Section 202 or 204 of the Housing Act 1996
 - The 12 month period is the period starting with:
 - the date that the person is notified of the outcome of the assessment; or
 - the decision on review; or
 - The day on which the appeal is determined

- The '*relevant period*' appears to stop running is where the LHA's homelessness function is discharged.
- This is on the basis that (arguably) the accommodation is no longer being provided pursuant to your 'homelessness housing functions' once a Section 84 decision has been provided to the applicant ending duty.
- If an appeal is then made to the County Court (following a review of the decision) the time limit will begin to run again as any such accommodation you choose to provide during the appeal **is** provided pursuant to your 'homelessness housing functions'.
- After a total of 12 months has lapsed a standard periodic contract would be entered into.
- 12 months are to re-start on a positive review/appeal decision (Schedule 2, Part 4, Para 12, (4)(b)(i))

Existing Occupants/Agreements

- The following is applicable to agreements existing on the 15th July 2022:
 - No specific provisions in the act Schedule 12 relating to homelessness or converting agreements specifically **but**:
 - Para 11, Part 4, Schedule 2 reads ‘A tenancy or licence within section 7, but made with an individual by a local housing authority because of the authority's functions under Part 2 of the [Housing \(Wales\) Act 2014](#) (anaw 7) (homelessness), **is not an occupation contract unless** [emphasis added] the authority is satisfied that it owes a duty to the individual under section 75(1) of that Act’
 - LHA Accommodation after s.75 will be an occupation contract and if you want it to be a standard contract a Section 13 notice will need to be served
- Relevant period (RSL) – Schedule 2, Part 4, Paragraph 12(2) A tenancy or licence within section 7 but made with a relevant landlord in pursuance of the **arrangements is not an occupation contract until** [emphasis added] immediately after the end of the notification period’ (NB: Where notification period has lapsed)

Section 13 Notices

- (1) A notice under this section is a notice—
 - (a) specifying the paragraph of Schedule 3 (*Paragraph 6*), and the description of occupation contract set out in that paragraph, on which the landlord relies, and
 - (b) stating that the contract is a standard contract.

- (2) The notice must also inform the contract-holder of his or her right to apply for a review under section 14, and of the time by which the application must be made

- Once a standard periodic contract has come into existence it can be ended:
 - Early by the Contract Holder – before written statement or occupation date (Section 152)
 - By agreement (Section 153),
 - As a result of breach of tenancy (Section 157),
 - False Statement (Section 158)
 - Estate Management Grounds (Section 160)
 - Contract Holders Notice (Section 163)
 - Landlord's Notice (Section 173).

- A Periodic Standard Occupation Contract created as a result of the LHA's homelessness functions can be ended pursuant to Section 173 upon giving **2 months notice**. (*Schedule 8A, Paragraph 6*).
- You will **not** need to wait until 6 months after the start of the agreement to serve notice but you will need to have made sure to have provided the following **before** serving a notice (*Schedule 9A*):-
 - Written statement of contract within 14 days (otherwise cannot serve for 6 months).
 - An address to which documents can be sent within 14 days (otherwise cannot serve for 6 months)
 - A valid EPC and Gas Safety Certificate
- A contract cannot be ended when:
 - A deposit has not been protected/prescribed information not provided
 - Where security has been taken in a form other than money or Guarantee
 - Where prohibited payments have been made and not repaid
 - Where the dwelling is unfit for human habitation

Breach of Contract

- Termination on grounds of contract holder breach:
 - Prohibited conduct – immediate notice (Section 159(2))
 - Any other breach – one month (Section 159(3))
 - Proceedings must be brought within 6 months of notice date (not expiry) (Section 159(4))
 - Court must consider it reasonable to make a possession order (Section 157(2))

Serious Rent Arrears

- Section 181 of the Act – applicable to standard periodic contracts (not secure).
- Where rent is payable weekly, serious rent arrears is at least 8 weeks rent.
- Mandatory Ground for possession if arrears in excess of the prescribed sum at the date of the notice and the date of the possession hearing

Estate Management Grounds

- Contained in Schedule 8 of the act:
 - Ground A – Building works
 - Ground B – Relevant redevelopment schemes
 - Ground C – Charities – continued occupation conflicts with the objects of the charity – LL must be charity
 - Ground D – Dwelling suitable for disabled people (adapted)
 - Ground E – People difficult to house
 - Ground F – Groups of dwellings for people with special needs
 - Grounds G & H – Under occupation grounds
 - Ground I – other estate managements reasons

- **Supported accommodation and homelessness accommodation are treated differently under the Act**
- Support can be provided in Homeless Accommodation but this does not make the accommodation 'supported accommodation'.
- If the accommodation is provided in pursuance of a homelessness function it is homelessness accommodation and the foregoing applies.
- Supported accommodation has a specific definition under the Act
- Supported agreements **can** initially be tenancies or licences for the first 6 months ('the relevant period') and this period can be extended.
- An agreement will become an occupation contract automatically at the end of 6 months. At this time the Landlord is required to issue an occupation contract.

Licences/Extensions

- Supported agreements **can** initially be tenancies or licences for the first 6 months ('the relevant period').
- An agreement will become an occupation contract automatically at the end of 6 months. At this time the Landlord is required to issue an occupation contract (Secure/Standard Supported).
- The Relevant Period can be **extended** by three months with the consent of the Local Housing Authority (where the Landlord is not a LHA).
- *You will need to work with Landlords to ensure that there is an agreed process in place to allow you to be able to provide timely consent.*
- The occupier should be consulted and four weeks notice of the extension must be given by the Landlord once consent has been given by the LHA.

- If the occupier disagrees with a decision to extend they can make an application to the County Court to challenge the decision.
- Where a County Court challenge is made, it would either be:-
 - a) a challenge to the LHA's decision to extend (where accommodation is their own); or
 - b) of the LHA's decision to give consent to a landlord to extend
- In both cases it is the LHA's decision making being challenged and the process is intended to be akin to judicial review.

Where Supported Standard Occupation contracts are provided

- 'A Supported Standard Contract' is a contract which '*relates to supported accommodation*'
- '**Supported accommodation**' is accommodation which is:-
 - Provided by a Community Landlord or Registered Charity; and
 - Landlord/Charity/Third party on behalf provides supports services; and
 - There is a connection between providing the accommodation and providing the support
 - Care institutions are excluded
- '**Support services**' are services which provide:-
 - Support in controlling over coming addiction
 - Support in finding employment or alternative accommodation
 - Support for someone who finds it difficult to live independently (age/illness/disability/other)
 - '**Support**' can include advice, training, guidance and counselling
- **Mobility Clauses** can be included in agreements to allow for mobility between units in the same building

Temporary Exclusion

- It is possible to **temporarily** exclude an occupant thereby requiring them to leave the dwelling **immediately** and not return for up a specified period of **up to 48 hours**. This includes communal areas.
- **Notice** must be given to the contract holder of the reason for the exclusion and this must be done at the time of the exclusion or as soon as reasonably practicable thereafter.
- A person can be excluded up to three times in any rolling six-month period.
- It is intended that such clauses are relied on:-
 - as a last resort to ensure the safety of others,
 - not punish the contract holder
 - to act as a period of reflection for the contract holder with a view to avoiding eviction.

Grounds for exclusion

- Matters that can justify a temporary exclusion are:-
 - Use of violence against any person
 - Doing something in the dwelling (including common parts) which creates a risk of serious harm to any person
 - Behaving in a way which seriously impedes the ability of another resident to benefit from the support being provided
- Guidance published by the Welsh Ministers can be found at:-
<https://gov.wales/sites/default/files/publications/2022-02/supported-accommodation-temporary-exclusion-procedures-statutory-guidance.pdf>
and landlords must have regard to this guidance when deciding whether or not to exclude.

Practical Considerations for LHAs

- Having a process to enable requests to extend the 'relevant period' to be considered and document and which would be capable of withstanding a challenge in the courts.
- Facilitating communication between landlords in the same locality to:
 - avoid (where possible) exclusions (by moving an occupier); or
 - to prevent the street homelessness of those excluded.
- Ensuring that Homelessness Advice Services/Housing Options departments are equipped to:
 - assist landlords who need to exclude contract holders; and
 - Assist excluded contract holders to prevent street homelessness.

- Let Landlords know what would be needed by HAS/HO to assist those who are excluded.
- Provide Landlords/Contact holders with appropriate benefits advice in the circumstances.
- Having sufficient availability to attend review meetings where possible.

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