

# LANDLORD COMPLIANCE - WHAT TO CHECK THIS MONTH... PENALTIES IN WALES

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**M**uch of the content of this magazine is about the business of investing and developing property to rent. However, sometimes people overlook the legal rules and regulations which landlords need to comply with.

Renting property to tenants is heavily regulated. Many of these regulations carry substantial penalties for non-compliance. So, your earnings as an investor are dependent not only on your savvy investment skills but also on legal compliance to avoid fines and penalties.

Every month, we will be looking at one issue where, if you fail to comply, could cause you financial loss.

This month's topic is:

## Penalties in Wales

With regard to the law for rented properties situated in Wales, there are some additional requirements for landlords and penalties for noncompliance.

### **FAILURE TO REGISTER / OBTAIN A LICENSE WITH RENT SMART WALES**

Wales has been developing its own private rented sector rules for some years. An early part of this was the Housing (Wales) Act 2014 which set up Rent Smart Wales and the registration scheme.

This provides that, with effect from November 2015, all landlords of rented property in Wales must register with Rent Smart Wales. Landlords who want to self-manage must also obtain a licence (for which mandatory training is required).

Landlords who do not obtain a licence to manage must use a licensed letting agent.

The penalties for non-compliance include:

- A fixed penalty notice of up to £150
- Prosecution and fines, and
- An inability to serve a valid possession notice

For more information and to register (if you have not already done so), landlords in Wales should visit Rent Smart Wales at <https://rentsmart.gov.wales/en/home/>.

### **Failure to provide a written occupation contract**

The law relating to rented properties changed dramatically in Wales on 1 December 2022 when the Renting Homes (Wales) Act 2016 came into force. (I wrote about this in the July 2022 issue of YPN, which you will find on the app.)

Tenancies in Wales are now treated the same as residential licences, which is why they are now called 'occupation contracts', and the tenants/licensees are now referred to as 'contract holders'.

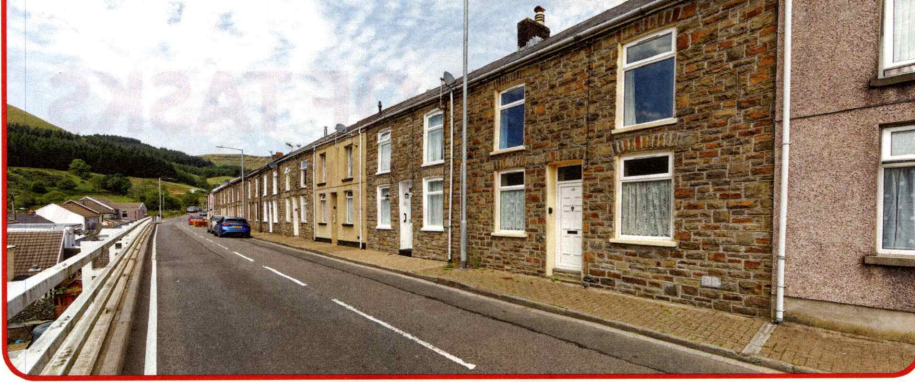
One element of the new legal regime is that landlords must provide their contract holders with a written statement of their occupation contract (i.e. a tenancy agreement!) within 14 days of the 'Occupation Date' (i.e. the date from which the contract holder is entitled to occupy the property).

If they fail to do this, contract holders are entitled to compensation, charged at the daily rate of rent until the written contract is provided, with a maximum period of two months. Contract holders are entitled to offset this against their rent.

Normally, the most compensation you will have to pay is two months' rent. However, note that contract holders can apply to the







Court for an order that you pay more than this if they think your failure to provide the written statement was intentional. The Court cannot, though, award an increase of more than 100%.

Note that you also need to provide a new written statement of contract if the terms of the contract change (e.g. by the Welsh government changing the prescribed terms) or if the tenants change. Landlords will also need to serve a new contract at the end of a fixed term if this is followed by a statutory periodic contract unless this has been provided for in the initial contract.

### 'Incomplete' written contracts

The legislation not only mandates landlords to provide a written contract. It also prescribes the wording of most of the clauses that go in it.

You can see all of the prescribed clauses, called 'terms', in the Welsh government's 'model contracts'. They consist of the following:

**Fundamental terms** – There are two types of fundamental terms:

- Those that have an (F) in the heading on the model contract, which cannot be amended.
- Those that have a (F+) in the heading can be amended, provided the amendment benefits the contract holders.

**Supplementary terms** – These are identified in the model contracts by having an (S) in the heading. They can be deleted or changed if the contract holders agree (this will be evidenced by contract holders signing the contract document).

If a contract is provided which omits the prescribed terms, this will be an incomplete contract and contract holders can, if a proper form of contract is still not provided after 14 days from the Occupation Date, apply to the Court for a declaration and compensation.

Compensation will be calculated in the same way as that for failing to provide a contract at all.

### About contracts

It is important that you are aware that the model contracts provided by the Welsh Government are simply a list of the fundamental and supplementary clauses that are required to be included in contracts (and only amended if this is permitted).

The model contracts should not be used as published. Landlords will need other clauses. These can be provided as:

**Additional terms.** These are terms added by the landlord to the contract. They cannot be incompatible with the fundamental and supplementary terms, and they must be compliant with the unfair terms rules in the Consumer Rights Act 2015. But otherwise, landlords can include whatever they need.

It is really important that landlords use a contract which has been amended. The prescribed terms have been drafted with tenants' interests in mind, and landlords will need to include additional clauses to protect their position. For example:

- To provide that rent be payable in advance
- To set out how deposits are to be dealt with (as is required by law if you take a deposit)
- To prohibit pets (should you wish to do this)
- To require contract holders to use the property as their only or principal home (otherwise, you will not be able to use the abandonment procedure in the legislation)

And so on.

There are many other clauses you will need to include, so you should take care to use a contract which has been specially drafted for Welsh landlords. Examples of suitable agreements include:

- Agreements provided by Propertymark for their agents
- Agreements available from the National Residential Landlords Association (NRLA), and

- My Landlord Law agreements, available FOC to members of my Landlord Law service

However, liability for penalties does not stop at the non-provision of proper contracts. Landlords must also provide...

### The Landlords Details

English landlords will be aware that they need to provide tenants with details of an address for service under Section 48 of the Landlord and Tenant Act 1987.

Section 48 no longer applies in Wales. Instead, Section 39 of the Renting Homes (Wales) Act requires landlords to provide their address using a special form, form RHW2.

If you change your address, then contract holders need to be notified using form RHW03.

The forms are available from the [gov.wales](https://gov.wales) website. We also have them all available for our Landlord Law members.

The penalties for failure to comply are the same as for failing to provide a written contract. Further details can be found in Sections 87 and 88 of the Renting Homes (Wales) Act.

### And finally...

Hopefully, if you rent out property in Wales, this article will contain nothing new, and you will already be compliant.

If not, you need to deal with the issue ASAP if you wish to avoid penalties.

We have a huge amount of explanatory material on the new Welsh laws on my Landlord Law website, along with standard Welsh contracts which can be used. Find out further details at <https://landlordlaw.co.uk/wales>



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Tessa is a specialist landlord and tenant solicitor and author of [www.landlordlaw.co.uk](https://www.landlordlaw.co.uk) and [lodgerlandlord.co.uk](https://lodgerlandlord.co.uk).

Tessa's Landlord Law service contains tenancy agreements and other documents, a property audit kit, detailed checklists on renting out and managing property, a number of step-by-step guides (including an eviction guide), and a members' forum where you can ask 'quick questions'. Find out more at [landlordlaw.co.uk/membership](https://landlordlaw.co.uk/membership).