

# Financial implications of the Renting Homes (Fees etc.) (Wales) Bill

October 2018



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# **Financial implications of the Renting Homes (Fees etc.) (Wales) Bill**

October 2018



# About the Committee

The Committee was established on 22 June 2016. Its remit can be found at:  
[www.assembly.wales/SeneddFinance](http://www.assembly.wales/SeneddFinance)

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Current Committee membership:



**Neil Hamilton AM**  
UKIP Wales  
Mid and West Wales



**Mike Hedges AM**  
Welsh Labour  
Swansea East



**Jane Hutt AM**  
Welsh Labour  
Vale of Glamorgan



**Steffan Lewis AM**  
Plaid Cymru  
South Wales East



**Nick Ramsay AM**  
Welsh Conservatives  
Monmouth



**David Rees AM**  
Welsh Labour  
Aberavon

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The following Member attended as a substitute during this inquiry:



**Llyr Gruffydd AM**  
Plaid Cymru  
North Wales

The following Member attended during the course of this inquiry, in accordance with Standing Order 17.49:



**Helen Mary Jones AM**  
Plaid Cymru  
Mid and West Wales

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## 1. Background and overview

1. The Renting Homes (Fees etc.) (Wales) Bill (the Bill) was introduced on 11 June 2018 by Rebecca Evans AM, Minister for Housing and Regeneration (the Minister).

2. The **Explanatory Memorandum** (EM) explains that the private rented sector (PRS) market offers an important housing option and currently accounts for approximately 15 per cent of all dwelling stock, and that the “Welsh Government is committed to modernising the PRS and ensuring it is a viable choice for those who wish to rent their home”.<sup>1</sup>

3. The EM cites unregulated fees being charged to tenants by letting agents and others as the main barrier to many people accessing the market and good quality rented housing.<sup>2</sup>

4. There are generally three types of tenants fees: setting up a tenancy; renewing the tenancy; and exiting the tenancy early, along with charges occurring during a tenancy, such as making repairs to the property as a result of the actions of a tenant.<sup>3</sup>

5. The EM states that the Bill will:

“...prohibit certain payments made in connection with the granting, renewal or continuance of standard occupation contracts. It also makes provision in respect of the treatment of holding deposits.”<sup>4</sup>

6. Under the **Renting Homes (Wales) Act 2016**, which has not been commenced yet, standard occupation contracts will replace the current assured short-hold tenancy as the default tenancy in the PRS (as well as applying in some limited circumstances in the social housing sector). The Bill has been developed to apply to these new arrangements, which will replace most existing tenancies, including assured short-hold tenancies.<sup>5</sup>

7. The Bill will:

“...make it an offence to require any payment, as part of the granting, renewing or continuing of standard occupation contracts (other than

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<sup>1</sup> Explanatory Memorandum, paragraph 3.2

<sup>2</sup> Explanatory Memorandum, paragraph 3.3

<sup>3</sup> Explanatory Memorandum, paragraph 3.14-3.15

<sup>4</sup> Explanatory Memorandum, paragraph 1.1

<sup>5</sup> Explanatory Memorandum, paragraph 3.5



for rent, security deposits, holding deposits and payments in default). Provision has been made to deal with offences committed by a body corporate, such as a company, so that they may be liable to proceedings being brought against them.”<sup>6</sup>

**8.** A Regulatory Impact Assessment (RIA) is contained in the EM, which presents the estimated costs and benefits arising from the Bill.

**9.** The Committee took evidence from the Minister on the financial implications of the Bill on **3 October 2018**.

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<sup>6</sup> Explanatory Memorandum, paragraph 3.26

## 2. Financial implications of the Bill

**10.** The RIA compares the costs of three options and provides calculations for arriving at these costs.

### Option 1 – Do nothing

**11.** The default option would allow the current status quo to continue. The Explanatory Memorandum explains that, currently, the **Consumer Rights Act 2015** requires letting agents to display an itemised list of their fees on their premises and website, although compliance is inconsistent. There is nothing to stop letting agents or landlords charging whatever fees they see fit to tenants at any stage of the tenancy.<sup>7</sup>

**12.** The Welsh Government estimates that the total costs incurred by tenants (initial letting agent fees, initial landlord fees and letting agent renewal fees) would be approximately £39.4 million over a five year period from 2019-20.<sup>8</sup>

### Option 2 – Legislate to ban all fees charged to tenants

**13.** This is the preferred option.<sup>9</sup> The proposed legislation would:

- Ban fees payable by tenants in connection with the granting, continuing and renewing of tenancies.
- Give Welsh Ministers powers to regulate the amount of deposit that can be taken.
- Provide exceptions to the ban to allow for:
  - Rent;
  - A returnable holding deposit capped at the equivalent of one week's rent;
  - A security deposit;
  - Payments in default of the standard occupation contract;

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<sup>7</sup> Explanatory Memorandum, paragraph 7.3

<sup>8</sup> Explanatory Memorandum, Table 8

<sup>9</sup> Explanatory Memorandum, page 19

- A person guilty of an offence will, on conviction, be liable to a fine.<sup>10</sup>

### Option 3 – Use a non-legislative approach to promote the charging of fewer fees to tenants

**14.** Implementing change without legislation would include encouraging rigorous enforcement of the existing legislation which applies to agents' fees, and establishing a new voluntary code.<sup>11</sup>

#### Cost methodology

**15.** The RIA explains that, whilst the analysis has been informed by engagement with key stakeholders including Rent Smart Wales and local authorities, it has been necessary to make a series of assumptions in order to complete the calculations.<sup>12</sup>

**16.** Given the uncertainty surrounding some of the evidence and assumptions, Annex 1 in the RIA includes a sensitivity analysis undertaken by the Welsh Government to calculate upper and lower bounds for the potential financial impacts of the Bill.

**17.** Such analyses gives rise to a broad range of costs, for example, Option 1 provides lower estimates of £27.2 million for total tenant fees over a five year period from 2019-20 whilst higher estimates are £63.2 million, presenting a cost range of £36 million.

**18.** When asked whether the Welsh Government is confident that the estimated costs used are an accurate reflection of the options considered, the Minister explained:

“We used the best data that was available to us in producing the RIA at the time of drafting, so we've been fortunate in Wales and we're in a position that England aren't in in the sense that we do have Rent Smart Wales, and they've been a really important source of expertise, looking at their experience, as well, which has helped inform our RIA. The collection of data through them has been significant because, again, this is an opportunity for us to engage directly with landlords and with

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<sup>10</sup> Explanatory Memorandum, paragraph 7.5

<sup>11</sup> Explanatory Memorandum, paragraph 7.7

<sup>12</sup> Explanatory Memorandum, paragraph 8.2

agents in a way that England can't, for example, in the production of their Bill."<sup>13</sup>

**19.** The Minister also pointed to the Welsh Government's consultation, the independent research it commissioned to inform the Bill and RIA as well as learning from the Scottish experience.<sup>14</sup>

**20.** In terms of the reliability of Welsh-specific data, the Minister said:

"I think the Welsh-specific data is as reliable as it can be. Again, we've looked at the best possible data that's available using reliable sources, Welsh Government sources, Office for National Statistics sources, and so on, alongside the independent research that we've carried out to inform both the development of the Bill and also our thinking in terms of what the impact might be on the various sectors involved."<sup>15</sup>

**21.** The Minister told the Committee that the sensitivity analysis applied to policy decisions indicates "both the best-case scenario and the worst-case scenario", with the Minister's official adding that "the range of estimates reflects that there are substantial differences in practice between individual landlords and, indeed, across the agents market as well".<sup>16</sup>

## Omitted costs

**22.** The RIA has omitted a range of costs associated with tenants renting properties:

- renewal fees charged by landlords;
- exit fees;
- tenancy deposits;
- holding deposits;
- other fees (such as for replacing lost keys, for a call out if the tenant was at fault, to add or remove renters from the contract, late payment fees, missed appointment fees and fees for pets); and

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<sup>13</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 180

<sup>14</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraphs 181-184

<sup>15</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 186

<sup>16</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraphs 188 and 191

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- letting agent fees to landlords.<sup>17</sup>

**23.** In relation to the impact of call-out fees on the total cost faced by tenants, the Minister told the Committee that there is not a great deal of evidence in relation to call-out fees and how often they are charged, but they would be allowed under the proposed legislation in certain circumstances, such as if a tenant lost their keys.<sup>18</sup>

**24.** The Minister added:

“...we’re very clear within the Bill on what is a permitted payment. So, those are the holding deposits, security deposits, rent and payment in default of contract. The kind of payments that are most frequently required, which are ones that will be banned under the Bill, are the exit fees, so when people come to the end of their contract. And also renewal fees; these will also not be allowed in future as well. So, those are the additional fees that are most often charged...we’ll be working to ensure that contracts are very clear so that individuals, landlords and letting agents will be very clear when an individual tenant or tenants are in default of that contract.”<sup>19</sup>

## Enforcement costs

**25.** The RIA explains that the current costs of enforcing the duties imposed on letting agents under the Consumer Rights Act 2015 are not known and there are suggestions that this is not being enforced consistently. However, the Welsh Government estimates an annual cost of £253,000-£279,000 for Wales per year.<sup>20</sup>

**26.** The Bill establishes an offence for requiring a prohibited payment from a tenant, to be discharged by a £500 Fixed Penalty Notice (FPN) administered by Local Housing Authorities. Costs incurred by Local Housing Authorities will be partially offset by the FPN income, which will be retained by the enforcement authority. The net cost estimate is between a cost of £69,000 and an income of £53,000 over five years from 2019-20.<sup>21</sup>

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<sup>17</sup> Explanatory Memorandum, paragraphs 8.33-8.49

<sup>18</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 198

<sup>19</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraphs 197 and 199

<sup>20</sup> Explanatory Memorandum, paragraphs 8.61-8.62 and 8.64

<sup>21</sup> Explanatory Memorandum, paragraphs 8.130, 8.150 and Table 18

**27.** The estimated cost of FPNs to landlords and letting agents are £119,000 and £12,000 respectively over five years from 2019-20.<sup>22</sup>

**28.** Rent Smart Wales will take account of any convictions under the ban as part of an assessment of compliance with the Code of Practice, and will assess new applications for licenses in the light of any convictions under the Bill. Costs have been estimated to be between £61,000 and £70,000 over five years from 2019-20.<sup>23</sup>

**29.** The more rigorous enforcement of existing legislation relating to the publication of fees (Option 3) is estimated to cost local authorities £100,000 per year. It is also estimated that the development and administration of a voluntary fees code would cost Rent Smart Wales £160,000 per year, with a registration cost to letting agents and landlords of approximately £650 per year.<sup>24</sup>

**30.** Responding to concerns about the additional costs to local authorities of enforcing the Bill, the Minister told the Committee:

“...we’ve had good engagement already with all of the people involved, so tenants’ representatives, landlords, agents, and local authorities as well. We’ve looked to Rent Smart Wales as a model, which has been a really transparent and straightforward way of enforcing what’s required under the Renting Homes (Wales) Act 2016 [correction: Housing (Wales) Act 2014] there. We don’t see this to be any different in terms of being a simple and transparent way forward, and we would expect, as I say, very high compliance. So, because of the high compliance we expect, we would then expect the cost to local authorities to be low.”<sup>25</sup>

**31.** The Minister said that the issuing of FPNs is not particularly burdensome and local authorities will be able to keep the money raised to offset the cost of enforcement.<sup>26</sup> The Minister’s official added:

“...our experience from Rent Smart Wales is that they estimate the cost of investigating a purported breach and issuing a fixed-penalty notice to be around £150 to £200. Local authorities themselves estimate a slightly higher cost, but still well within the £500 fixed-penalty levy that they would be able to retain to cover that cost. Prosecution costs would

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<sup>22</sup> Explanatory Memorandum, Table 16

<sup>23</sup> Explanatory Memorandum, paragraph 8.153 and Table 17

<sup>24</sup> Explanatory Memorandum, Table 19

<sup>25</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 201

<sup>26</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 202

be slightly higher, but still not excessive. We estimate those to be around about an additional £300 to £400. Local authorities estimate, again, a slightly higher figure of maybe up towards £1,000, but, in the event of a successful prosecution, of course, costs could be awarded. So, as the RIA sets out, we envisage this being pretty much self-funding.”<sup>27</sup>

**32.** The Minister also said it was “important to recognise that local authorities haven’t raised concerns with us in terms of the additional cost to them through this Bill, because, obviously, they can retain the fixed-penalty notices”.<sup>28</sup>

**33.** In relation to enforcement resources, the Welsh Local Government Association told the Equality, Local Government and Communities Committee that “practitioners and local authorities feel as if they have been involved in the development of the resource calculation and are comfortable with that”.<sup>29</sup>

**34.** In response to a question on the effectiveness of the non-legislative approach proposed in Option 3, the Minister told the Committee that enforcement would involve spending a lot of money and would not deliver the Welsh Government’s policy aims of tenants not paying certain fees. The Minister also felt that a voluntary fees code would not work given previous experience of voluntary schemes in this sector, such as the landlord accreditation scheme, which only attracted 2,000 out of an estimated 70,000 landlords at that time.<sup>30</sup>

## Transition costs

**35.** A number of transition costs have been identified, summarised in the following table:

Body	Cost range in 2019-20		Potential additional costs
Welsh Government	£4,000	£4,000	£2,000
Local Authorities	£25,000	£34,000	
Rent Smart Wales	£5,000	£6,000	
Training Providers	£3,000	£5,000	
Letting agents	£420,000	£917,000	
Landlords	£1,293,000	£2,732,000	
Total	£1,750,000	£3,698,000	£2,000

Source: Explanatory Memorandum, Table 10: Estimated Transition costs (to nearest £1,000)

<sup>27</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 203

<sup>28</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 223

<sup>29</sup> Equality, Local Government and Communities Committee, 19 September, paragraph 90

<sup>30</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraphs 273-275

**36.** The RIA states that Welsh Government, local authority and Rent Smart Wales staff costs are opportunity costs, as it is not anticipated that the Bill will require additional staffing to implement. It is assumed that such costs will be met within current funding streams.<sup>31</sup>

**37.** The Minister told the Committee that transitional costs are expected to be very short term and small sums. She continued:

“...we estimate that the costs for Welsh Government would be £4,000; £25,000 to £34,000 for local authorities; and between £5,000 and £6,000 for Rent Smart Wales...this is particularly with a focus on communication activities. We would expect that most of that work would be able to be absorbed within their existing budgets without any undue difficulty, and it’s for that reason that we look at that as an opportunity cost.”<sup>32</sup>

## Net costs and savings

**38.** The RIA includes net ongoing costs and savings for the major parties affected if legislation was passed to ban fees charges to tenants when compared to Option 1.

	Letting Agents	Landlords	Tenants
2019-20	£1,665,000	£2,934,000	-£4,599,000
2020-21	£1,703,000	£3,001,000	-£4,705,000
2021-22	£1,742,000	£3,070,000	-£4,813,000
2022-23	£1,782,000	£3,141,000	-£4,923,000
2023-24	£1,823,000	£3,213,000	-£5,037,000

Source: Explanatory Memorandum, Table 12: Net costs ( / savings) of Option 2 (to nearest £1,000)

**39.** Based on research commissioned by the Association of Residential Letting Agents (ARLA), the Welsh Government has assumed that:

- letting agents will pass 75 per cent of the lost fee income on to landlords via increased initial letting fees to landlords; and
- landlords will pass approximately 50 per cent of any increase in letting fees on to tenants through higher rents (or landlords currently charging

<sup>31</sup> Explanatory Memorandum, paragraph 8.70

<sup>32</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 210



fees will choose to pass on 50 per cent of this lost income to tenants through increased rent).<sup>33</sup>

**40.** The RIA notes that, whilst tenants will be liable for higher rents as landlords compensate for higher letting agents fees, tenants would make a net saving of over £24 million between 2019-20 and 2023-24 if fees were banned.<sup>34</sup>

## Impacts of legislation

**41.** The Welsh Government acknowledges that tenants claiming Housing Benefits or Universal Credit could have greater difficulty paying higher rents. As the maximum help towards rent which can be claimed via these benefits is governed by local housing allowance rates for those renting from private landlords, and is currently restricted until 2020, the RIA states that “any impact will be dependent on future decisions to be made by the UK Government, and therefore cannot be quantified through a cost estimate at this time and are unknown”.<sup>35</sup>

**42.** Responding to concerns that benefit claimants may struggle to cope with higher rents if landlords pass on higher letting agent fees to tenants, the Minister told the Committee:

“...we’ve looked very closely at the legislation in Scotland to understand whether or not a knock-on cost had been the increase in rents. Actually, it can’t be proven that the legislation, which achieved the same aim in Scotland, did lead to a rise in rent, and that’s something that there’s been independent research into, and a UK Parliament scrutiny committee also looked into this issue. So, this Bill, were it to become an Act, does not have to necessarily have a knock-on impact in terms of increases in fees [correction: rent]. However, we’ve recognised that there is potential for it to happen.”<sup>36</sup>

**43.** The Minister said “the real concern is about the growing gap between local housing allowances and rents” following a five year freeze on local housing allowance rates to 2020 and cited the use of initiatives such as discretionary housing payments and bond schemes to support people on benefits and low incomes into properties. In relation to the impact of potentially higher rents on

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<sup>33</sup> Explanatory Memorandum, paragraphs 8.92 and 8.102

<sup>34</sup> Explanatory Memorandum, page 21

<sup>35</sup> Explanatory Memorandum, paragraphs 8.113 and 8.117

<sup>36</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 229

the affordability of local authorities to discharge their duties through a private rented sector tenancy mechanism under the Housing (Wales) Act 2014, the Minister said:

“I think that the removal of fees—and let’s not forget that, actually, local authorities end up paying some of these fees—would actually mean that local authorities, potentially, could have more to spend on supporting people into accommodation as a result of not having to pay the additional fees that letting agents charge.”<sup>37</sup>

**44.** In terms of monitoring the impact of the legislation on changes in rent levels, the Minister’s official explained that the Welsh Government already collects private rental data for the Department for Work and Pensions (DWP) to assess local housing allowances. The Minister’s official went on to say:

“The data is fairly consistent. We’re required, in order to deliver on our duties in relation to DWP, to collect data on different property sizes in specified area, and to meet a minimum standard in terms of the proportion of the market as far as it can be assessed to be in that area. So, the data is robust and fairly comparable and collected on a regular basis.”<sup>38</sup>

**45.** When asked whether the Welsh Government had made any assessment of how the loss of letting agents fees will impact on particularly smaller letting agents in Wales, the Minister said there was no evidence of a negative impact based on the Scottish experience, indicating that the total number of letting agents has increased in Scotland since the introduction of its legislation.<sup>39</sup>

**46.** On the issue of increases in letting fees leading to more landlords opting to self-manage their properties, and the potential impact on the quality of service that tenants would then receive, the Minister’s official said that Scottish Government colleagues have indicated that there has not been that change.<sup>40</sup> The Minister’s official added:

“...we do have Rent Smart Wales, which would require a minimum level of training and awareness for any landlord, whether they be an individual landlord directly managing their own property or an agent managing on behalf of other people. So, I think we have a fail-safe there

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<sup>37</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraphs 230-231 and 234

<sup>38</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraphs 243 and 245

<sup>39</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 253

<sup>40</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 257

in terms of quality and making sure that all of our landlords, as far as we can, are operating to a minimum standard.”<sup>41</sup>

**47.** The RIA notes that if both letting agents and landlords pass on 100 per cent of their lost fee income to tenants, this would lead to the same costs as the ‘do nothing’ option.<sup>42</sup> When questioned on the likelihood of this scenario occurring, the Minister told the Committee:

“I think that would be highly unlikely, for a number of reasons. I think that for 100 per cent to be achieved, it would require the whole of the letting agent sector to be operating in the same way all at once, and I think that would be unlikely, especially because it’s a competitive market, so letting agents will be wanting to attract landlords whose properties they can manage. So, I think that, actually, it will lead to healthy competition between letting agents in terms of providing a service at a good price to landlords.”<sup>43</sup>

**48.** The Minister’s official added:

“...in response to our consultation, tenants were actually quite clear that if they had a choice of paying a slightly higher rent—and I believe the ARLA evidence paper comes out at something around about £100 a year might be the impact on rents—that tenants would actually find that easier to cope with than having to find several hundred pounds in a lump sum, perhaps as frequently as every year or every six months, if they’re moving around the sector a lot.”<sup>44</sup>

**49.** In response to concerns that landlords might consider selling their portfolios if their costs increased, and the impact this behaviour would have on the PRS, the Minister said:

“...this is an unlikely thing to happen, because, of course, before we introduced Rent Smart Wales, everybody was saying, ‘Well, everybody’s going to sell their properties; no-one’s going to want to do the half-day training’ and so on, but actually it didn’t happen, and we didn’t see that

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<sup>41</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 256

<sup>42</sup> Explanatory Memorandum, Page 79

<sup>43</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 261

<sup>44</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 263

as a response within the sector at all. Similarly, it's not the experience that they've had in Scotland."<sup>45</sup>

## Committee view

**50.** The Committee accepts the Welsh Government's rationale for introducing the Bill, and agrees that the provisions are necessary to sustain an accessible and affordable private rental sector in Wales. The Committee notes the estimated savings to tenants of banning fees, but is also mindful of the cost implications for letting agents and landlords, and the possible unintended consequence of costs being redistributed to tenants by other means.

**51.** The Committee notes the difficulties in ascertaining the financial impact of the Bill on future rent levels and acknowledges that tenants responding to the consultation indicated that paying slightly higher rent would be more manageable than having to find more significant up-front fees.

**52.** Whilst noting the Minister's view that a high level of compliance is anticipated, the Committee believes that enforcement will be central to the Bill's success. It is recognised that local authorities will be able to retain the income from collecting FPNs to off-set enforcement costs. However, the Committee remains concerned that enforcement activities may not be cost neutral for local authorities and that the potential redistribution of lost fees income by letting agents and landlords could impact on local authorities' ability to prevent homelessness by discharging their duties through a private rented sector tenancy.

**Conclusion 1.** The Committee acknowledges the uncertainty surrounding some of the evidence and assumptions in the Regulatory Impact Assessment and welcomes the inclusion of the sensitivity analysis to examine the range of potential costs in the most favourable and severe scenarios that can reasonably be projected.

**Recommendation 1.** The Committee recommends that the Welsh Government closely monitors and reviews the impact of the Bill's implementation on rent levels.

**Recommendation 2.** The Committee recommends that the Welsh Government closely monitors and evaluates the financial impact of the Bill on local authorities, particularly with regards to enforcement costs, to ensure that they are sufficiently resourced.

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<sup>45</sup> Finance Committee, Record of Proceedings, 3 October 2018, paragraph 269