



Llywodraeth Cymru
Welsh Government

RENTING HOMES (FEES ETC.) (WALES) BILL

Explanatory Memorandum
incorporating the
Regulatory Impact Assessment and
Explanatory Notes

June 2018

Renting Homes (Fees etc.) (Wales) Bill

Explanatory Memorandum to Renting Homes (Fees etc.) (Wales) Bill

This Explanatory Memorandum has been prepared by Education and Public Services Group of the Welsh Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the Renting Homes (Fees etc.) (Wales) Bill, introduced by me on the 11 June 2018, would be within the legislative competence of the National Assembly for Wales.

Rebecca Evans AM

Minister for Housing Regeneration
Assembly Member in charge of the Bill

11 June 2018

Contents page

Part 1 – EXPLANATORY MEMORANDUM

	Page
1. Description	3
2. Legislative Competence	4
3. Purpose and intended effect of the legislation	5
4. Consultation	12
5. Power to make subordinate legislation	14
6. Regulatory Impact Assessment	18

PART 2 – IMPACT ASSESSMENT

7. Options	22
8. Costs and benefits	24
9. Summary of Impact Assessments	68
10. Competition Assessment	71
11. Post implementation review	73

APPENDIX 1 – Explanatory Notes	86
---------------------------------------	-----------

APPENDIX 2 – Index of Standing Orders	99
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1. Description

1.1 The Renting Homes (Fees etc.) (Wales) 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.

2. Legislative Competence

2.1 The National Assembly for Wales ('the Assembly') has the legislative competence to make the provisions in the Renting Homes (Fees etc.) (Wales) Bill ('the Bill') pursuant to Part 4 of the Government of Wales Act 2006 ("GoWA 2006") as amended by the Wales Act 2017.

3. Purpose and intended effect of the legislation

Purpose

- 3.1 The publication of *Prosperity for All: the national strategy*, reiterated the importance of housing as a key priority for the Welsh Ministers. The private rented sector (PRS) plays an important part in meeting the housing needs of the people of Wales. *Prosperity for All* recognises that the bedrock of living well is a good quality, affordable home which brings a wide range of benefits to health, learning and prosperity.
- 3.2 The PRS market offers an important housing option and currently accounts for approximately 15% of all dwelling stock, having more than doubled in size between 2000/01 and 2014/15. The Welsh Government is committed to modernising the PRS and ensuring it is a viable choice for those who wish to rent their home.
- 3.3 However, getting a property in the PRS is being made more difficult by increasing costs and fees becoming prohibitively high, and consequently restricting access to homes in the PRS for many people. Unregulated fees being charged to tenants by letting agents and others have been highlighted as the main barrier to many people accessing the market and good quality rented housing.
- 3.4 A PRS that does not function effectively risks increasing levels of homelessness, and places pressure and demands on social housing, by financially excluding those who can no longer access the private rental market, due to high costs. Tenants within the PRS spend a higher proportion of their income paying the costs of renting their homes than owner occupiers or those within social housing. The impact of additional costs is consequently greater. Action is therefore needed to restrict such costs to ensure the sector can be accessed by those needing or wishing to rent privately.
- 3.5 The Welsh Government has recognised the importance of ensuring Wales' housing law is fit for the future through the coherent and comprehensive updating of housing law. This has seen the introduction of the Housing (Wales) Act 2014, which provides for the registration and licensing for landlords and agents via 'Rent Smart Wales'. In addition, implementation of the Renting Homes (Wales) Act 2016 will simplify and clarify contractual arrangements, and will prohibit fees being charged for the initial provision of written statements of occupation contracts, or statements of variation of those contracts. Under Renting Homes, standard occupation contracts will replace the current assured shorthold 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 shorthold tenancies.

- 3.6 Research commissioned by the Welsh Government, and undertaken by the Cambridge Centre for Housing & Planning Research (Clarke et al (2017))¹, identified a number of issues relating to fees charged to tenants and the potential difficulties these can pose for tenants in securing a tenancy. These included: a wide variation in fees charged by letting agents for a particular service with no real justification for the variation; a lack of clarity on what exactly the fee covers; and a real lack of choice for potential tenants.
- 3.7 Managing to meet the costs of a tenancy, especially for those on lower incomes, can be challenging. There is a risk that tenants may suffer hardship through tenancy costs that can affect their quality of life, or at worst become vulnerable to homelessness. This is consistent with the findings of Reeve et al (2016) cited by Clarke et al (p. 33, 2017) who argued that fees were a significant barrier for many tenants, particularly vulnerable ones, from entering the PRS. A Citizens Advice Bureau (CAB) survey (2015) cited by Clarke et al (p.33, 2017) reported that 64% of tenants considered fees a problem for their tenancy, with 42% having to borrow from friends or relatives, 21% struggling to pay bills and 19% getting overdrawn (which could include entering pay day loans) to pay the fees, or seeking assistance from local authorities. Both CAB and Which? found that if reference checks are subsequently failed then prospective tenants currently incur costs without securing a tenancy. The additional expenditure makes it difficult for some to find alternative accommodation. Meeting the policy objective of making accommodation within the PRS accessible and affordable (in terms of both the cost of renting as well managing the costs of moving) means that the Welsh Government wishes to see any avoidable barriers removed.
- 3.8 Although the Consumer Rights Act 2015 requires all letting agents in England and Wales to publish full details of their fees and charges, it does not regulate the amount of fees which may be charged. In addition, it can be difficult to make comparisons between different agents' fees, what those fees relate to and, potentially, whether landlords are also being charged fees by agents for lettings services. Variation in practice across the PRS makes it difficult to plan because tenants do not know what they will be expected to pay. These unexpected costs can put tenancies at risk, or at worst make them unaffordable.

Market failure

- 3.9 Clarke et al (p. 41, 2017), during their interviews with agents, were not able to identify why the activity carried out by different agents in undertaking checks, setting up new tenancies or dealing with other

¹ Clarke, A., Jones, M. & Muir, K. (2017). *Research into letting agent fees to tenants*. Cardiff: Welsh Government, GSR report number 48/2017
Available at: <http://gov.wales/statistics-and-research/research-letting-agent-fees-tenants/?lang=en>

organisations (such as for credit referencing or inventories) resulted in the level of variation in fees. It is consequently difficult to confirm whether the costs incurred, allowing for a proportionate amount of profit, are consistent with the fees subsequently charged to tenants.

3.10 CAB and Shelter (cited by Clarke et al, p. 34, 2017) suggest there is inconsistency between the recipients of tenant fees when compared to other services, such as employment agents, who charge fees to employers, rather than prospective employees, or estate agents charging sellers rather than buyers of homes. Evidence from letting agents largely indicated that they considered landlords their clients rather than tenants, albeit a number believed they had a duty of care towards tenants (Clarke et al p. 34, 2017). These arguments suggest the basis for charging tenants is driven by an attempt to keep their costs to landlords minimal in order to attract business. However, as a result of this approach the costs of fees being charged to tenants continue to increase as outlined in Schedule 1 to the regulatory impact assessment (RIA) of the Bill. As a result, tenants are finding it more and more difficult to access the PRS, at a time when buying their own home is often unattainable and social housing is not available to them. It is vital that access to the PRS remains an attractive option for those wishing to rent

3.11 As most properties are let by a single agent, tenants rarely have any option but to deal with whichever agent is managing the property they wish to rent, irrespective of the agent's fees. This means that 'shopping around' is simply not an option, meaning that the costs of fees to tenants remain high and a barrier to many.

3.12 In addition, tenants do not tend to negotiate readily, though negotiation over the fees agents charge to landlords is more common, as landlords can more easily approach another agent if the associated costs are excessive. For many, this has resulted in tenant fees becoming a barrier to accessing the PRS. Failure to address this financial barrier now has the potential to risk creating a dysfunctional housing sector in Wales, with many people unable to access their housing tenure of choice.

3.13 The Welsh Government is aware of the risk that, as a consequence of the ban on tenant fees, rents may increase. However, this potential effect must be balanced with the benefits which tenants will enjoy, as a result of the greater predictability of cost over the length of the tenancy and reduced up-front costs. Feedback from stakeholders representing tenants confirmed the greater predictability of costs would be preferable.

Context

3.14 Tenant fees are primarily split into three key areas: setting up a tenancy; renewing the tenancy; and exiting the tenancy early. In addition, charges are also made relating to activities occurring during a tenancy, often as a consequence of an action of the tenant.

3.15 The set up fees for establishing a tenancy are commonly paid upfront, when the tenancy is initially established. Renewal fees may be charged to tenants for renewing the tenancy agreement, normally after an initial fixed term period of six months, but this might vary depending on the length in time of the agreement. Exit fees may be charged to tenants in order to recompense a landlord for allowing them to end the tenancy early. Charges resulting from the actions of the tenant may be incurred at any point during the tenancy in response to specific events, for example replacing lost keys or making repairs to the property as a result of the actions of a tenant.

3.16 The Welsh Government's consultation on proposals to ban fees charged in the PRS identified activities for which fees charged to tenants are common. These activities are listed below:

- Accompanied viewings
- Pre-tenancy negotiation
- Producing the tenancy agreement
- Producing guarantor forms if applicable
- Completing reference reports
- Obtaining / verifying all safety certificates
- Protecting the deposit and issuing documentation
- Processing move in monies and signing documentation
- Issuing the inventory and schedule of property
- Amending tenancy agreements
- Renewing tenancy agreements
- Early termination

3.17 The research (Clarke et al, p. 13, 2017) identified that further charges are raised by agents for other administrative tasks, such as preparing tenancy information packs, etc. Some agencies stated they also corresponded with utility companies and helped tenants with benefit applications. A number of letting agents confirmed, when responding to the Welsh Government's consultation on fees charged within the PRS, details of which are provided in section 4, that these fees were commonly charged in their day to day business. Not all of these tasks are completed by agents and third parties were reported to assist with obtaining credit references, bank references or charges, production of inventories, erecting 'To Let' signs, arranging the payment of tenancy deposit scheme, and providing Energy Performance Certificates (Clarke et al, p. 13, 2017).

Holding deposits

3.18 Holding deposits are commonly paid by prospective tenants, for taking the property off the market and giving them a right of first refusal to take up the tenancy. On the basis the tenant passes any necessary checks, the holding deposit is normally put towards the tenancy deposit or first month's rent, once the tenancy is signed.

- 3.19 Such deposits serve two purposes. Firstly, giving confidence to the prospective tenant by removing the risk of another prospective tenant securing a tenancy ahead of them. Secondly, agents and landlords are also protected from the risk of tenants speculatively reserving a number of properties, which can impede the efficient operation of the rental market and can result in unnecessary and costly work for landlords and agents.
- 3.20 The “holding” period usually covers a reasonable period of time needed to obtain any necessary checks required for the tenancy. However, in the case of students, this can be for a considerably longer period before the occupation date of the tenancy, as much as several months in some cases.

Charges resulting from the fault of tenants

- 3.21 Once a tenancy agreement is agreed between a tenant and landlord, additional charges may be incurred by tenants where there has been fault on the part of their part. These charges must be set out in the tenancy agreement and reflect what tenants are responsible for. This might include undertaking day to day maintenance about the property which a reasonable tenant would do, or rectifying damage to the premises wilfully or negligently incurred. In addition, whilst tenants should pay rent in accordance with the terms of their tenancy agreement, charges are sometimes used as a deterrent to late payments.

Security deposits

- 3.22 Other than the rent itself, security deposits (called tenancy deposits) reflect the highest outlay on the part of the tenant. Evidence collected from the consultation found that landlords almost always charge one month’s rent for the security deposit. Letting agents generally charge slightly more; a month’s rent plus one or two weeks’ rent. Some properties, such as those that are listed, which have unique architectural features or fully furnished properties that have been expensively (and recently) decorated, may charge a higher deposit to cover potential damage. Higher deposits may also be charged to tenants with pets, as landlords envisage that cleaning costs may be higher than for tenants without pets.
- 3.23 Higher security deposits of six weeks’ rent or more are not the norm, the circumstances and types of properties on which they are charged means we would not expect them to be an issue for many prospective tenants and therefore not a significant barrier to entering a tenancy. Maintaining the option of charging a higher security deposit will provide flexibility for landlords to adapt to the conditions of their property. There is a risk that some landlords might be reluctant to rent their properties if the safeguard of a larger deposit is not permitted.
- 3.24 The Welsh Government has not been provided with evidence to show significant or consistent overcharging of security deposits to the same

level as that of other fees payable by tenants. However, we are concerned that a consequence of the ban on fees could be an increase in the level of security deposit as an added safeguard for the tenancy. If this were to become commonplace, with landlords charging up to two months rent, the affordability of homes within the PRS might be affected for many tenants.

Intended effect

- 3.25 The banning of fees to tenants and prospective tenants by letting agents and landlords, in connection with granting, renewing or continuing tenancies, is intended to ensure that the risks identified above are mitigated, and that the sector remains functional and affordable for those who wish to access it. This Bill has been developed in the context of helping tenants find homes within the PRS and move more easily. Good landlords and letting agents recognise this aim and are working collaboratively with the Welsh Government and other key partners to help the PRS flourish. The prohibiting of charging fees to tenants reflects a further step in improving the PRS, by increasing accessibility and transparency for tenants and prospective tenants.
- 3.26 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 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. The permitted payments reflect the need to offer protection to all parties through security deposits in case there is damage done to the property. Returnable holding deposits have advantages to both landlord and prospective tenant in easing the initial stages of agreeing a tenancy. However, capping holding deposits to a week's rent, as set out in the Bill, will ensure that they remain affordable to the contract-holder, and ensures a balance between the interests of landlords and lettings agents on the one hand and contract-holder on the other.
- 3.27 Standard contracts under the 2016 Act will set out the responsibilities of both landlord and contract-holder, providing certainty of their obligations to one another. Where a contract-holder is at fault, and breaks the terms of the contract, costs may be incurred by the landlord for which the contract-holder should be liable². Permitting charges for these costs reflects a reasonable commitment on the part of the contract-holder to agree to pay such sums. The charging of payments in default is longstanding practice of which there is little evidence to show tenants within the PRS are being overcharged to a significant or consistent

² The Welsh Ministers have powers to make regulations so that the provisions of the Bill apply to assured tenancies, defined as such under the Housing Act 1988 in case the 2016 Act is not fully in force by the time approval is sought for this Bill.

degree. On that basis, the Welsh Government sees no need to change such practice.

- 3.28 Evidence for capping security deposits in Wales is unclear and did not feature in responses to the consultation. However, there is a risk such deposits could rise and therefore become unaffordable. Powers for the Welsh Ministers to set a lower cap have therefore been included within the Bill as a necessary safeguard. The effect will be to maintain security deposits at their current levels and to avoid increases that harm the affordability and accessibility of the PRS.
- 3.29 Whilst almost all landlords and agents are committed to making the PRS an attractive housing option, there may be circumstances where disputes arise over the charging of a prohibited payment. Should contract-holders consider they have been charged a prohibited payment, or if a holding deposit is not returned in accordance with the provisions of the Bill, we have created a right to apply through the county court for recovery of these sums.
- 3.30 Offences under the Bill will be enforced by local housing authorities who will be able to issue fixed penalty notices for offences under sections 2 and 3 as an alternative to commencing proceedings against letting agents and landlords. However, proceedings may follow if a landlord or agent chooses not to pay a fixed penalty notice. Furthermore, the licensing arrangements for letting agents and landlords under the Housing (Wales) Act 2014, which require them to demonstrate they are fit and proper, means that offences resulting from a breach to the ban could put their licences in jeopardy. Local housing authorities will be required to notify the licensing authority (or all of them if there is more than one) of any conviction.
- 3.31 Provision has been included within the Bill to permit a local housing authority to require documents or information in connection with its functions under the Bill. Any person who receives a notice will be required to hand over any documents or information to the local housing authority. Details will be provided of the consequences of not complying with the notice. The Bill will make it an offence if a person fails to respond to the notice or provides false or misleading information to a local housing authority. Provision is made to ensure that conviction of such offences will be reported to the licensing authority.
- 3.32 The Bill will include a regulation-making power, to amend Chapter 3 of Part 3 of the Consumer Rights Act 2015, to require letting agents to ensure that their fees are displayed, in accordance with the Act, on third party websites, and that provision is made that more than one penalty can be imposed on letting agents when a continuing breach has not been remedied. This will ensure that there is consistency in the advertising of permitted payments on property portals and the websites and offices of letting agents.

4. Consultation

Consultation on fees charged to tenants in the private rented sector

4.1 On 19 July 2017, the Welsh Government issued a 12 week consultation seeking views on the nature and level of fees charged to tenants in the private rented sector, inviting comments on the possible consequences of banning fees. It was felt that publishing a draft bill was unnecessary in light of the policy certainty of the bill's provisions which had been informed by research commissioned on behalf of the Welsh Government - including consultation with stakeholders. Details of the consultation were shared widely by Rent Smart Wales, with all registered or licensed landlords and letting agents emailed directly to invite comments (approximately 80,000 landlords and 2,600 letting agents in total). The views of tenants groups, as well as other key stakeholders, were actively sought to ensure that a variety of interests were captured to inform the development of policy.

4.2 By the time the consultation closed on 27 September, 683 responses had been received, broken down according to the following key groups:

Landlords	45%
Tenants	33%
Letting / Management Agents	14%
Local Authorities	2%
Representative Bodies	2%
Other	2%
Did not answer	2%

4.3 A more detailed analysis of the consultation is available on the Welsh Government website³, but key findings from the consultation confirmed that:

- 56% of all respondents agreed with an outright ban on fees.
- 55% of respondents were of the view that a ban on fees would lead to an increase in rents, though many respondents thought that the rise would be negligible and was preferable to up-front fees.
- 90% of respondents believed that fees charged as a result of a default on the part of a tenant, or for services provided at the request of a tenant, should continue to be allowed.
- 64% of respondents agreed that holding deposits should be allowed, though there were concerns about both the amount of holding deposit required and the terms by which they were returnable.

³ <https://beta.gov.wales/sites/default/files/consultations/2018-02/180226-fees-charged-to-tenants-responses.pdf>

- 91% of tenants responded that they have been charged fees to rent properties.
- When fees were charged, tenants said that, on average, they were charged £249 to begin a tenancy, £108 to renew a tenancy, and £142 at the end of a tenancy as part of the normal moving out process.
- Two-thirds of tenants indicated were made aware of fees before they entered into an agreement.
- 62% of tenants responded that fees have affected their ability to move into a rented property, while 86% replied that fees have affected their ability to use an agent.
- 99% of agents charge fees to tenants – the reported average was £181 per tenancy.
- Only 19% of landlords charge fees to tenants – the reported average was £66 per tenancy.
- It was indicated that landlords are generally unaware of the types of fees their agent (if they use one) charge to tenants. 61% of landlords did not know the amount their tenants were charged.
- 92 -95% of agents charge fees to landlords. Agents indicated that the average fee charged for letting a property is £233, whereas landlords indicated it is £265.
- 61% of landlords responded that an increase in fees charged to them would affect their decision on using an agent in future.

4.4 In addition to the consultation exercise, a stakeholder discussion was held in Cardiff City Hall on 12 December 2017 to test the understanding of how any future legislation might work in practice. The discussion also focused on providing quality assurance of the information being used to inform the RIA; testing key assumptions about the impact of the Bill. Participants in the discussion included a wide range of representatives operating in the PRS, including ARLA Propertymark, the National Landlords Association, the Residential Landlords Association, the Property Ombudsman, Rent Smart Wales, WLGA, CAB, Shelter Cymru, NUS Wales, TPAS, Let Down in Wales, MyDeposit, Deposit Protection Service and Tai Pawb.

4.5 The research commissioned by the Welsh Government into fees charged to tenants, undertaken by the Cambridge Centre for Housing and Planning Research, involved a series of interviews and surveys with key stakeholders. Those stakeholders included representatives of letting agents and landlords, as well as bodies with an interest in the experiences of tenants, such as CAB. Evidence and testimonies provided by individuals taking part in the research proved valuable in informing the consultation and further development of the policy proposals that followed.

5. Power to make subordinate legislation

5.1 The Bill contains provisions to make subordinate legislation and issue determinations. Table 5.1 (subordinate legislation) and Table 5.2 (guidance) set out in relation to these:

- (i). the person upon whom, or the body upon which, the power is conferred;
- (ii). the form in which the power is to be exercised;
- (iii). the appropriateness of the delegated power; and
- (iv). the applied procedure, that is, whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

Table 5.1: Summary of powers to make subordinate legislation in the provisions of the Renting Homes (Fees etc.) (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
7 (1)	Welsh Ministers	Regulations	Provides the Welsh Ministers with the flexibility to amend the definition of 'Permitted Payments'	Affirmative	Power enables amendment of primary legislation
13 (3)	Welsh Ministers	Regulations	Provides the Welsh Ministers with the flexibility to amend the level of fixed penalty notice which may be given in respect of an offence under the Bill	Affirmative	Power enables amendment of primary legislation
18(1)	Welsh Ministers	Regulations	Provides the Welsh Ministers with a power to amend Chapter 3 of Part 3 of the Consumer Rights Act 2015 (duty to publicise fees etc.)	Negative	The negative procedure is appropriate for regulations given the nature of the proposed amendments.
19 (1)	Welsh Ministers	Regulations	Provides the Welsh Ministers with the option to apply the Bill to Assured Tenancies (should the standard occupation contract introduced by the Renting Homes (Wales) Act 2016 not be in force by the date of commencement of the Bill, once enacted).	Negative	The negative procedure is appropriate for regulations which make amendments to enable provisions set out in the Bill which once agreed by the Assembly may be implemented to existing tenancy arrangements should the Renting

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
					Homes Act not be fully commenced.
Schedule 1 paragraph 2(4)	Welsh Ministers	Regulations	Provides the Welsh Ministers with a power to prescribe a limit of a security deposit a contract-holder is requested to pay.	Negative	The negative procedure is appropriate for regulations to set a cap, if necessary. .
Schedule 1 paragraph 6	Welsh Ministers	Regulations	Provides the Welsh Ministers with powers to change the meaning of “permitted variation” in paragraph 1 of Schedule 1 and includes powers to make amendments to Chapter 3 of Part 3 and Chapter 4 of Part 7 of the Renting Homes (Wales) Act 2016	Negative	The negative procedure is appropriate for regulations which make technical amendments
Schedule 2, paragraph 2(3)	Welsh Ministers	Regulations	Provides the Welsh Ministers with the flexibility to amend the deadline for agreement of return of holding deposits	Negative	The negative procedure is appropriate for regulations which make technical amendments
Section 21	Welsh Ministers	Regulations	Provides the Welsh Ministers with a power to make supplementary, incidental, consequential, transitory, transitional or saving provision in respect of the Bill.	Negative	The negative procedure is appropriate for regulations which make technical amendments
Section 24	Welsh Ministers	Order	Provides the Welsh Ministers with a power to bring the majority of the remaining provisions of the Bill into force.	No procedure	

Table 5.2: Summary of powers to issue guidance in the provisions of the Renting Homes (Fees etc.) (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
15	Welsh Ministers	Guidance	Provides Welsh Ministers with the power to issue statutory guidance to local housing authorities in relation to enforcement of the Bill	Negative	The negative procedure is appropriate for guidance which will provide instruction on how to appropriately enforce the provisions of the Bill, but not actually change those enforcement provisions, as agreed by the Assembly.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has been completed for the Bill and it follows below.

6.2 There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

PART 2 – REGULATORY IMPACT ASSESSMENT

Table A

SUMMARY – REGULATORY IMPACT ASSESSMENT (RIA)

Renting Homes (Fees etc.) (Wales) Bill		
Preferred option: <i>Legislation prohibiting certain payments in relation to the grant, renewal or continuance of standard occupation contracts.</i>		
Stage: Introduction	Appraisal period: 2019/20 - 2023/24	Price base year: 2017/18
Total Cost Total: £18,586,000 - £42,606,000 Present value: £16,874,000 -£38,660,000	Total Benefits Total: £16,697,000 – £38,634,000 Present value: £15,054,000–£34,832,000	Net Present Value (NPV): £-1,820,000 - £-3,828,000

Administrative cost

Costs:			
<p>There will be a limited transitional cost to Welsh Government of providing briefing for Local Authorities, and updating the Code of Practice used by Rent Smart Wales. There will also be transitional costs to Local Authorities and Rent Smart Wales to cover training, adaptation of working practices and policies.</p> <p>The main administrative costs resulting from the Bill are those involved in enforcement, which will fall on enforcement bodies (Local Housing Authorities), and changes required in Rent Smart Wales licence administration. The costs of enforcement will be mitigated by retention of Fixed Penalty Notices issued where</p>			
Transitional: £34,000 – £46,000	Recurrent: £8,000 – £139,000	Total: £42,000- £185,000	PV: £40,000- £174,000
Cost-savings: No administrative cost savings have been identified			
Transitional: £0	Recurrent: £0	Total: £0	PV: £0
Net administrative cost: £42,000-185,000			

Compliance costs

The main ongoing costs of the Bill, in terms of a loss of a source of revenue, will be felt by those letting agents who currently charge the most and largest fees; they will

therefore make less profit from letting activities and/or need to cover their normal business costs via another method. To a lesser degree, landlords who charge the kinds of fees being banned will also be affected. Costs could be transferred from letting agents to landlords if letting agents choose to recoup the lost revenue via higher fees to landlords, and landlords could then choose to transfer these costs to tenants via an increase in rent. The recurrent cost (excluding penalties) to letting agents and landlords over the appraisal period is estimated to be £16.7m-£38.6m, with a central estimate of £24.1m.

There will be transitional costs of between £1,716,000 - £3,654,000, incurred by letting agents, landlords and training providers as they adapt to the changes.

Transitional: £1,716,000- £3,654,000	Recurrent: £16,828,000 – £38,767,000	Total: £18,544,000 – £42,421,000	PV: £16,834,000 – £38,486,000
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Other costs

No other costs have been identified.

Transitional: £00	Recurrent: £0	Total: £0	PV: £0
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Unquantified costs and disbenefits

As letting agents and landlords amend their business practices to comply with the Bill it is possible some letting agents reduce the level of service they provide, reduce lettings business or stop trading; some landlords may choose (if their fees are increased) to shop around for a more cost effective letting agent, stop using letting agents and manage property themselves, or even reduce or divest of their properties. There is a risk of fewer jobs or agencies operating in the lettings business, or landlords leaving the Private Rented Sector (PRS). However, it is not envisioned that this Bill will have an impact on the overall size of the PRS or availability of rental property. Rents may increase if letting agents and landlords recoup lost fee income through higher rents. Since we have no information on how each individual letting agent and landlord will choose to respond to the legislation, these costs are unknown given that it is not possible to produce a quantified estimate of these impacts.

Benefits

Tenants will benefit from not having to pay fees, particularly initial and renewal fees, which are estimated in this document. Depending on the choices made by letting agents and landlords dealing with the loss of fee income, tenants may face higher rents, but the PRS will be more accessible, and tenants will benefit from greater certainty around the ongoing costs of accommodation. The benefit to tenants over the appraisal period is estimated to be £16.7m-£38.6m, with a central estimate of £24.1m.

Those tenants who found it difficult to raise the initial fees will benefit from an ability to enter or move within the PRS to achieve accommodation which is more suitable to their needs.

Total: £16,697,000 – £38,634,000

PV: £15,054,000 – £34,832,000

Key evidence, assumptions and uncertainties

The modelling work carried out in this document makes a number of assumptions around the number of properties rented per year, fees charged, proportion of properties let by landlords or by letting agents. These assumptions are outlined in the text.

Given the level of uncertainty in the figures used for the central estimate presented, sensitivity analysis has been undertaken testing the impact of changing the key assumptions; this is presented in Annex 1.

7. Options

7.1 Three main options were identified:

- Do nothing
- Legislate to ban all fees charged to tenants⁴
- Use a non-legislative approach, to promote the charging of fewer fees to tenants

Option 1: Do nothing

7.2 Under this option the current status quo will be allowed to continue.

7.3 Currently, the Consumer Rights Act 2015⁵ states that letting agents must display an itemised list of their fees on their premises and website, although, as discussed later, compliance with this is patchy. There is nothing to stop letting agents or landlords charging whatever fees they see fit to tenants at any stage of the tenancy.

7.4 In Chapter 8, below, there is a summary of the fees that are currently charged to tenants in the private rented sector (PRS). There is some evidence that fees, and the amount of items for which fees are charged, have increased over time.⁶ The main issue with this option is that it does nothing to address the affordability of the PRS, and indeed, not taking action at this point may lead to tenants wishing to enter or move within the PRS facing an increasing financial barrier in future.

Option 2: Legislate to ban fees charged to tenants

7.5 Under this option, legislation will:

- Ban fees payable by tenants in connection with the granting, continuing and renewing of tenancies (by letting agents, landlords and third parties).
- 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
- A person guilty of an offence will, on conviction, be liable to a fine. Local Housing Authorities will have powers to issue Fixed Penalty Notices to discharge the liability of a person who has committed an

⁴ 'Tenant' in this document refers to the holder of a standard occupation contract or assured tenancy (including assured shorthold tenancy).

⁵ Consumer Rights Act, 2015: Section 83.

⁶ Discussed at para 8.56 and in Annex 1.

offence, and will also have information powers to assist with their enforcement action.

7.6 This approach will ensure that the policy objective of making the PRS more accessible is achieved by ensuring that costs incurred at the outset of the tenancy are proportional to the rental charge, and that unpredictable additional fees are not charged throughout the tenancy term.

Option 3: Non Legislative Approach

7.7 This option aims to implement change without legislation. The key actions to be taken to achieve this include encouraging rigorous enforcement of the existing legislation which applies to agents' fees, and establishing a new voluntary code.

7.8 The Consumer Rights Act 2015 requires all letting and management agents to publish their fees. The responsibility for enforcement of this requirement lies with the Trading Standards (Weights and Measures Authority) teams within local authorities and the fines for non compliance can be as much as £30,000. Research for Welsh Government notes the 'lack of effective enforcement of the 2015 legislation'.⁷ Providing additional funding to enforce the legislation may increase compliance with this existing legislation, helping to increase transparency and preventing tenants from entering into financial arrangements that they only later find to be unsustainable in practice.

7.9 Whilst enforcement of the 2015 Act would provide greater transparency on fees, it would not reduce fees and would not apply to landlords. As such, it would therefore need to be supported by additional action in order to achieve the objective of addressing the affordability of the PRS. That additional action would be to work with the sector bodies to develop a voluntary fees code.

7.10 A voluntary fees code could standardise what charges would be permitted and propose a cap on the amounts that could be charged.

7.11 The licensing conditions for Rent Smart Wales can be varied without the need for legislation and licensing is mandatory for those involved in managing tenancies. However, any change to conditions would entail imposing a significant change to business practices for letting agents and landlords without the opportunity for oversight and amendment by the National Assembly, and so will not be considered for this option.

7.12 The take up is likely to be very low. Additionally, those most likely to sign up are those who do not operate problematic practices anyway, and therefore the impact would likely be very limited. For this reason, this option is rejected

⁷ Clarke, Anna et al, *Research into letting agent fees to tenants*. Welsh Government: 2017, p49. <http://gov.wales/statistics-and-research/research-letting-agent-fees-tenants/?lang=en>

8. Costs and benefits

8.1 The assessment of costs and benefits is centred on the five year period 2019-20 to 2023-24. If passed the Bill is expected to receive Royal Assent in Spring 2019 and, consequently, it will be during 2019-20 that letting agents, landlords, and bodies associated with communication of the changes, and enforcement of the ban will begin to incur costs. A five year appraisal period has been chosen, since the costs and benefits of the Bill are expected to reach a steady state quickly.

8.2 The RIA presents a best estimate of the costs and benefits of the Bill based upon the available evidence. The analysis has been informed by engagement with key stakeholders including Rent Smart Wales and local authorities. Nevertheless, it has been necessary to make a series of assumptions in order to complete the calculations. Any assumptions made are explained in the narrative. In light of the uncertainty surrounding some of the evidence and assumptions, sensitivity analysis has been undertaken and this has been used to calculate upper and lower bounds for the potential financial impacts of the Bill (Annex 1).

Option 1: Do nothing

8.3 There are no additional costs associated with this option, but understanding the current impact of fees in the PRS will assist in identifying the financial implications of the Bill and alternative options.

Background

Size of Private Rented Sector

8.4 The PRS in Wales at 31 March 2016 accounted for approximately 202,000 households, according to Welsh Government Dwelling Stock Estimates.⁸ The PRS has expanded significantly in recent years, more than doubling between 2000-01 and 2014-15. Assuming that the annual average growth rate from the period 2011 to 2016 (2.3%) carries on, the projected size of the PRS from 2019-20 to 2023-24 is shown below.

⁸ Dwelling stock estimates as at 31 March 2016: <http://gov.wales/docs/statistics/2017/170427-dwelling-stock-estimates-2015-16-en.pdf>

Table 1: Estimated future growth of Private Rented Sector⁹

Year	PRS households
2019-20	220,989
2020-21	226,070
2021-22	231,268
2022-23	236,585
2023-24	242,025

Lettings in Private Rented Sector

8.5 Landlords and agents can have different roles in the letting and management of rental properties:

- Landlord self-management – the landlord fully manages all stages of the process, finding the tenant, drawing up the agreement, collecting the rent and managing the tenancy
- Let only - Letting agent advertises the property, finds tenants and organises the signing of the tenancy, including any pre-tenancy checks; then the landlord manages the tenancy from that point onwards
- Managing agent – Letting agent is responsible for letting the property, collecting rent and managing the property throughout the tenancy.

8.6 There will be more nuanced relationships between landlord and agent, but for the purposes of this assessment, tenancies will be broadly categorised as ‘self managing landlords’ (let and managed by landlord); ‘let only’ (let by agent and managed by landlord); or ‘managing agent’ (let and managed by an agent).

8.7 The underpinning assumption is that where fees are charged in relation to a tenancy, they would be charged by the landlord if they self-manage, and by the letting agent in the let-only or managing agent arrangements.

8.8 Rent Smart Wales, as the lead licensing authority for landlords and letting agents as set out Part 1 of the Housing (Wales) Act 2014, requires landlords to register their properties, and those landlords and letting agents who manage properties to be licensed. When registering properties, landlords are asked which activities they carry out, and which are carried out by an agent. This offers a source of information on the letting and management activities of those involved in the private rented sector in Wales.

8.9 Rent Smart Wales uses the term ‘agent’ to describe any person or organisation working on behalf of a landlord. This includes those who might be described as high street letting agents, as well as any informal arrangements whereby an individual looks after a rental property on behalf

⁹ Data extrapolated from Welsh Government Dwelling Stock Estimates: <http://gov.wales/docs/statistics/2017/170427-dwelling-stock-estimates-2015-16-en.pdf>, assuming the compound annual growth rate 2010/11-2015/16 (2.3%) continues into the future.

of the landlord. In order to refine the data provided by Rent Smart Wales to reflect the involvement of those that might be referred to as ‘commercial’ agents, it has been filtered so that only agents operating as a limited company or under a ‘trading as’ name are included in the let only or managing agent categories. Any other ‘agents’ identified in their data have been added in to the self-managing landlord total.

8.10 Information from Rent Smart Wales, extracted on 7 November 2017, will be used to consider the proportion of properties which fall into each category for the purposes of this Assessment. Not all properties are registered yet, and in addition, Rent Smart Wales is only required to register those properties which are let under Assured Shorthold Tenancies, Assured Tenancies and Regulated Tenancies. Therefore, the total number of properties registered, even once registration is complete, is likely to be less than the current projected size of the PRS provided by dwelling stock estimates.

Table 2: Rent Smart Wales letting information – properties registered by 07/11/17¹⁰

Description	Number of properties	%
Self managing landlords (properties where no ‘commercial’ letting or managing agent is involved)	101,371	59%
Let only (‘commercial’ let only agent involved)	6,828	4%
Managing agent (‘commercial’ managing agent involved)	64,913	37%
Total (a)	173,112	100%

(a) Excludes 2,261 registered properties where no letting or management information is known.

8.11 Rent Smart Wales estimate there are approximately 90,000 landlords in Wales. At the date this data was extracted it is estimated that around 3,500 landlords were still yet to register. Compliance with Rent Smart Wales is not full as yet, and therefore the indicative percentage split between the different letting/management relationships may change as compliance increases. However, this is the best data currently available in relation to Wales.

8.12 Alternative estimates of the proportion of properties let by agents from other sources vary considerably. ARLA estimate that 60% of rental property in the UK is managed by letting agents.¹¹ Shelter Cymru conducted a survey of Welsh tenants which suggested 31% of properties are let by an agent.¹² The Council of Mortgage Lenders’ research with UK

¹⁰ See annex 2

¹¹ Capital Economics, *Letting the market down? Assessing the economic impacts of the proposed ban on letting agent fees. A report for ARLA Propertymark*, March 2017, p 27. <http://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>

¹² Shelter Cymru, *Letting Go Why it’s time for Wales to ban letting agent fees*, 2016, p3. <https://sheltercymru.org.uk/letting-go/>

landlords says 51% of landlords use letting agents.¹³ Research for Welsh Government estimated that 29% of property was managed by agents, and suggested that a further 7% was let by agents but managed by landlords.¹⁴

8.13 This variation shows that UK-wide data is not likely to reflect the realities of the Welsh private rented sector. This RIA will use the split indicated by the RSW data above, given that it is Wales specific, and has been generated with reference to actual property registrations rather than sample information.

Length of tenancy / Turnover

8.14 Any estimate of the annual cost of fees requires a measure of how often tenants move, and therefore how often they are required to pay initial and other tenancy fees.

8.15 Research for the letting agent representative body, ARLA, estimates the average tenancy lasts 18 months in the UK.¹⁵ This agrees with landlord research for Direct Line which also estimates an average length of 18 months.¹⁶ The English Housing Survey reports that private renters in England had lived in their current home for an average of 4.3 years, with 26% living in their current accommodation for less than a year.¹⁷

8.16 To provide Wales-specific figures, this Assessment will use the Annual Population Survey to estimate the proportion of PRS households which have moved in the last year (rounding to 28%) and which have remained in their property for more than one year (rounding to 72%):

¹³ 36% Use agents to fully manage all properties, 10% use agents to find tenants for all properties, 5% combination of let-only and full management for all properties. Council for Mortgage Lenders, *The profile of UK private landlords*, Dec 2016.

<https://www.cml.org.uk/news/cml-research/the-profile-of-uk-private/>

¹⁴ [Clarke et al, p12](#)

¹⁵ *Private Rented Sector Report*, ARLA PropertyMark, August 2017, p4.

<http://www.arla.co.uk/media/1046352/arla-property-mark-prs-report-august-2017.pdf>

¹⁶ Report notes that Cardiff has an average turnover of 11 months, but the data only covers 12 cities across the UK, with information from 122 agents, data from each city being from a sample of at least 10. <https://www.directlineforbusiness.co.uk/landlord-insurance/knowledge-centre/news/a-home-for-just-18-months>

¹⁷ Department for Communities and Local Government, *English Housing Survey: Private Rented Sector 2015-16*, <https://www.gov.uk/government/statistics/english-housing-survey-2015-to-2016-private-rented-sector>

Table 3: Accommodation - length of time lived at this address: Annual Population Survey.¹⁸

	Less than 12 months	12 months but less than 2 years	2 years but less than 3 years	3 years but less than 5 years	5 years but less than 10 years	10 years or more
2017	27.8%	18.1%	14.9%	15.2%	12.9%	11.2%

8.17 For the purposes of this Assessment, it is assumed that in any one year 28% of properties would be subject to initial tenancy set up fees (if charged), and that 72% of properties would be subject to renewal fees (if charged).

Initial tenancy fees charged by letting agents

8.18 Initial tenancy fees can be charged as one fee, or may be broken down into different sums. These fees generally cover such activities as referencing, drawing up the contract and inventory.

8.19 Research for different industry and lobbying bodies has identified a wide range of estimates for average initial fee charged. There is a limited amount of information which represents the Wales-specific situation. A range of the available information is presented below for illustrative purposes.

¹⁸ Annual population survey, Q1 2017.

Table 4: Average initial tenancy fee charged by letting agents

Source	Geographical scope	Amount
National Approved Letting Scheme	UK wide	£172 ¹⁹
ARLA PropertyMark	UK wide	£202 ²⁰
English Housing Survey	England only	£223 ²¹
Citizens Advice Bureau	England only	£337 ²²
Shelter UK	England and Wales	£355 ²³
Lettingfees.co.uk	England only, selected local authority areas	£412 ²⁴

8.20 Research commissioned for Welsh Government provides an average of fees charged in Wales, based on a survey of Welsh letting agents, of £178.²⁵ This is consistent with the response to Welsh Government's consultation on letting fees. Letting agents were posed the question 'What fees do you charge to tenants? Please detail, with a breakdown of services provided for the charges below.' The average (mean) response to that question was also £178.

8.21 Responses from tenants give a different result. In answer to the question 'Have you ever been charged fees before entering into a tenancy agreement? If yes, please detail your most recent pre-tenancy charges, and if possible a breakdown of the charges, here', tenants' average (mean) response was £231.²⁶

8.22 The research for Welsh Government identified that just over half (51%) of fees reported by letting agents were between £150 and £300.²⁷

8.23 For the purposes of this Assessment, the central estimate of initial letting agent fees will be £178. To reflect the range of fees being charged,

¹⁹ NALS, *Response to letting agent fee ban consultation*, June 2017: 'A survey of 339 firms carried out by NALS in 2016 found that, on average, agents charged tenants £172 (including VAT) for the services they provide to them. Only 8 firms charged over £400.'

<http://www.nalscheme.co.uk/wp-content/uploads/2017/06/NALSCONresfinal.pdf>

²⁰ [Capital Economics, p 37.](#)

²¹ Department for Communities and Local Government, *English Housing Survey: Private Rented Sector 2014-15*, p3.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/570848/Private_Rented_Sector_Full_Report.pdf

²² Citizens Advice Bureau, *Still let down: How letting agents are still exploiting private renters - and what this tells us about consumer protection*, March 2015, p16.

https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/still-let-down-final.pdf

²³ *Letting agencies: The price you pay*, Shelter England, June 2013, p 10.

https://england.shelter.org.uk/_data/assets/pdf_file/0006/671649/Letting_agencies_-_The_price_you_pay.pdf

²⁴ [Capital Economics, p30.](#)

²⁵ [Clarke et al, p16](#)

²⁶ Two of the figures quoted in response to this question were very large, giving an average (mean) of £249. Once these figures were omitted, the average reduced to £231.

²⁷ [Clarke et al, p12](#)

a sensitivity analysis will be carried out using a lower and higher estimate of £150 and £300.

8.24 Research for Welsh Government identified that 84% of letting agents in Wales charge a fee.²⁸ By accessing the survey data used to create that report, we have identified that 84% of letting agents surveyed were responsible for letting 92% of the number of properties let by agents in the survey, therefore suggesting that 92% of properties let by agents are subject to a fee. For this reason, this Assessment will assume that 92% of properties let by agents are subject to a fee.

Initial tenancy fees charged by landlords

8.25 Initial fees are also charged by some landlords. There is very limited evidence available of the average size of this fee.

8.26 Research for Welsh Government also suggests that the charges made by landlords, and the frequency with which they are charged, are much lower than those charged by letting agents. Of the landlords surveyed, only 10% charged fees.²⁹ From survey data on the number of properties the landlords each dealt with, we have calculated that this suggests 23% of properties let by landlords are subject to a fee. The same research reported the median fee charged as £125. However, looking at the survey responses, the mean fee charged per property is £104. This will be used as the central fee estimate.

8.27 Due to the uncertainty around this estimate, because of a low response rate, and the wide range of fees identified in the research (£20-£250, plus an outlier of £750), the sensitivity analysis will vary this figure by 50%, giving a lower estimate of £52 and a higher estimate of £156.

Renewal fees charged by letting agents

8.28 Fees are often charged by letting agents to renew a tenancy after the initial agreement has ended, as an alternative to allowing the tenancy to lapse into a periodic tenancy.

8.29 As was the case with initial fees, a wide range of charges has been identified in research. Citizens Advice Bureau research in England has identified 65% of agents they surveyed charge a renewal fee, and that 45% of renters reported having been charged a renewal fee. The average charge reported by agents was £85, and by tenants £98. The range of all fees reported by agent and tenant was £15 - £500.³⁰ Shelter Cymru's research found 35% of agents charge renewal fees in a range of £20-£114.³¹

²⁸ [Clarke et al, p15.](#)

²⁹ [Clarke et al, p27](#)

³⁰ [CAB, Still let down, p30.](#)

³¹ [Shelter Cymru, Letting Go; p8.](#)

8.30 Research for Welsh Government found that 37% of agents surveyed charged renewal fees. From survey data on the number of properties dealt with by survey respondents, we have calculated that this represents 64% of properties let by agents being subject to a renewal fee. The median renewal fee identified in the research was £60 (although the range reported was between £15 and £250 which reflects the findings of other organisations).³²

8.31 For the purposes of this Assessment, the £60 median fee identified by this research will be used. However, to reflect the range of fees identified in research, sensitivity analysis will vary this estimate by 50% to give a lower and higher estimate of £30 and £90.

8.32 This Assessment will assume that tenancies are granted for one year and renewed after this point for a further year-long term. However, many tenancies will be granted for six months and also renewed on that basis. Therefore, calculations of costs made on the basis of 12 month tenancies will represent a lower estimate than may exist in practice. Sensitivity analysis will consider the potential costs should tenancies be renewed every 6 months instead.

Renewal fees charged by landlords

8.33 Research for Welsh Government found that the practice of charging fees for renewal of tenancies was much less widespread among self-managing landlords than letting agents. Survey responses indicated that only 3 of the 111 surveyed landlords charged for renewal, with 91 landlords choosing not to charge for this, and a further 17 stating that they did not renew tenancies, or allowed them to become periodic tenancies.³³

8.34 Given that the evidence does not suggest this is a widespread practice in Wales, this Assessment will not attempt to quantify these costs.

Exit fees

8.35 Exit fees are also reported in research. For example Citizens Advice Bureau found that 41% of agents reported charging an exit fee, of an average £76, and that 24% of tenants reported being charged, with an average of £81.³⁴

8.36 However, the research for Welsh Government, conducted specifically in relation to Welsh letting agents, did not find significant evidence of this practice, with exit fees being routinely charged by only 3% of agents. A larger proportion of those surveyed stated they would charge a fee to

³² [Clarke et al, p19.](#)

³³ [Clarke et al, p28.](#)

³⁴ [CAB, Still let down, pp29-30.](#)

those tenants wishing to exit a tenancy early, as an alternative to charging the full remaining tenancy rent.³⁵

8.37 Similarly, the research found that the practice of charging for termination of a tenancy was very limited among landlords. Though 35% of respondents would charge a fee in preference to requiring the remaining tenancy rent if the tenant wished to leave before the end of their fixed term, only 2 of the 113 landlords answering this question would charge in any other circumstance.³⁶

8.38 Since the research commissioned for Welsh Government did not find compelling evidence of exit fees being charged routinely, this Assessment will not attempt to quantify these fees across the market. However, it should be acknowledged that there are some tenants who will incur these charges, and that they are not inconsequential.

Tenancy deposits

8.39 In addition to fees charged to initiate a tenancy, tenants are also usually expected to pay a month of rent in advance and a tenancy deposit, which is either lodged with a tenancy deposit scheme under a custodial arrangement, or held by the landlord and insured.

8.40 Responses to the Welsh Government's consultation on letting fees suggested that the average deposit required in Wales is around one month.

8.41 This Assessment will not attempt to estimate the annual costs of tenancy deposit, since the proposed legislation discussed in option 2 will not make any changes to the current rules around deposits. The proposed Bill makes provision to introduce a cap, should there be a change in practices which makes tenancies unaffordable due to the size of the deposit required. The intention is to track and monitor the situation, prior to deciding if action is required, and therefore the current best estimate of the cost of this provision is zero. A Regulatory Impact Assessment will be completed to accompany introduction of such legislation.

Holding deposits

8.42 Holding deposits may also be required. These usually consist of a sum charged to reserve a property for a tenant while pre-tenancy checks are carried out, prior to the signing of a tenancy agreement. Should the prospective tenant go on to sign a tenancy agreement, the funds from this deposit are usually put towards either the rent in advance or the tenancy deposit, and may be referred to as 'non-returnable reservation fees'.³⁷

³⁵ [Clarke et al, p21.](#)

³⁶ [Clarke et al, p28.](#)

³⁷ [Clarke et al, p22.](#)

- 8.43 Research for Welsh Government found that though holding deposits were only charged by around 34% of agents, those who didn't charge a deposit generally required other initial tenancy fees to be paid up front, and that therefore requiring a financial commitment to be made prior to the property being taken off the market was a widespread practice.
- 8.44 The research found that holding deposits were more likely to be a set fee rather than a number of weeks' rent, and averaged £208 (ranging from £50 to £820).
- 8.45 This Assessment will not attempt to quantify the scale of holding deposits. In the proposed legislation (described in option 2) these will be permitted, subject to a cap, and conditions about the time period they may be retained for and in what circumstances they must be returned.

Other fees

- 8.46 Fees may be charged for other reasons, since there is no restriction currently on what may be charged. Research for Welsh Government notes that charges are most commonly made to cover the costs incurred for example in replacing lost keys or for a callout where the tenant was at fault for some reason (such as if they broke a window).³⁸
- 8.47 Research for Citizens Advice Bureau notes a number of other fees which may be charged, including for the addition or removal of renters from the contract, late payment fees, missed appointment fees and fees for pets.³⁹ There is limited evidence of the extent of these fees being charged, and therefore they will not be considered in this Assessment. However it should be noted that the Bill option, explored in Option 2 will allow some permitted payments.

Letting agent fees to landlords

- 8.48 Landlords who use letting agents either to manage their properties, or to find a tenant and initiate a tenancy, are charged fees by letting agents. Research for Welsh Government has found that the median monthly charge to landlords for management services is 10% of the rent charged. In addition, 71% of managing agents charged an up front fee in all cases, and a further 16% only charged a fee for let-only services. It has not been possible to quantify the proportion of properties to which these percentages refer. Therefore for the purposes of providing a rough estimate, it will be assumed that charges are required in respect of 71% of properties which are let and managed, and 87% of properties which are let only.
- 8.49 The median fee identified for rent collection or management was £200 (range £20-£650) and the median fee for let only services was £300

³⁸ [Clarke et al, p21.](#)

³⁹ [CAB, Still let down, p25.](#)

(range £25-£975). This assessment will not consider the cost of letting fees to landlords, focusing instead on fees to tenants.

Costs of Option 1

8.50 Using the information outlined in the previous paragraphs, a central estimate of the annual cost of fees to tenants has been calculated. In the analysis, it is assumed that fees will rise in line with general price inflation in future years.

8.51 As outlined above, the information used in these calculations is a central estimate drawn from the best available evidence from a number of sources. Given the high level of uncertainty around these estimates, sensitivity analysis has been carried out in Annex 1 to determine a range of potential costs.

Costs to tenants of initial and renewal fees

8.52 Based on the assumptions made above, the cost to tenants of initial letting agent fees, initial landlord fees and letting agent renewal fees is presented in tables 5-7.

*Table 5: Costs to tenants of initial letting agent fees (to nearest £1,000)*⁴⁰

Year	Size of PRS (no. of properties)	Of which let per year (28%)	Of which by letting agents (41%)	Of which charge initial letting fees (92%)	Cost per year where fee £178
2019-20	220,989	61,877	25,370	23,340	£4,155,000
2020-21	226,070	63,300	25,953	23,877	£4,250,000
2021-22	231,268	64,755	26,550	24,426	£4,348,000
2022-23	236,585	66,244	27,160	24,987	£4,448,000
2023-24	242,025	67,767	27,784	25,562	£4,550,000

⁴⁰ Size of PRS derived from Dwelling Stock data; % properties let/renewed per year derived from Annual Population Survey; % properties let by agents/landlords derived from Rent Smart Wales data (at annex 2); % charging initial fees and initial fee estimate from research for Welsh Government (Clarke, et al).

Table 6: Costs to tenants of initial landlord fees (to nearest £1,000)⁴¹

Year	Size of PRS (no. of properties)	Of which let per year (28%)	Of which by landlords (59%)	Of which charge initial letting fees (23%)	Cost per year where fee £104
2019-20	220,989	61,877	36,507	8,397	£873,000
2020-21	226,070	63,300	37,347	8,590	£893,000
2021-22	231,268	64,755	38,205	8,787	£914,000
2022-23	236,585	66,244	39,084	8,989	£935,000
2023-24	242,025	67,767	39,983	9,196	£956,000

Table 7: Costs to tenants of letting agent renewal fees (to nearest £1,000)⁴²

Year	Size of PRS	Of which renewed per year (72%)	Of which by letting agents (41%)	Of which charge renewal fees (64%)	Cost per year where fee £60
2019-20	220,989	159,112	65,236	41,751	£2,505,000
2020-21	226,070	162,770	66,736	42,711	£2,563,000
2021-22	231,268	166,513	68,270	43,693	£2,622,000
2022-23	236,585	170,341	69,840	44,698	£2,682,000
2023-24	242,025	174,258	71,446	45,725	£2,744,000

Total cost to tenants

8.53 Under the central estimate examined here by 2023-24, if fee levels and tendency to charge these fees remain the same, initial and renewal fees to tenants could account for £8.2m per year. The sensitivity analysis in Annex 1 shows that the range of potential fee could be £5.7m-£13.2m.⁴³

Table 8: Summary total cost to tenants of initial and renewal fees (to nearest £1,000)⁴⁴

Year	Letting agent initial fee	Landlord initial fee	Letting agent renewal fee	Total
2019-20	£4,155,000	£873,000	£2,505,000	£7,533,000
2020-21	£4,250,000	£893,000	£2,563,000	£7,706,000
2021-22	£4,348,000	£914,000	£2,622,000	£7,884,000
2022-23	£4,448,000	£935,000	£2,682,000	£8,065,000
2023-24	£4,550,000	£956,000	£2,744,000	£8,250,000

⁴¹ *ibid*

⁴² *ibid*

⁴³ See Annex 1, table v.

⁴⁴ Summarised from tables 7-9.

Cost of potential fee increases

8.54 While the analysis assumes fees will increase in line with general price inflation, there is some evidence to suggest that fees have been increasing at a faster rate. A calculation of the potential impact of fees which increase over the rate of inflation is shown in the sensitivity analysis at Annex 1.

Current cost to letting agents

8.55 Initial and renewal fees form part of the income which letting agents receive. Estimates in research have identified that fees could account for around 20% of all letting agent revenue.⁴⁵ Research for Welsh Government estimates this figure at 25%.⁴⁶

8.56 Research for Welsh Government estimates that letting agents spend a median average of 14 hours on tasks related to each tenancy.⁴⁷ 11 hours of tasks were associated with tenancy initiation, one hour with renewal and two hours with tenancy termination.

8.57 The same research also found that many letting agents also incurred costs with third parties in the process of letting property,⁴⁸ which came to an average of £92 per let. These costs were incurred on such services as credit and bank referencing, and the production of inventories. The research considered these to be valid costs associated with the set-up of a tenancy.

8.58 The conclusions of the research included that given the work involved for agents in setting up a new tenancy, they 'do not typically make excessive profits on setup fees in relation to costs incurred', but that they 'may well make excessive profits on renewal fees where... very little work is actually involved'.⁴⁹

Local Authorities

8.59 Changes brought in by the Housing (Wales) Act 2014 allow Local Authorities to discharge homeless duties through establishment of a PRS tenancy. Brief engagement work with a limited number of Local Authorities shows that at least some funding for adjustment to these new rules had been spent securing properties by paying agency fees, though for those replying in detail it was clear this was a minority of funding, and far more was granted for rent and bonds.⁵⁰

⁴⁵ [Capital Economics, p38](#); CBRE *Banning letting agent fees to tenants, Impact of implementation*, March 2017, p10. <https://www.cbresidential.com/uk/sites/uk-residential/files/Agent%20Letting%20Fees%20final.pdf>

⁴⁶ [Clarke et al, p25 \[Fig. 7\]](#).

⁴⁷ [Clarke et al, p13](#).

⁴⁸ [Clarke et al, p14](#).

⁴⁹ [Clarke et al, 59](#).

⁵⁰ Welsh Government colleagues approached 10 local authorities, of the 6 who replied and were able to give replies referring to different elements of expenditure, 5 had recorded funding agency fees.

Enforcement costs

- 8.60 There are several current legislative requirements which landlords and/or agents must comply with which relate to fees, and which are subject to enforcement activity.
- 8.61 The Consumer Rights Act 2015 imposes a duty on letting agents to itemise and publicise the fees they charge to letting agents and landlords both on their business premises and on their websites. Enforcement is undertaken by local authority Weights and Measures officers (Trading Standards). In Wales this is conducted on a local level as part of regular trading standards activities.
- 8.62 Current costs of enforcement of this legislation are not known, and additionally there is widespread commentary suggesting that the duty is not being enforced consistently.⁵¹ However, a broad estimate of the maximum potential current cost per year can be made.
- 8.63 At the end of December 2017, there were 762 commercial agents licensed with Rent Smart Wales. As licensing is not yet complete, RSW have estimated there could be up to 850 letting agents in total.⁵² This represents the number of businesses rather than number of letting agent premises. Information gathered from RSW shows, as might be expected, that there are a different number of letting agents operating in each local authority. The table below shows the number of agencies operating in each local authority area. An estimate of the potential annual cost of enforcing Consumer Rights Act 2015 provisions around display of letting agent fees is calculated by assuming that enforcement may require one visit every quarter, each taking an hour, at a salary of £54,000-£60,000⁵³ including on costs. This takes into account the number of agency businesses per authority, rather than number of branches, however this will include agents who operate in more than one local authority area counting in both local authorities.

⁵¹ [Clarke et al. 49.](#)

⁵² Information supplied by Rent Smart Wales.

⁵³ Equivalent to local authority Technical Officer grade. See Annex 3.

Table 9: Estimated maximum cost of enforcing Consumer Rights Act 2015 provisions in relation to display of letting agent fees (to nearest £1,000)⁵⁴

LA area	Number of 'commercial' agents operating in area	Estimated cost per year	
		low	high
Blaenau Gwent	74	£8,000	£9,000
Bridgend	94	£11,000	£12,000
Caerphilly	130	£15,000	£16,000
Cardiff	283	£32,000	£35,000
Carmarthen	108	£12,000	£13,000
Ceredigion	50	£6,000	£6,000
Conwy	81	£9,000	£10,000
Denbighshire	83	£9,000	£10,000
Flintshire	108	£12,000	£13,000
Gwynedd	54	£6,000	£7,000
Isle of Anglesey	44	£5,000	£5,000
Merthyr Tydfil	53	£6,000	£7,000
Monmouthshire	71	£8,000	£9,000
Neath Port Talbot	103	£12,000	£13,000
Newport	136	£15,000	£17,000
Pembrokeshire	79	£9,000	£10,000
Powys	87	£10,000	£11,000
Rhondda Cynon Taf	167	£19,000	£21,000
Swansea	142	£16,000	£18,000
Torfaen	65	£7,000	£8,000
Vale Of Glamorgan	135	£15,000	£17,000
Wrexham	96	£11,000	£12,000
Total		£253,000	£279,000

8.64 The estimated annual cost of £253,000-£279,000 is proposed as a maximum possible cost, given that it is not evident that enforcement is being pursued pro-actively.

8.65 Rent Smart Wales administers mandatory landlord registration, and letting agent and landlord licensing. As part of the licensing process RSW must be satisfied that the landlord/agent is fit and proper, by ensuring they have no relevant convictions against them.⁵⁵ There is also a Code of Practice, which includes statutory requirements licensees must comply with, among which is the requirement to display fees in compliance with the provisions of the Consumer Rights Act 2015.

⁵⁴ Number of commercial agents provided by Rent Smart Wales – 'commercial agents' has the same meaning as used in annex 1 – agents licensed by Rent Smart Wales which operate as limited companies and under 'trading as' names.

⁵⁵ Full Welsh Government Guidance on Fit and Proper Person Test:

<http://gov.wales/docs/desh/publications/151126-fit-and-proper-person-guide.pdf>

8.66 Either RSW or individual Local Authorities can enforce compliance with licensing requirements. Local authorities can recover enforcement costs via a fee redistribution arrangement with RSW set out in the Memorandum of Understanding agreed between each local authority and RSW.

8.67 Rent Smart Wales is self funding, from the fees generated by registrations and licence applications. The Bill option outlined in Option 2 will outline only the projected additional costs to Rent Smart Wales of the provisions of the legislation. This section will not attempt to quantify the current costs of Rent Smart Wales.

Benefits of Option 1

8.68 The benefits of the current approach are limited. Allowing current practice to continue would not address the issue of affordability in the PRS, and indeed, if the current situation continues, it may worsen. This approach would not require any familiarisation or adaptation on the part of individuals, businesses, or the public sector.

Option 2: Legislation to ban fees

8.69 The costs identified in relation to the 'do nothing' option above will form the basis for exploration of the costs of legislation to ban fees. The initial impact of a ban will be that those letting agents and landlords who charge fees will see a reduction in income. Potential and existing tenants who are charged fees currently, would not need to pay these following a ban, thereby reducing the financial barrier to entering, or moving within, the PRS.

Transition costs

8.70 This section will estimate the predicted transition or familiarisation costs which will be incurred by those affected by the legislation. Unless otherwise stated, it is assumed that transitional costs will be incurred at the point when the legislation comes into force (estimated to be 2019-20) only. The staff costs identified in relation to Welsh Government, local authority and Rent Smart Wales actions are opportunity costs, since it is not envisioned that the Bill will require any additional staffing to implement. As such, the activities identified in this section will not attract additional Welsh Government funding as part of the implementation of the Bill, and will be assumed to be met within current funding streams.

8.71 Staff costs are quoted inclusive of on-costs, and are rounded up to the nearest £10.

*Welsh Government*⁵⁶

8.72 There will be costs to the Welsh Government in communicating the policy change. This is largely envisioned to be incurred through training events, updating documentation, and the potential production of guidance in relation to enforcement.

8.73 It is estimated that in order to train local authority Housing Services and related advice and third sector organisations in the changes brought about through the Bill, Welsh Government will stage 3 regional events. This would take around one day of administration and preparation, in addition to requiring the attendance of 3 staff members at each event.⁵⁷ It is anticipated that these events could be held at Welsh Government offices, and so would not incur venue hire costs. Staff costs plus travel and subsistence are estimated at approximately £3,000.⁵⁸

⁵⁶ Welsh Government Staff costs for 2017/18 are based on average band costs, see Annex 3.

⁵⁷ One day staff preparation HEO level. 3 staff attending – one G7, one SEO and one HEO. Daily rate calculated as annual rate divided by 52 weeks then 5 days. Allowing up to £1000 for travel and subsistence.

⁵⁸ Welsh Government staff costs taken from 2017-18 average band pay scales. All admin, preparation and drafting activity carried out by HEO staff (£46,492pa); assumed that the staff training events will be attended by one Grade 7 (£77,308), one SEO (£58,742) and one HEO staff member. Salary costs quoted inclusive of on-costs.

8.74 The Rent Smart Wales Code of Practice will need to be updated to reflect the change made by this legislation. It is estimated that this would take up to one week, including translation. It is estimated this will cost £960.⁵⁹

8.75 The Bill includes a power to produce guidance on the enforcement provisions introduced by the legislation. This will not be undertaken unless there is evidence of confusion about the new rules, giving rise to issues with enforcement of the ban. If guidance is required, it is unlikely to be substantial, and would have a maximum cost of approximately £1,910.⁶⁰ Given this is a discretionary activity, it is not certain what year it may be incurred in and a predicted date for their preparation is unknown.

*Local Authority Housing Services*⁶¹

8.76 It is assumed that each local authority will send two members of staff to the Welsh Government training session described above, and then spend an additional 2 days each cascading information and updating processes, websites, etc. to deal with the change in legislation. Allowing for the potential staff grades which may attend it is estimated that this will cost in the region of £1,160-£1,600 per local authority,⁶² or approximately £25,480-£34,380 nationally.

*Rent Smart Wales*⁶³

8.77 Rent Smart Wales staff will need to be trained in the changes taking place. It is estimated that this would take a Group Leader 0.5 days to prepare and 1.5 days to deliver, costing £400-£430.

8.78 Rent Smart Wales is committed to providing training on any changes to its Code of Practice, for all those who have already undergone training to become licensed under the scheme. The proposed Bill will entail a change to Housing related law, which will be reflected in the Code of Practice and therefore RSW will need to provide training for its licensees on the change.

8.79 Assuming it will take two days for a training officer to plan content for a short film and produce a slide pack detailing the changes, and a further two days for two admin staff to draft and send emails to licensees, staff costs are estimated at £650-£730. Based on similar information videos, it is anticipated a video would cost £2,000 to produce, via an external contractor.

⁵⁹ HEO staff 4.5 days, clearance by G7 0.5 days.

⁶⁰ Is estimated it would take one staff member approximately 2 weeks to draft, translate and publish electronically (HEO staff 9 days to draft, clearance by G7 1 day).

⁶¹ Information on local authority salary scales provided by Welsh Government's external Housing Expert Panel group, see Annex 3.

⁶² Calculated as 6 days of either Technical Officer or Environmental Health Officer grade staff.

⁶³ Rent Smart Wales salary scales provided at 2017/18 rates, see Annex 3.

8.80 Licensing with Rent Smart Wales requires undertaking training with an approved training provider. Any new legislative requirements on letting agents and landlords will need to be reflected in that training. Rent Smart Wales provides training itself. In addition to utilising the materials produced for licensees (detailed above) it will take a training officer up to two days to review and amend training content, costing £300-£320.

8.81 Rent Smart Wales provides Local Authorities with an online portal to produce FPN's in relation to contravention of the requirement to register and/or licence according to the requirements of the Housing (Wales) Act 2014. As part of the transition to this legislation, Rent Smart Wales will procure an update to their system to allow FPN's to be generated by Local Authorities in relation to these requirements. Rent Smart Wales have estimated that this will cost in the region of £2,000.

RSW licensing training providers

8.82 In addition to the training available with Rent Smart Wales directly, there are other approved training providers. On 21 December 2017 there were 13 approved external training providers listed on the Rent Smart Wales website.⁶⁴ If it takes one person in each organisation two days to review and update training materials, this is estimated to cost £2,660-£5,350.⁶⁵

Letting agents and landlords

8.83 Business practices of letting agencies and landlords will need to be adapted to meet the changes required by this Bill. It is estimated that this will be a more complex task for letting agents and so it is estimated that each business will need 2 people to spend 3-5 days updating business practices. For landlords it is estimated that all landlords will need to spend half an hour reviewing the updated information they receive from Rent Smart Wales, but that those using a letting agent and those who currently self-manage but charge fees, accounting for around half of landlords, will need to spend 0.25-0.5 days considering how to respond to the change.⁶⁶

8.84 Proxy salary information has been drawn from the Annual Survey of Hours and Earnings, based on the best available proxy included in the Wales-specific data.⁶⁷ Provisional data for 2017, shows the median gross salary for 'estate agents and auctioneers' in Wales was £8.84 per hour,

⁶⁴ <https://www.rentsmart.gov.wales/en/training/approved-external-providers/>

⁶⁵ The individual salary ranges for external training providers are not known. This estimate has been produced by varying the training auditor salary provided by Rent Smart Wales by 30% (giving a range of £26,550-£53,403, and therefore a daily rate of £102.12-£205.40). Should better information become available, this estimate will be updated.

⁶⁶ These two groups account for 55% of properties (41% of properties are rented by agents, and 23% 59% of the properties which are let directly by landlords are subject to fees). For the purposes of this calculation it is estimated that around half of landlords are responsible for these properties.

⁶⁷ [http://gov.wales/statistics-and-research/annual-survey-hours-earnings/?lang=en Sheet: 'PROV – Work Region Occupation SOC10 \(4\) Table 15.5a Hourly pay – Gross 2017'](http://gov.wales/statistics-and-research/annual-survey-hours-earnings/?lang=en Sheet: 'PROV – Work Region Occupation SOC10 (4) Table 15.5a Hourly pay – Gross 2017')

and for ‘managers and directors in retail and wholesale’ was £10.37 per hour.⁶⁸ Assuming an estimated 30% uplift for on costs, this gives a total hourly rate of £11.49-£13.48. Since letting agents and landlord salaries are not included as a category in this data set, this range will be used to quantify potential costs.

8.85 Based on this, the estimated cost would be £552-£1,078 per letting agency, £5.75-£6.74 each for those landlords spending half an hour considering the change, and £22.98-£53.92 each for those spending 0.25-0.5days. Assuming a potential range of 762-850 letting agents and a total of around 90,000 landlords in Wales, this gives a potential cost range of £420,000-£917,000 to letting agents, and £1,293,000-£2,730,000 to landlords.

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

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

Ongoing costs of legislative changes

8.86 The costs presented in this section rely on an estimation of behaviour of letting agents and landlords in response to a ban on charging fees. There are also many other factors which govern the rental market, which are not possible to predict, including the localised impact of competition. The information provided here is a best estimate based on the evidence available. Given the wide range of potential impacts, sensitivity analysis has also been carried out to consider the range of costs and benefits which may result from varying some of the key assumptions.

Impact on letting agents

8.87 The ‘do nothing’ option, above, estimated that letting agents fees for initiating or renewing a tenancy are likely to be in the region of £7.3m per year by 2023-24. It will be necessary for letting agents to decide how to cope with the loss of income that a ban on fees would generate.

8.88 Letting agents could choose to absorb the loss of income from fees which can no longer be charged to tenants, by reducing their own costs or profit margin, or may alternatively pass some or all of the costs on to

⁶⁸ To work out transition costs, it is assumed that each profession works approximately 40 hours per week, or 8 hours per day.

landlords instead through increasing the fees charged to them. As above, research for Welsh Government found that letting agents incur costs in the process of letting property. In adapting to this legislation, letting agents will need to either find another way of paying these costs, or consider whether there are ways to reduce the costs of letting properties.

8.89 Research for Welsh Government⁶⁹ looked at the likely impact of the ban on letting agents, and their survey found a range of potential responses:

- 76% stated they were very or quite likely to make less profit;
- 77% stated they very or quite likely to increase up front costs to landlords;
- 73% stated they very or quite likely to increase management fees to landlords, suggesting they increase rents;
- 15% stated they very or quite likely to stop offering a let only service;
- 14% stated they very or quite likely to stop managing rental properties.

8.90 The research noted:

‘Agents are most likely to absorb some of the costs associated with a ban on tenant fees, and pass some to landlords in the form of upfront fees or increased management fees. Only a small number of agents thought that they would reduce the checks they undertook, make other cuts to services, or cease letting properties’.⁷⁰

8.91 A report commissioned for agent representative body, ARLA, considered the likelihood and rate at which letting agents may pass their loss of fees on to landlords.

‘There are a large number of letting agents in England and Wales. However, given the differences in the services they offer and the localised nature of the work, the market is likely to be somewhere between the theoretical constructs of a monopoly and perfect competition. As such, the plausible pass-through rate of letting agents onto landlords is likely to be between 50 and 100 per cent, for which we have assumed 75 per cent.’⁷¹

8.92 For the purposes of this Assessment, the central assumption will be that letting agents will pass 75% off the lost fee income on to landlords via increased initial letting fees to landlords. Sensitivity analysis at Annex 1

⁶⁹ [Clarke et al, p43](#). Since the table provided in the research paper does not specify the exact percentages answering each question, further analysis of the raw survey data has been carried out to provide these percentages (given as a percentage of the total answering each question, rather than answering the survey as a whole, so there may be some variation from the results given by Cambridge).

⁷⁰ [Clarke et al, p43](#).

⁷¹ [Capital economics, p43](#).

will consider a worst case scenario where 100% of fees currently charged to tenants are passed to landlords, and then to tenants as increased rent.

- 8.93 Competition may dictate that letting agents are not able to charge higher fees to landlords, since they are able to shop around for a letting agent with terms which suit them. It is not possible to estimate with accuracy the behaviour of letting agents and landlords in reaction to the ban, and therefore these assumptions are made in order to illustrate the potential impact of fee redistribution. Potential costs are consequently unknown.
- 8.94 Other impacts on letting agents may include a loss of profits, reduction in staffing, and reduction in services. This Assessment will not attempt to monetise or quantify these effects, since there is little certainty about the likelihood of each outcome. Potential costs are consequently unknown. However it should be noted that these are potential outcomes when considering the legislation.

Impact on Landlords

- 8.95 One immediate impact of a ban on fees will be that those landlords who currently charge fees will lose that income. As discussed as part of the 'do nothing' option, the estimated cost to tenants of initial letting fees charged by landlords is £873,000 in 2019-20.
- 8.96 Those landlords who use a letting agent may find that the fees letting agents charge to landlords are increased, as agents seek to recoup income which can no longer be gained from fees to tenants.
- 8.97 Landlords may deduct 'letting agent fees and management fees' as an allowable expense from their rental income for tax purposes. If landlords were to either start or continue to do this, then any increase in the fees charged by letting agents would offset more of their rental profits, resulting in a reduced tax liability,⁷² and reduced tax revenue for the Chancellor of the Exchequer. It is not possible to calculate potential costs as this would require knowledge about the decisions of individual landlords in response to the Bill as well as their tax liability and therefore these costs are unknown.
- 8.98 However, landlords would still need to consider how to deal with either the inability to charge fees currently levied on tenants, or increased fees from letting agents. The Council of mortgage lenders surveyed members to ascertain the coping strategy landlords would choose to deal with a worsening cash flow situation.⁷³ Allowing for multiple responses, the most popular strategies were to increase rents, cease buying new property, sell

⁷² <https://www.gov.uk/guidance/income-tax-when-you-rent-out-a-property-working-out-your-rental-income>

⁷³ Scanlon, K and Whitehead, C; *The Profile of UK Private Landlords*; Council for Mortgage Lenders, December 2016, table 14 p44 and table 36 p63. <https://www.cml.org.uk/news/cml-research/the-profile-of-uk-private/>.

some or all properties, or use income from other sources. Allowing for a single response only, other than 'don't know', the most popular strategies were to increase rent and sell all rental properties. A minority answered each question stating they would reduce use of letting/management agencies.

8.99 The research for Welsh Government asked a similar question, this time specifically in relation to letting agent charges increasing by £200, and found that 82% would be very or quite likely to increase the rent, 68% very or quite likely to shop around for a different agent, 41% very or quite likely to self manage and stop using an agent. Only 35% answered that they were very or quite likely to pay the additional charge and absorb the costs.⁷⁴

8.100 The research for Welsh Government also found that self managing landlords who charged fees were likely to raise rents to compensate for a fee ban.⁷⁵

8.101 The report for ARLA discussed previously considered the response of landlords to a fee ban, and suggested a rate at which landlords would be likely to pass on the increased fees they faced from letting agents to tenants:

'Landlords, if they continue to use agents, can pass on the rise in fees to their tenants in the form of higher rent. Again, whilst there are many landlords, they do offer differentiated products. Since homes are nearly always unique (bar for those in mega complexes) the pass-through rate of landlords is assumed to be closer to that in a monopolistic market at around 50 per cent'.⁷⁶

8.102 For the purposes of this Assessment, the central assumption will be that landlords will choose to pass 50% of any increase in the letting fees they are subject to on to tenants, via an increase in the rental charge, and similarly that if landlords currently charge fees they will choose to pass on 50% of this lost income to tenants through increased rent. When modelling the potential increase in rent, any funds recouped by landlords will be applied over 12 months. As in the 'do nothing' option, it will be assumed here that tenancies are granted for 12 months and renewed after that point for the same period. However, it is likely that in practice many tenancies are granted for 6 months and renewed on that basis too, so current fees charged, and therefore the increased charge made by letting agents, or loss of income to landlords may be significantly higher than identified in this analysis.

⁷⁴ [Clarke et al, p46](#). As with the letting agent survey responses, the table provided in the research paper does not specify the exact percentages, and so further analysis of the raw survey data has been used to provide these.

⁷⁵ [Clarke et al, p45](#)

⁷⁶ [Capital Economics, p43](#).

8.103 Sensitivity analysis at Annex 1 considers the potential difference which would be represented by renewals at 6 months.

Cumulative cost of legislation to landlords

8.104 Research for Welsh Government, similarly to consultation responses and research and opinion pieces published by landlord and letting agent representative bodies, identified that this proposed legislation should be viewed in conjunction with the combined regulatory, taxation and other changes affecting the industry in recent years.

8.105 The Housing (Wales) Act 2014 imposed the requirement to register and possibly also licence with Rent Smart Wales. Though all provisions have not yet been commenced, the Renting Homes (Wales) Act 2016 will require significant changes to practices of landlords, through revised tenancy agreements and requirements around property condition. Additionally, changes to tax relief on mortgage interest, loss of the wear and tear allowance on income tax and higher rates for Stamp Duty (soon to become Land Transaction Tax in Wales) on second homes are identified as potentially inhibiting to potential and current landlords.

‘An increase on charges to landlords will come at a time when many are already being hit by higher tax bills and further disincentives to increase their portfolios. This may cause some landlords to sell up and, overall, is likely to exert a small downward pressure on the speed of growth of the PRS in Wales.’⁷⁷

8.106 The proposed legislation in the context of other reforms may represent a final inducement to avoid increasing, or reduce holdings, or divest of property entirely. Although it is not possible to translate this into tangible costs, which are therefore unknown, it should be considered as one of a number of possible impacts of the Bill.

Impact on Private Rented Sector

8.107 As summarised in the paragraphs above, one of the potential actions which landlords may take in response to either the inability to charge fees directly to tenants, or to increased fees from letting agents, is to choose to buy less property, stop purchasing new stock, or divest of current stock partially or entirely. Should enough landlords take these steps then there would be an effect on the availability of property in the PRS.

8.108 However, it is considered unlikely that this legislation will have a detrimental impact on the availability of property, as landlords will retain the option to increase rent to cope with increased charges. That said, the legislation could lead to changes in the way properties are let and/or managed if landlords decide to undertake the activities themselves rather

⁷⁷ [Clarke et al, p61.](#)

than use an agent. Such a change could, initially, lead to higher costs for landlords who would need to become licensed. The cost of a licence (including training and fees) is estimated to be less than £1 per week over the 5 year licence period. In addition, some landlords may save money as agents could choose to reduce fees charged to landlords in order to make themselves more competitive in the market place. In light of the range of circumstances and potential outcomes that these costs are unknown.

Impact on tenants

8.109 The initial impact on tenants will be as a result of the fee ban itself. Under the 'do nothing' approach discussed above, the benefit in terms current cost of fees to tenants is estimated in Table 8.

8.110 An additional consequence of a ban is identified in the preceding paragraphs: fees which can no longer be charged to tenants may be passed over to landlords, who in turn may choose to recover the difference from an increase in rent (further detail of potential rent increases is set out in paragraph 8.128).

8.111 In order to model the effect of lost fee income being passed to landlords and/or tenants via an increase in rent, a sample rent will be used. According to Welsh Government statistics⁷⁸ the median monthly rent for a one bedroom property in the PRS in Wales during 2016 was £400.

8.112 This illustration assumes that the lost fee income from initial or renewal fees (subject to the pass on rates set out above) will be recouped through an increase in rent applied over a year (as estimated in paragraph 8.128). Since not all tenancies are granted for and renewed after a year, the sensitivity analysis will consider the potential rent increase which would result from tenancies being renewed every 6 months.

Rent increase: impact on benefit claimants

8.113 For those tenants claiming help to pay their rent via Housing Benefit or Universal Credit, any increase in rent may be more difficult to cope with than for other groups. 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. These are set annually based on the rental trends in the local Broad Rental Market Area (BRMA). Since 2011 LHA rates have been set at the 30th percentile of rents in the BRMA. This means that benefits in relation to housing costs will only reflect the price of the cheapest 30% of accommodation on the market. From April 2016, for the four years to 2020, LHA rates have been restricted to the lower of either the 30th percentile rent in the BRMA or the existing LHA rate.

⁷⁸ Private sector rents for Wales, 2016, p3: <http://gov.wales/docs/statistics/2017/170411-private-sector-rents-2016-en.pdf>

- 8.114 Work undertaken by Community Housing Cymru has argued that LHA rates in some areas in Wales are considerably lower than the 30th percentile of current rental charges, due to rent inflation since the point at which LHA rates were frozen, and that this trend is likely to continue, as rents rise and are not matched by the LHA rate.
- 8.115 Since LHA rates do not currently change to reflect changing rental charges, if rents increase, due to this legislation or for any other reason, benefits claimed to help pay the rent will fall short of the full rental charge in many cases. Claimants will need to use income from other sources, such as wages or benefits intended to cover living costs to 'top up' the rent, to avoid falling into rent arrears.
- 8.116 Claimants may be eligible to apply for Discretionary Housing Payments (DHP's), a discretionary fund administered by the local authority, if they need extra help towards their rent, over and above that available from Housing Benefit or Universal Credit. DHP's are awarded from a limited fund, assessed on a case by case basis, and generally granted for a limited period. Funding for DHPs is granted by the UK Government Department for Work and Pensions, and funding for their continued award is not guaranteed. Therefore, DHP's are unlikely to provide a comprehensive solution to any problems represented by disparities between rents and benefit payments.
- 8.117 Since the restriction on LHA rates is currently set to continue until 2020, any impact will be dependent on future decisions to be made by the UK Government, and therefore cannot be quantified through a costs estimate at this time and are unknown.

Impact of rent increases over time

- 8.118 It is difficult to assess the impact on individual tenants of the proposed legislation, since a detailed exploration would rely on data on lengths of tenancy (which would dictate the frequency to which tenants are subject to initial or renewal fees) and a prior knowledge of all the decisions that letting agents and landlords will make in response to the ban. Neither of these items of information are available at this time; the following paragraphs explore in general terms what the impact on different tenants may be. Specific cost estimates are therefore not known.
- 8.119 If a tenant moves regularly, the likelihood is that they would currently face initial letting agent fees every time they moved. Should the legislation be passed, they would no longer have to pay initial fees, but, based on the model outlined in the previous section, their rent may increase due to the decisions of letting agent and landlord to recoup a proportion of lost fee income through higher landlord fees and then higher rent. However, the increased rent they pay would be less than the fees they would previously been charged. The increase would also be spread over the course of the tenancy and therefore be easier to budget for.

- 8.120 Similarly, if a tenant does not move, but is currently subject to renewal fees, they would also save money over the course of their tenancy, since the potential rent increase they might face, according to the model described above, would be less than the fees they would have paid. However, given that initial fees are generally larger than renewal fees, tenants who move frequently may save more than others.
- 8.121 There may be cases where a property is not subject to fees, but due to the local market, a landlord decides to set the rent at a higher rate than previously, and that tenant will pay more over the course of their tenancy than they would currently. However, many forces, including local market influences and competition, along with the individual behavioural choices of letting agents and landlords, and many other factors, are involved in the rent level set for any particular property. Even if rents do increase, tenants will still benefit from knowing at the outset of the tenancy what the predictable monthly costs of their accommodation will be, and will not need to raise substantial sums of money to pay fees at the outset and at various points through their tenancy.

Redistribution of banned fees

- 8.122 The 'do nothing' option identified the costs to tenants of fees in the PRS. This section examines the potential redistribution of those costs, based on the assumptions laid out in the preceding section. This assumes that the costs per year which are currently charged to tenants as lump sums, either at the start of a tenancy or on renewal, are likely to be shared following the ban between the letting agent, landlord, and tenant (as an increase in the rent). This modelling relies on the assumption that letting agents will absorb 25% of the change in income following the ban, and pass the remaining 75% on to landlords, who will themselves absorb 50% of that amount, and pass the remaining 50% on to tenants through an increase in monthly rent. Where landlords previously charged an initial fee to tenants themselves, it is assumed that they will absorb 50% of this lost fee income, and pass the other 50% to tenants through an increase in rent. Sensitivity analysis at Annex 1 explores the potential effect on tenants of letting agents and landlords passing 100% of costs to them.
- 8.123 Should this legislation be passed, it may not be commenced immediately in April 2019, since the commencement date will be dependent on the date when Royal Assent is granted. However, calculations are presented based on the full year (2019-20), for easier comparison with the current 'do nothing' option.
- 8.124 Table 14 illustrates the costs and benefits to letting agents, landlords and tenants of the legislation, excluding transition, familiarisation and other costs. Table 15 provides the net costs and benefits of the legislation to each group up to 2023-4. Table 15 demonstrates that benefits to tenants represented by the proposed legislation are as a direct consequence of costs accruing to landlords and letting agents.

Table 11: Redistributed costs (/ savings) of Option 2 2019-20 (to nearest £1,000):

Letting agents	Costs (revenue loss from no letting fees)	£6,660,000
	Benefits (revenue gain from higher landlord fees)	£4,995,000
	Net cost	£1,665,000
Landlords	Costs (revenue loss from no letting fees & increased letting agent fees to landlords)	£5,868,000
	Benefits (higher rent)	£2,934,000
	Net cost	£2,934,000
Tenants	Costs (higher rent)	£2,934,000
	Benefits (no letting fees)	£7,533,000
	Net cost	-£4,599,000 ⁷⁹

Table 12: Net costs (/ savings) of Option 2 (to nearest £1,000)⁸⁰

	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

8.125 The guidance in the HM Treasury Green Book includes consideration of the distributional impacts of Government interventions and, in particular, how an intervention may affect different income groups. The rationale for considering distributional impacts in an economic appraisal is that the value of an additional pound of income may be higher for a lower income recipient than a higher income recipient.

8.126 While there are exceptions, tenants in the private rented sector would, generally, be expected to be more heavily represented in lower income groups than landlords and the owners of letting agencies. Therefore, while the modelling shows the net benefit to tenants being equal to the net cost to landlords and letting agents, it could be argued a greater weight should be attached to the former than the latter.

⁷⁹ A negative cost represents a benefit.

⁸⁰ Table 14 translates the net costs identified in table 13 for 2019-20, and adds the net costs for each group for 2020-21 to 2023-24. A negative cost represents a benefit.

8.127 Sensitivity analysis at Annex 1 explores the range of potential costs which could result from the alternative fee estimates proposed.

Rent increase

8.128 To illustrate the potential impact on rents of the redistributed banned fees, the central estimate initial and renewal fees charged by landlords and letting agents have been applied to the median one-bedroom rent identified above. Sensitivity analysis at table 29 explores the potential rent increase which would result from a 100% pass on of lost fee income from letting agent to landlord, and from landlord to tenant.

Table 13: Percentage rent increase per month on sample rent (£400 per month)⁸¹

	Fee	Action taken by letting agent		Action taken by landlord		Rent increase (if applied over 12 months)	
		25% costs absorbed by agent	75% costs passed to landlord	50% costs absorbed by landlord	50% costs passed to tenant	£ per month	% per month
Letting agent initial fee	£178	£44.50	£133.50	£66.75	£66.75	£5.56	1.4
Letting agent renewal fee	£60	£15.00	£45.00	£22.50	£22.50	£1.88	0.5
Landlord initial fee	£104	-	-	£52.00	£52.00	£4.33	1.1

Costs of enforcement:

8.129 The following section outlines the costs of enforcement related to Option 2. Enforcement activity outlined in Option 1 will not be affected by these activities, and so these costs should be considered as additional to any existing currently.

Prohibited payments

8.130 The Bill establishes that an offence will have been committed if a prohibited payment is required from a tenant. Local Housing Authorities will be granted powers under the Bill to enforce its provisions. The Bill will permit the offence to be discharged by a Fixed Penalty Notice as an

⁸¹ Sections above 'Impact on Letting Agents' and 'Impact on Tenants' outline the theory that letting agents will pass 75% off lost fee income on to landlords via increased fees, and that landlords will pass 50% off lost fee income or increased letting agent fee costs on to tenants via an increase in the rent. This table models what increase to rents would result from fees being redistributed to landlords and on to tenants.

alternative to proceedings being commenced by a local housing authority. The enforcement body may issue a Fixed Penalty Notice (FPN) of £500. Any funds recouped from FPN's will be retained by the issuer, and put towards the cost of continued enforcement of the legislation. If the FPN is paid then the liability for the offence is resolved. If it is not paid, or the enforcement body considers it preferable to issuing a FPN, court proceedings may be commenced by the enforcement body, which could result in an unlimited fine being levied.

8.131 As part of the licensing process carried out by Rent Smart Wales, a 'fit and proper person' test is applied to applicants. This process will consider such factors as housing related offences; the offence created by this legislation will be a housing related offence, and therefore any person convicted of this offence may fail the fit and proper person test, and not be issued a licence.

8.132 Those letting agents and landlords already licensed under Rent Smart Wales are required to comply with a Code of Practice issued by the Welsh Government. This Code will be updated to reflect any changes to housing legislation. Anyone found not to be compliant with the Code may have their licence revoked by Rent Smart Wales.

8.133 Local Authorities will have a duty to inform Rent Smart Wales of any convictions confirmed by the court. Additionally, those currently licensed will undergo periodic audit to check compliance. Licensing is mandatory for any person undertaking activities in relation to managing tenancies, and therefore for letting agents, revocation of a licence could result in the closure of a business; for landlords loss of a licence would require them to use an agent (either an nominated individual or commercial letting agency) to manage their portfolio.

Permitted payments

8.134 The Bill allows for a limited number of permitted payments to be required in relation to a tenancy. The Bill permits payments for rent, security deposit, holding deposit, and payments in default. Payments in default occur if a tenant breaches their contract, by not making a payment that is required of them, or if there is a breach of the terms of that contract.

Estimated level of contravention

8.135 Levels of enforcement activity will depend on the likelihood and level of contravention of the ban. In addition to the financial penalties available through FPN's (of £500) and court fines (which are not subject to any maximum on the standard scale), the ultimate penalty of business closure is possible due to the mandatory licensing required by the Housing (Wales) Act 2014, exercised by the current lead licensing authority, Rent Smart Wales.

8.136 The existence of Rent Smart Wales also gives an opportunity for direct communication with all registered and licensed landlords and letting agents, which will assist in communicating the change in the law directly, which may result in a lower rate of contravention than if this was not possible. An estimate for the cost of this communication activity is outlined in paragraph 8.79, above.

8.137 Enforcement of provisions of the Housing (Wales) Act 2014 requiring registration and licensing via Rent Smart Wales applies to the same groups (landlords and letting agents) as the Bill. For comparison, the rates of enforcement of compliance with registration and licensing conditions over the first year of enforcement (23/11/16-22/11/17) are detailed below.⁸²

Fixed Penalty Notices:

- 162 served (157 by Rent Smart Wales, 5 by Local Authorities)
- 14 on agents for failure to be licensed;
- 58 on landlords for failure to be registered;
- 85 on landlords for failure to be licensed;
- 4 for failure to provide information requested under Section 37
- 1 for providing false or misleading information.

Prosecutions:

- 11 prosecutions sought (all successful)
- 6 taken by Rent Smart Wales and 5 by Local Authorities
- 9 of landlords and 2 of agents.

8.138 There were 20,885 licenses issued by the end of November 2017, with a further 6,544 still awaiting assessment (which may include duplicate or erroneous data).⁸³ The numbers of penalty notices served in relation to a failure to be licensed is taken to be the total number of FPN's less the number issued in relation to a failure to register properties (104). The contravention rate in relation to licensing is therefore between 0.4% and 0.5% of the number of licenses, and the total prosecutions in relation to Rent Smart Wales compliance in total only representing between 0.04% and 0.05% of the licence total.

8.139 The contravention rate during the first year of enforcement of the requirement to become licensed with rent Smart Wales will be used to produce an estimated contravention rate for the enforcement of the proposed legislation.

8.140 Working on a high estimate that there will be up to a 1% contravention of the ban in the first year, and there are up to 850 letting agents operating in Wales, there may be around 9 letting agents that contravene the ban.

⁸² Information provided by Rent Smart Wales 21/12/17

⁸³ Data from Rent Smart Wales website, accessed on 21/12/2017 (no longer available as updated monthly). Landlords licensed: 18,111; landlord licenses being assessed: 6,359; agents licensed: 2,774; agent licenses being assessed: 185.

There are 90,000 landlords, but given that research has identified that only around 10% of landlords charge fees, a 1% contravention rate could imply that around 90 landlords fail to comply in the first year. If offenses resulting in prosecution occur at the rate of 0.05% of potential offenders, this would suggest that less than one letting agent, and ten landlords may face prosecution in the first year.

8.141 It will be assumed that the maximum number of cases will be identified in the first year of implementation of the ban, therefore 1% in 2019-20, and that rates of contravention will diminish substantially following this. Rates of contravention proposed here are estimates, based on the most appropriate proxy offence located. There is a high level of uncertainty around these estimates.

Table 14: Estimated contravention rates

Year	Assumed % FPN	Number of FPNs	Assumed % prosecutions	Number of prosecutions
2019-20	1%	99 (9 letting agents, 90 landlords)	0.05%	5 (landlords)
2020-21	0.75%	74 (6 letting agents, 68 landlords)	0.0375%	3 (landlords)
2021-22	0.5%	49 (4 letting agents, 45 landlords)	0.025%	2 (landlords)
2022-23	0.25%	25 (2 letting agents, 23 landlords)	0.0125%	1 (landlord)
2023-24	0.1%	10 (1 letting agent, 9 landlords)	0.005%	0

8.142 Depending on the severity of the contravention, Rent Smart Wales may decide to revoke the licenses of letting agents or landlords contravening the ban. This will be most severe for letting agents, since they will no longer be permitted to manage properties, and will therefore no longer be able to continue this aspect of their business. Landlords whose licenses are revoked may still remain landlords, but will need to nominate a management agent to act on their behalf. This Assessment will not attempt to quantify the impact of licence revocation, both since the decision to revoke will be made on a case by case basis, making prior estimation of the rate difficult, and since the impact will vary considerably depending on the size and nature of the business or landlord affected. Any costs in this regard are therefore unknown.

Cost to Enforcement Bodies (Local Housing Authorities)

- 8.143 The Bill will give enforcement powers to local housing authorities. It is likely that work in relation to the ban will be reactive – ie the enforcement body will investigate where non-compliance is reported, and take action appropriately. Costs for local authorities of undertaking this action depend on the practical arrangements put in place by each authority.
- 8.144 Powers under the Local Government Act 1972 permit one local authority to act on behalf of some or all Local Housing Authorities to discharge any of their functions, which means it would be possible for one local authority to exercise enforcement powers on behalf of others in relation to this Bill (with their permission). Similarly, Part 1 of the Housing (Wales) Act 2014 permits Cardiff Council to host the lead licensing authority created by that Act, which acts on behalf of all local authorities in Wales.⁸⁴ For this reason, costs derived from the current costs to Rent Smart Wales of enforcing aspects of the Housing (Wales) Act 2014 on behalf of other authorities, are also included below as a proxy for the potential costs which may be incurred in the enforcement of this Bill.
- 8.145 For the purposes of this assessment, a range of potential costs will be identified, since the actual costs will depend in each case on many factors, including the extent of the breach and the local staffing costs and process arrangements in the enforcement authority.
- 8.146 Assistance from local housing authority members of the Housing Expert Panel has been sought to consider the costs to local authorities of enforcing this legislation. Investigation of a potential breach of legislation, resulting in the issuing of a Fixed Penalty Notice (FPN), is estimated to involve staff costs of £300-£370. If it is considered appropriate to proceed to prosecution instead of/in addition to issuing a FPN, this is estimated to add an estimated £790-£960 to the cost.⁸⁵
- 8.147 Rent Smart Wales, as a proxy of a body acting on behalf of other local authorities, have provided cost estimates based on similar tasks undertaken in their core work administering mandatory letting agent and landlord licensing. Costs to investigate a potential breach of the law are estimated between £130-£150. Should a FPN be issued this will add an additional £20-£40. Should a case require preparing for prosecution, this will add an additional £370-£440 per case.⁸⁶

⁸⁴ Under section 101(1)(b) of the Local Government Act 1972 (arrangements for discharge of functions by local authorities), a local authority may arrange for the discharge of any of their functions by any other local authority.

⁸⁵ Staff costs as per note 48 above. Investigation and issue of FPN costed as 1 hr admin, 6.5 hours TO, 2.5hrs EHO, 1 hr Service manager, prosecution costs based on 3 days of solicitor salary.

⁸⁶ Investigation costed as one day for an Enforcement Officer; issuing of FPN as one hour by enforcement officer (with possible extra hour if a FPN reminder is sent); preparation and prosecution as 3 hours for an Environmental Health Officer to prepare the case, 1.5 hours for manager sign off and 0.5 days preparation and 0.5 days appearance in court for a solicitor, followed by an additional 2 hours by an admin officer after the case has completed.

- 8.148 Not every investigation will result in a FPN being served or prosecution sought, and therefore costs of investigation would not be met via receipt of FPN payments. Rent Smart Wales estimate from their current work that 75-80% of referrals are resolved without the need for a FPN or prosecution to go ahead. It is likely that some of these investigations will take less time than others, and so for the purposes of this assessment, it will be assumed that action is taken against 50% of reported and investigated potential breaches, and therefore that the number of FPNs issued is the result of double the number of investigations. This will be factored in to the assessment of the potential cost of enforcement.
- 8.149 Based on the estimated contravention rate identified above, an estimate of costs per year is provided in Table 18. The costs are presented as a range, which is made up from the lowest and highest estimate of cost of enforcement from the information outlined in the previous paragraphs. It is assumed that enforcement will be pursued against 50% of reported contraventions, and so the costs presented in the table are effectively double the cost of enforcing the number of FPN's estimated. Since it is not possible to estimate whether local housing authorities or a local authority acting on behalf of some or all local authorities will enforce each case, the costs of enforcement by both types of authority are included in the range.
- 8.150 Costs incurred will be partially offset by the income from FPN's which will be retained by the enforcement authority which collects them. Should cases be successfully brought by enforcement authorities through the courts, it is likely that costs may also be awarded to the enforcement authority. However, since the amount of costs awarded depends upon many factors, and is decided on a case-by-case basis the potential income from this source is not considered in the table below. An estimate of the costs per year is presented in table 15. It is not possible to predict which enforcement body will undertake which activity and therefore costs and benefits may not be distributed equally across the organisations involved.

Table 15: Estimated enforcement costs (rounded to nearest £1,000)⁸⁷

Year	Number FPNs issued	Cost estimates (assuming 50% enforcement rate of reported breaches)		Potential FPN income (if all issued are paid)	Net cost estimate	
		Low	High		Low	High
2019-20	99	£30,000	£78,000	£50,000	-£20,000	£28,000
2020-21	74	£22,000	£57,000	£37,000	-£15,000	£20,000
2021-22	49	£15,000	£38,000	£25,000	-£10,000	£13,000
2022-23	25	£7,000	£19,000	£13,000	-£6,000	£6,000
2023-24	10	£3,000	£7,000	£5,000	-£2,000	£2,000

Cost to letting agents/landlords

8.151 Based on the estimated contravention rate identified above there will be a cost to letting agents and landlords who choose to contravene the proposed legislation. As discussed above FPN receipts will be used to offset the cost incurred by the enforcement body, this constitutes a transfer of funds from the letting agent or landlord to the enforcement body. Only those businesses engaged in illegal activity will incur these costs.

8.152 Based on the estimated contravention rates identified above, the costs are detailed in table 16. Since it is not possible to predict the magnitude of costs awarded should offenses be confirmed by the courts, the cost of these will not be estimated and is therefore unknown.

Table 16: Estimated cost of fixed Penalty Notices (rounded to nearest £1,000)⁸⁸

Year	Estimated number FPNs		Estimated cost	
	Landlords	Letting agents	Landlords	Letting agents
2019-20	90	9	£45,000	£5,000
2020-21	68	6	£34,000	£3,000
2021-22	45	4	£23,000	£2,000
2022-23	23	2	£12,000	£1,000
2023-24	9	1	£5,000	£1,000

Cost to Rent Smart Wales

⁸⁷ Number of FPNs issued from table 16. Low and high estimate of costs taken from lowest and highest estimate identified in 'Cost to enforcement bodies' section, ie low estimate £139.78 per case (Rent Smart Wales low estimate outlined in 8.148) high estimate £360.45 per case (Local Authority high estimate outlined in 8.147). Costs of investigation include an estimate that 50% of investigations will proceed to FPN and 50% will not, outlined in 8.150. A negative cost represents a net benefit.

⁸⁸ Fixed penalty notice of £500. Estimated contravention rate as per table 16.

8.153 In addition to any reactive enforcement undertaken, Rent Smart Wales will take account of any convictions under this ban as part of assessment of compliance with the Code of Practice, and will assess new applications for licenses in the light of any convictions under this legislation being considered as part of the 'fit and proper person' test. The proposed legislation would have a minimal impact on visits/audits scheduled for licence purposes and on determination of licence applications, in the region of ten minutes per visit/audit if the findings are satisfactory.

8.154 Rent Smart Wales will be informed by local authorities on confirmation of convictions for the offence of charging a prohibited payment by the court. Information sharing powers under the Housing (Wales) Act 2014 also mean they may be informed by local authorities when a FPN has been issued (as part of current information sharing with reference to licensing). In a simple case where a FPN is notified, and no other issues are identified, it is estimated this would take one day, with a one hour case conference with a manager, at a cost between £200-£230. Where a prosecution has confirmed an offence has been committed, it is estimated that considering this would take an officer two days with an additional half day of manager input required, at a cost of between £450-£510.

8.155 To estimate the maximum potential annual cost of these activities, the estimated contravention rates identified above is combined with the costs identified in the previous paragraph.

Table 17: Estimated cost of Rent Smart Wales of considering impact on licenses of infringements of this legislation (to nearest £1,000)

Year	Estimated Cost	
	Minimum	Maximum
2019-20	£23,000	£27,000
2020-21	£18,000	£20,000
2021-22	£12,000	£13,000
2022-23	£6,000	£7,000
2023-24	£2,000	£3,000

8.156 Should activity in the preceding paragraphs result in an application being refused or licence revoked, there would be additional costs involved should the decision be challenged via the Residential Property Tribunal. It is estimated that this would total £2,070-£2,500 per case. However, since it is not possible to estimate the rate at which licenses will be revoked as a consequence of a breach of this legislation, or the rate at which licence revocations are appealed, this assessment will not attempt to quantify this cost which are therefore unknown.

Benefits of Option 2

Benefits to tenants:

Monetised benefits

8.157 The 'bill' option costs describe the potential redistribution of lost fee income following the ban. This section showed the redistributed costs which may fall on tenants. Taking into account the projected costs of future fees presented in the 'do nothing' option above, these lower projected costs represent a saving to tenants:

Non-monetised benefits

Affordability

8.158 The benefits of this option stem from the removal of the up-front barrier to PRS accommodation which fees represent, which will be felt primarily by tenants. The aim of the Bill is that tenants should only have to pay rent in advance, a security deposit and potentially a returnable holding deposit to secure accommodation, and any payments in default, and that the ongoing costs of the tenancy should be predictable.

8.159 Research by Citizens Advice Bureau has found that fees cause financial distress, with 64% of survey respondents experiencing problems paying fees, 42% needing to borrow from family or friends, 21% having trouble paying other bills as a result and 19% going overdrawn in order to pay fees.⁸⁹ Fees may also deter renters from moving at all.⁹⁰

8.160 This assessment has discussed how a ban on fees to tenants may result in an increase in rents. Research for Welsh Government notes that

'Even if capitalised into rent, it was strongly felt that eliminating upfront fees would ease access to the sector and help tenants at a time when their finances were already stretched. It would also be easier for tenants to compare rent levels between different properties than to calculate the overall costs of rents, upfront fees, and renewal fees'.⁹¹

8.161 Similarly, the response to the recent consultation exercise by Welsh Government into the issue of fees from Shelter Cymru noted:

⁸⁹ [CAB, *Still let down* p25](#)

⁹⁰ [CBRE, *Banning letting agent fees to tenants*](#), p6 'The English Housing Survey [2014/15] reported that a third of private tenants said that agency fees prevented them from moving home.

⁹¹ [Clarke et al, p48](#).

‘We are aware that there are concerns that landlords will increase rents to cover the additional charges they face; however, we feel that even if this was to happen it is a smaller regular payment that tenants can plan for over the course of a year, rather than in a single up-front payment’.⁹²

- 8.162 There is the potential that competition between letting agents for landlords’ business, and between landlords to attract tenants, may also mean that higher fees or rental charges are not accepted by the market.

Reasonableness of fees

- 8.163 There is a widespread belief that fees charged are in some cases unreasonable. Fees for the same service can vary significantly, which has led to speculation about whether fees charged reflect the costs of the services provided

‘The average reference check charge from the agents’ survey was £83 but the range of these fees was very broad with the lowest fee being £6 and the highest £300. It is unclear whether these charges fairly reflect the costs involved’.⁹³

- 8.164 Research for Welsh Government found little association between the work and charges involved in tenancy renewal:

‘The evidence suggests that agents may well make excessive profits on renewal fees where, by their own estimation, very little work is actually involved’.⁹⁴

- 8.165 A ban on fees will put tenants in a stronger position of knowing the predicted costs of a tenancy than they are at the moment, making the renting process more accessible. Where a tenant believes they have been charged a prohibited payment, the Bill makes provision for them to apply the court to recover that payment.

Failure of market/enforcement

- 8.166 The provisions of the Consumer Rights Act 2015 were intended to aid transparency, by requiring letting agents to display an itemised list of the fees that they charge. However, since tenants choose a property based on features such as location, price and facilities, rather than on the letting agency used, this has not aided tenants in avoiding or negotiating fees. Research for Welsh Government notes:

⁹² Shelter Cymru, Response to Welsh Government consultation: Fees charged to tenants in the private rented sector, September 2017.

⁹³ [CAB, Still let down, p21.](#)

⁹⁴ [Clarke et al, p59.](#)

‘The large majority of private rented sector homes in Wales are marketed by only one agent... [so tenants] are therefore unable to shop around for an agency independently of choosing the property they want...

Tenant groups in particular felt that tenants were unable to negotiate for lower fees because housing was often in short supply and potential tenants were plentiful’.⁹⁵

8.167 It has also been noted elsewhere in this assessment that the provisions in the Consumer Rights Act relating to publication of fees are not being enforced effectively, so tenants may still be unable to check in advance of agreeing to a tenancy what fees may be charged.

8.168 The banning of fees will aid tenants by ensuring that they only need to look at the rent, together with any holding and security deposits, to consider the affordability of their accommodation.

Exclusion from the Private Rented Sector

8.169 It was noted above that some local authority funding is currently spent helping potential tenants to access the PRS. Individuals at risk of homelessness for whatever reason, including those who have achieved refugee status, find it challenging to raise the funds required to secure a property, even if they have the regular income required to pay the rent. Removing fees, which can be unpredictable and in many cases add substantial sums to the funds required to achieve a tenancy, should assist tenants to move into and within the PRS.

⁹⁵ [Clarke et al, p40, p38](#)

Summary Costs and Benefits of Option 2

8.170 This table summarises the costs identified in relation to Option 2. These are presented as a lower and upper range of potential costs identified in the text. Further exploration of the range of costs identified is presented in the sensitivity analysis at Annex 1.

Table 18: Summary cost per year (to nearest £1,000)⁹⁶

Body	2019-20		2020-21		2021-22		2022-23		2023-24		Total per body	
	low	high	low	high	low	high	low	high	low	high	low	high
Welsh Government	£4,000	£4,000									£4,000	£4,000
Local Authorities	£25,000	£34,000									£25,000	£34,000
Training providers	£3,000	£5,000									£3,000	£5,000
Enforcement bodies	-£20,000	£28,000	-£15,000	£20,000	-£10,000	£13,000	-£6,000	£6,000	-£2,000	£2,000	-£53,000	£69,000
Rent Smart Wales	£28,000	£33,000	£18,000	£20,000	£12,000	£13,000	£6,000	£7,000	£2,000	£3,000	£66,000	£76,000
Letting agents	£1,613,000	£3,612,000	£1,219,000	£2,755,000	£1,246,000	£2,817,000	£1,273,000	£2,881,000	£1,303,000	£2,947,000	£6,654,000	£15,012,000
Landlords	£3,339,000	£7,467,000	£2,081,000	£4,832,000	£2,117,000	£4,931,000	£2,154,000	£5,033,000	£2,196,000	£5,141,000	£11,887,000	£27,404,000
Tenants	-£3,189,000	-£7,380,000	-£3,263,000	-£7,549,000	-£3,338,000	-£7,723,000	-£3,414,000	-£7,900,000	-£3,493,000	-£8,082,000	-£16,697,000	-£38,634,000
Total per year	£1,803,000	£3,803,000	£40,000	£78,000	£27,000	£51,000	£13,000	£27,000	£6,000	£11,000	£1,889,000	£3,970,000

Preferred option

8.171 For the reasons outlined above, Option 2 is considered to be the preferred option.

⁹⁶ Negative cost represents a benefit.

Option 3: Non- legislative approach

8.172 This option seeks to promote compliance with current legislation around publication of letting fees, as well as to promote the limitation of those fees via an industry led voluntary scheme to limit fees.

8.173 Given that the current legislation around fees relates to publication only, and that there would not be any enforcement of a voluntary scheme to encourage letting agents and landlords to discontinue the practice of charging fees to tenants, it is unlikely that this option would have a significant impact on the issue of fees presenting a financial barrier to tenants wishing to enter or move within the PRS.

Costs of effective enforcement of current legislation

8.174 As discussed above, current legislation in the Consumer Rights Act 2015 requires letting agents to publicise an itemised list of their fees on their premises and website, but it is suggested that enforcement of these rules is inconsistent.

8.175 This option would include rigorous enforcement of the current legislative requirements, so that tenants would be more likely to accurately understand the costs involved in letting a property, both those levied at the outset, and those which may occur throughout a tenancy, for example renewal or exit fees.

8.176 The 'do nothing' option discussed the potential cost of fully policing these rules, estimating an annual cost of £112,000. As an alternative, the provision of 1 extra member of staff per local authority (at a salary £50,000 p.a., including on costs) would result in costs of £1.1 million per annum nationally, or, encouraging local authorities to share resources could allow costs to at least be halved to £550,000 pa nationally. An alternative option would be to utilise the 'lead authority' approach which currently operates for the regulation of estate agents whereby Powys and Ynys Mon councils deliver the regulation activity on behalf of all English and Welsh authorities. The provision of an additional 1.5 FTE staff would probably be sufficient to review the estimated 400-800 high street agents in Wales, including scrutinising web pages to check online compliance. Estimating a salary (including on costs) of £50,000 per staff member, and allowing a budget for travel costs of £25,000 would mean a total cost of £100,000 p.a. nationally.

Voluntary fees ban

8.177 Enforcement of the current Consumer Right Act 2015 provisions will not of itself reduce fees, and would not apply to landlords either. Therefore to achieve the objective of reducing financial barriers to the PRS, and make the sector more attractive to current and potential tenants, action would be taken to develop a voluntary fees code, which could be "regulated" by Rent Smart Wales (RSW).

- 8.178 In identifying the costs of a potential voluntary scheme for the PRS, evidence from the voluntary precursor to RSW has been used. The Explanatory Memorandum for the Housing (Wales) Act 2014,⁹⁷ discussed the costs of 'Landlord Accreditation Wales', a voluntary accreditation scheme for private sector landlords, run by Cardiff Council on behalf of the 22 local authorities in Wales. Over the first five years it ran, around 2,000 landlords became members of the scheme. Given the lower estimate of potential landlords numbers identified in that Explanatory Memorandum, 70,000, this gives a membership rate of less than 3%. The scheme cost approximately £65,000 per year, and was funded by local authorities.
- 8.179 The same Explanatory Memorandum considered the costs which might be incurred in achieving a more comprehensive take-up of the voluntary landlord licensing scheme. It estimated that repeated messaging and information would be needed to persuade landlords to register, at a cost of a minimum of £20,000 per Local Authority, £440,000 nationally, per year, but that even this would likely not be sufficient to secure the involvement of the majority of private landlords.
- 8.180 A voluntary scheme to address fees would need to also encompass letting agents, which were not involved in Landlord Accreditation Wales. As of the end of December 2017, there were 19,327 landlords and 2,916 agents licensed with Rent Smart Wales. Since licensing is required for any body managing tenancies, licensees are envisioned as representing the group which would be targeted to join the scheme. As compliance with RSW is not yet full, the voluntary fee ban scheme potential membership would be in excess of 22,000.
- 8.181 It is likely that it would prove more difficult to persuade individuals to join a voluntary scheme of this nature, particularly since if not all businesses choose to join, those who do stop charging fees would not be operating on a level playing field with those who do not. If agents signing up to the scheme decide to increase fees to landlords in preference to charging them to tenants, they may find it difficult to compete with other agents who are able to keep their landlord fees low by charging fees to tenants.
- 8.182 In order to estimate the cost of running such a scheme, it will be supposed that it could be run by Rent Smart Wales, who could use the database for the mandatory registration and licensing of landlords and agents to record membership, promote the scheme, and communicate with members.
- 8.183 If take up were estimated to be the same as the previous voluntary licensing scheme at 3% over five years, this would give an approximate

⁹⁷ Explanatory Memorandum of the Housing (Wales) Act 2014, [http://www.assembly.wales/Laid%20Documents/PRI-LD9558-EM%20-%20Housing%20\(Wales\)%20Bill%20-%20EXPLANATORY%20MEMORANDUM-18112013-251741/pri-ld9558-em-e-English.pdf](http://www.assembly.wales/Laid%20Documents/PRI-LD9558-EM%20-%20Housing%20(Wales)%20Bill%20-%20EXPLANATORY%20MEMORANDUM-18112013-251741/pri-ld9558-em-e-English.pdf)

number of registrations per year of around 130. The administration for a scheme with such a level of take up could be undertaken by one person. If an additional staff member was employed to work on communications to boost take up of the scheme, with both costing £30,000 (including on-costs) then an estimate of staff costs would be £60,000 per year. A budget for communications expenses, including publicity, advertising etc, of £100,000 per year has been estimated.

8.184 Given that membership of the scheme would not amount to much more than periodical communications, a small sum of £5 would be charged for registration. The cost per year is based on the assumption that the 3% of signups to the voluntary scheme would be equally spread over the period of assessment.

Table 19: Costs of Option 3

Cost	2019-20	2020-21	2021-22	2022-23	2023-24
Enforcement of current legislation (Local Authorities)	£100,000	£100,000	£100,000	£100,000	£100,000
Voluntary Scheme administration (Rent Smart Wales)	£160,000	£160,000	£160,000	£160,000	£160,000
Landlords/ Agents	£650	£650	£650	£650	£650

Benefits

8.185 A more accurate understanding of the costs of undertaking a tenancy, which may flow from more comprehensive enforcement of current legislation in relation to display of fees may benefit some tenants. The potential maximum benefit to tenants of this voluntary approach would be the same as that identified in the Bill option. However, given the very low likely sign up to this scheme, the benefits to tenants would also be expected to be low.

8.186 This scheme would only require change in letting agent and landlord practices to the extent that they sign up to and work in compliance with the voluntary scheme. As noted above, a lower sign up may discourage more potential applicants from joining the scheme, as they would be at a competitive disadvantage if they chose to redirect fees they would previously have charged to tenants on to landlords, since landlords can shop around to choose the letting agency with the most favourable terms for them.

8.187 To provide a monetary estimate of the impact of this option, it has been assumed that 3% of properties let by letting agents that currently charge

fees would be subject to the voluntary fee ban (ie in addition to those who do not current charge fees), and that 3% of properties let by landlords that currently charge fees will also be subject to the voluntary fee ban. The estimate of redistributed costs has only been carried out for the year 2023-24 to reflect the full 3% sign up anticipated by this point. For those stopping charging fees, it has been assumed that the choices they make about what to do to amend their business practice to deal with the lack of tenant fees, will be as per the central assumption described earlier in this document.

Table 22: Summary effect of voluntary fee ban (to nearest £1,000)

	'Do nothing' option current fees charged to tenants	Costs per year of option 3 in comparison to 'do nothing' option		
		Letting Agents	Landlords	Tenants
2019-20	£7,533,000	£50,000	£88,000	£7,395,000
2020-21	£7,706,000	£51,000	£90,000	£7,565,000
2021-22	£7,884,000	£52,000	£92,000	£7,739,000
2022-23	£8,065,000	£53,000	£94,000	£7,917,000
2023-24	£8,250,000	£55,000	£96,000	£8,099,000

8.188 Table 22 demonstrates that this option increases the cost to letting agents and landlords, but that though costs to tenants would be reduced, this would only be a very minor reduction and that there would remain a substantial annual cost of fees to tenants should this option be pursued.

8.189 In summary, this option is rejected as it does not meet the objective of removing a financial barrier to the PRS, and would entail significant costs.

9. Summary of Impact Assessments

9.1 Alongside this Regulatory Impact Assessment, a number of other separate impact assessments have been carried out, and are summarised below.

Equality Impact Assessment

9.2 In drafting the Bill, consideration has been given to the Welsh Ministers' duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation as well as to advance equality of opportunity and to foster good relations between people who share characteristics and those who do not.

9.3 An equality impact assessment indicates the new legislation may have a differentially greater positive impact on younger, BME and non-Christian householders, as there is a greater proportion from these groups living in the PRS than in the population as a whole. Data from the 2011 census on residents in the PRS found that 16% of the population lived in PRS accommodation. Of these 8% of Household Reference Persons identified as BME (compared to 4% of the whole population); the highest concentration (44%) Household Reference Persons under 35 lived in the PRS; though Christianity was the most common religion reported in the PRS (46%), the PRS had the highest percentage of those reporting a religion other than Christian.

9.4 The Bill is not considered to have any negative implications for people with protected characteristics.

Rights of the Child

9.5 A children's rights impact assessment has been undertaken. Due regard has been given to the United Nations Convention on the Rights of the Child.

9.6 Data from the 2011 Census shows a slightly higher proportion of households with dependent children living in the PRS than across all tenures (34% compared to 28%), and looking at lone parents (with any age of children) there is a higher proportion in the PRS than across all tenures (17% compared to 11%). Data on the population as a whole shows that the PRS is becoming a more popular tenure type, and this is likely to mean that a higher proportion of children are accommodated through the PRS than in the past.

9.7 The provisions of this Bill do not relate directly to children, but the Bill will remove a significant financial barrier to achieving a tenancy, and to moving between properties, in the PRS. In being able to move more easily into and within the PRS, and to budget for the regular rental cost, free of the imposition of periodic and unexpected fees charged by letting agents and landlords, parents may be better able to locate and secure property which is adequate to their needs, and the needs of their family as a whole. Their

considerations in moving will include access to a clean and safe environment, and ensuring the standard of living in their new property is good enough to meet the whole family's physical and mental needs. As such Articles 24 (health and health services) and 27 (Adequate standard of housing), are of particular relevance to this Bill.

Impact on Welsh Language

9.8A Welsh Language Impact Assessment has been carried out which has found there to be no clear link to the Welsh Language Standards. The banning of fees to tenants in the PRS could help to preserve Welsh speaking communities, by assisting tenants wishing to remain in, or move into, an area with a high density of Welsh speakers, to secure accommodation without the need to raise additional funds to cover fees.

Impact on the justice system

9.9 In accordance with requirements of Assembly Standing Orders that the person in charge of a Bill must make a written statement setting out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill, a justice impact assessment has been undertaken. It has identified, quantified and costed the impact of the proposed legislation on the civil and criminal justice system including any potential impacts on:

- Legal aid
- Courts, tribunals and the judiciary
- Prosecuting bodies
- Prisons and probation services
- Youth justice services

9.10 The justice impact assessment has indicated that the Bill is likely to have little or no impact on the justice system.

Rural proofing

9.11 The rural proofing screening assessment has shown that there is no negative impact as a result of this legislation. The Bill aims to address the accessibility of the PRS. This is equally relevant to homes which are rented by people in rural areas.

Health and well being

9.12 Research on the health impacts of housing shows that the self-reported health of adults who are private renters is poorer than in other tenures.⁹⁸ Reducing the financial barrier to finding accommodation of choice should

⁹⁸ Information from the Health Impact Assessment for the proposed Wales Agent and Landlord Licensing Scheme (created by Part 1 of the Housing (Wales) Act 2014): http://whiasu.publichealthnetwork.cymru/files/6514/9554/0684/proposed_Wales_Agent_and_Landlord_Licensing_Scheme.pdf

make it easier for prospective tenants to gather the funds required to move to a property more suitable to their needs.

9.13 Unexpected fees can cause financial distress, which can lead to worry and stress, which can sometimes extend to more serious mental health problems. Making costs predictable, and removing the potential for unexpected fees to be levied throughout a tenancy should make it easier for tenants to budget, and to fully understand their financial responsibilities to a property before they take on a tenancy. This should have a positive impact on mental health. There are also potential physical health benefits from removal of fees, resulting from the income saved which would be available to spend on food, fuel and other essential health-related outgoings.

9.14 Should rents increase, this may exert pressure on the availability of properties which are affordable for those who rely on housing benefit or the housing costs element of Universal Credit. However, taking away the up-front financial barrier to a tenancy, and ensuring that the rental cost is the only cost tenants need to budget for over the lifetime of their tenancy, may still make it easier for potential tenants to identify and secure appropriate, affordable property. Therefore the Bill is expected to have a neutral, or positive impact on health and well being.

Impact on privacy

9.15 The Bill does not produce any new requirements relating to privacy or the sharing of information. The impact assessment undertaken has found that there will be no impact as a result of this legislation.

Social and environmental impacts

9.16 The social impact of the Bill is likely to apply to current and potential private sector tenants, letting agents and landlords. Paragraphs 8.158 to 8.169 acknowledge the likely impact in improving the affordability and accessibility of the private rented sector and challenging the reasonableness of letting agent fees; these impacts cannot be quantified financially. The Bill is not expected to make any notable impact on the environment, and therefore no financial estimation has been made.

10. Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	Yes
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	Yes
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	Yes

10.1 In relation to questions 1-3, Rent Smart Wales data shows that (at the date the data was extracted) the largest letting agent managed 3,058 properties, which accounts for less than 2% of the PRS. The largest 3 letting agent businesses managed 6,235 (3.5%) of the PRS. This assessment has estimated that properties that are let by an agent but managed by a landlord account for around 4% of properties in the PRS, and therefore no one letting agent can have over a 10% market share, and no three can have over 50%. There are no individual landlords with holdings large enough to affect this assessment.

10.2 In relation to question 4 - some firms charge much more than others currently, and so a larger proportion of their current turnover will be disrupted. Research for Welsh Government suggested that it is larger businesses, and those operating in high rent markets, which currently charge the largest fees in the sector, and so will be most affected by the ban.⁹⁹

⁹⁹ [Clarke et al, p16.](#)

- 10.3 In relation to question 5 - the changes to business practices required by the ban may lead to some letting agent or landlord businesses choosing to stop trading.
- 10.4 In relation to questions 6 and 7 - it is likely that these new developments will be incorporated into existing training that those applying to be licensed by RSW already need to undertake. It is not anticipated that training incorporating this new Bill will cost any more than existing training.
- 10.5 In relation to question 9 – the Bill will prevent agents charging fees to tenants, restricting choice available to agents when considering the price of their services. This is considered to be a desirable outcome of the Bill.

11. Post implementation review

- 11.1 The aim of the Bill is to assist in making the PRS an attractive option for tenants, by reducing the upfront and unexpected financial barrier represented by fees. Post implementation review will focus on assessing the extent to which the Bill has contributed to that aim, whether the costs predicted were accurate, and what the impact of the Bill more generally has been.
- 11.2 The recent formation of Rent Smart Wales provides an opportunity to assess impact on the PRS in ways that was not previously possible. Data from RSW could be used to track landlord and letting agent registrations, de-registrations and licensing, as a way to assess whether landlords choose to self manage or divest of property. As licensing requires training of all staff associated with lettings, levels of training uptake at licence renewal may give an idea of any effects on staffing in letting agents.
- 11.3 Licenses granted by RSW need to be renewed every five years. The bulk of licenses will be due for renewal in 2021-3. In order to draw on information from that renewal process, it is proposed that post implementation review of this Bill be carried out in 2023-4.
- 11.4 A variety of methods will be used to assess the impact of the Bill and to consider the accuracy of the costs estimated in this document, including a review of data from national statistics and RSW. These could include average rent levels and the number of properties, landlords and agents registered and licensed with RSW. Post implementation review should also consider of the level of enforcement action taken against contravention of the ban. Post implementation review is also likely to include a qualitative assessment of the Bill's performance against its objectives, such as interviews to assess tenant, landlord and letting agent satisfaction, and experiences in the letting market following the implementation of the legislation.

Annex 1: Sensitivity Analysis

1. Analysis in the Regulatory Impact Assessment was carried out based on a central assumption of fees and the pass-through rate of lost fee income from letting agents and landlords on to tenants. Sensitivity analysis has been carried out to consider a range of fees, alternative pass through rate and alternative renewal period to reflect the fact that much of the work to examine potential impacts of changes to the PRS is based on assumptions and estimates, so giving exact estimates of potential impacts would be misleading.

Fee levels

2. The central assumption gave a projection of current costs in the ‘do nothing’ option, and potential redistributed costs in the Bill option. The text in the assessment discusses the reasoning behind each fee chosen, along with the range identified for the sensitivity analysis. The following table summarises these estimates.

Table i: Fee estimates

Fee	Central assumption	Lower estimate	Higher estimate
Letting agent initial fee	£178	£150	£300
Letting agent renewal fee	£60	£30	£90
Landlord initial fee	£104	£52	£156

Range of costs for Option 1

3. Tables ii-v set out the costs to tenants per year of initial and renewal fees charged by letting agents and initial fees charged by landlords, using the alternative higher and lower charge estimates identified in the Background section starting from paragraph 8.3.

Table ii: Cost to tenants of initial letting agent fees¹⁰⁰

Year	Central assumption	Lower estimate	Higher estimate
2019-20	£4,155,000	£3,501,000	£7,002,000
2020-21	£4,250,000	£3,581,000	£7,163,000
2021-22	£4,348,000	£3,664,000	£7,328,000
2022-23	£4,448,000	£3,748,000	£7,496,000
2023-24	£4,550,000	£3,834,000	£7,669,000

¹⁰⁰ This table provides a comparison with table 5. The size of the PRS, derived from dwelling stock data is multiplied by the percentage of properties let per year (28%) derived from the annual population survey, then the % of properties let by agents (41%) derived from Rent Smart Wales data, discussed at annex 1, then the percentage of properties which are charged an initial fee (92%) derived from research for Welsh Government (Clarke, et al). The central, higher and lower estimate fees are outlined in table i.

Table iii: Costs to tenants of initial landlord fees¹⁰¹

Year	Central assumption	Lower estimate	Higher estimate
2019-20	£873,000	£437,000	£1,310,000
2020-21	£893,000	£447,000	£1,340,000
2021-22	£914,000	£457,000	£1,371,000
2022-23	£935,000	£467,000	£1,402,000
2023-24	£956,000	£478,000	£1,435,000

Table iv: Costs to tenants of letting agent renewal fees¹⁰²

Year	Central assumption	Lower estimate	Higher estimate
2019-20	£2,505,000	£1,253,000	£3,758,000
2020-21	£2,563,000	£1,281,000	£3,844,000
2021-22	£2,622,000	£1,311,000	£3,932,000
2022-23	£2,682,000	£1,341,000	£4,023,000
2023-24	£2,744,000	£1,372,000	£4,115,000

Table v: Total cost of fees per year to tenants (to nearest £1,000)¹⁰³

Year	Central assumption	Lower estimate	Higher estimate
2019-20	£7,533,000	£5,191,000	£12,070,000
2020-21	£7,706,000	£5,309,000	£12,347,000
2021-22	£7,884,000	£5,432,000	£12,631,000
2022-23	£8,065,000	£5,556,000	£12,921,000
2023-24	£8,250,000	£5,684,000	£13,219,000

Costs if tenancies are renewed every 6 months

4. The estimates of cost in option one are based on the assumption that tenancies are granted for one year, and then (if applicable) renewed at that point for a further year. The table below considers the costs to tenants if tenancies are granted and renewed for 6 months instead. This assumes that in the first year a tenant will pay an initial fee when they agree to rent a property and then a renewal fee after 6 months, and that in subsequent

¹⁰¹ This table provides a comparison with table 6. The size of the PRS, derived from dwelling stock data is multiplied by the percentage of properties let per year (28%) derived from the annual population survey, then the percentage of properties let by landlords (59%) derived from Rent Smart Wales data, discussed at annex 1, then the percentage of properties which are charged an initial fee (23%) derived from research for Welsh Government (Clarke, et al). The central, higher and lower estimate fees are outlined in table i.

¹⁰² This table provides a comparison with table 7. The size of the PRS, derived from dwelling stock data is multiplied by the percentage of properties renewed per year (72%) derived from the annual population survey, then the % of properties let by agents (41%) derived from Rent Smart Wales data, discussed at annex 1, then the percentage of properties which are charged a renewal fee (64%) derived from research for Welsh Government (Clarke, et al). The central, higher and lower estimate fees are outlined in table i.

¹⁰³ This table provides a comparison with table 8, and is a summary of tables ii-iv.

years they pay renewal fees twice per year. The fees charged by landlords in this estimate remain the same, since the assessment only considers the cost of initial landlord fees. For this table, central fee estimates are used.

Table vi: Total cost of fees per year to tenants, if renewals at 6 months (to nearest £1,000)

Year	Letting Agent first year fees (tenant pays initial fee and renewal fee)	Letting agent subsequent year fees (tenant pays 2 x renewal fees per year)	Landlord initial fees per year	Total fees per year
2019-20	£5,555,000	£5,010,000	£873,000	£11,438,000
2020-21	£5,683,000	£5,125,000	£893,000	£11,701,000
2021-22	£5,813,000	£5,243,000	£914,000	£11,970,000
2022-23	£5,947,000	£5,364,000	£935,000	£12,246,000
2023-24	£6,084,000	£5,487,000	£956,000	£12,527,000

Cost of potential fee increases

5. There is evidence that letting agent fees have been increasing. In 2015 Citizens Advice Bureau revisited research into fees in England and Wales, initially conducted in 2009, and found:

‘Across all the additional charges, there was an increase in average from 2009. All of these charges except ‘check out inventory’ have increased above inflation, sometimes significantly so. For example, the average administration fee increased by 55 per cent from £118 in 2009 to £183 in 2015’.¹⁰⁴

6. If initial and renewal fees charged by letting agents were to rise at an estimated 5% per year, the total cost to tenants of letting fees could increase to £9,774,000 per year by 2023-4.

¹⁰⁴ [CAB, *Still let down*, p17-18.](#)

Table vii: Cost of letting agent fees if 5% increase per year¹⁰⁵

Year	Fee level (increasing at 5% per year)		Cost per year to nearest £1000		
	Initial letting agent fee	Renewal letting agent fee	Initial letting agent fee	Renewal letting agent fee	Total cost per year
2017-18	£178.00	£60.00			
2018-19	£186.90	£63.00			
2019-20	£196.25	£66.15	£4,580,000	£2,762,000	£7,342,000
2020-21	£206.06	£69.46	£4,920,000	£2,967,000	£7,887,000
2021-22	£216.36	£72.93	£5,285,000	£3,187,000	£8,471,000
2022-23	£227.18	£76.58	£5,677,000	£3,423,000	£9,099,000
2023-24	£238.54	£80.41	£6,097,000	£3,677,000	£9,774,000

Range of costs for Option 2

Table viii: Range of costs and benefit of Option 2 2019-20 (to nearest £1,000)¹⁰⁶

Group	Description	Central	Low	High
Letting agents	Costs (revenue loss from no letting fees)	£6,660,000	£4,754,000	£10,760,000
	Benefits (revenue gain from higher landlord fees)	£4,995,000	£3,565,000	£8,070,000
	Net cost	£1,665,000	£1,188,000	£2,690,000
Landlords	Costs (revenue loss from no letting fees & increased letting agent fees to landlords)	£5,868,000	£4,002,000	£9,380,000
	Benefits (higher rent)	£2,934,000	£2,001,000	£4,690,000
	Net cost	£2,934,000	£2,001,000	£4,690,000
Tenants	Costs (higher rent)	£2,934,000	£2,001,000	£4,690,000
	Benefits (no letting fees)	£7,533,000	£5,190,000	£12,069,000
	Net benefit	£4,599,000	£3,189,000	£7,380,000

¹⁰⁵ The size of the PRS, derived from dwelling stock data is multiplied by the percentage of properties let (28%) or renewed (72%) per year derived from the annual population survey, then the percentage of properties let by landlords (59%) or letting agents (41%) derived from Rent Smart Wales data, discussed at annex 1, then the percentage of properties which are charged an initial fee by letting agents (92%) or landlords (23%), or a renewal fee by letting agents (64%) derived from research for Welsh Government (Clarke, et al).

¹⁰⁶ This table provides a comparison with table 11.

Tables ix-xi: Costs of option 2 (to nearest £1,000), low, central and high estimates¹⁰⁷

Central Fee Estimates			
	Net costs of option 2		
	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

Low Fee Estimates			
	Net costs of option 2		
	Letting Agents	Landlords	Tenants
2019-20	£1,188,000	£2,001,000	-£3,189,000
2020-21	£1,216,000	£2,047,000	-£3,263,000
2021-22	£1,244,000	£2,094,000	-£3,338,000
2022-23	£1,272,000	£2,142,000	-£3,414,000
2023-24	£1,302,000	£2,191,000	-£3,493,000

High Fee Estimates			
	Net costs of option 2		
	Letting Agents	Landlords	Tenants
2019-20	£2,690,000	£4,690,000	-£7,380,000
2020-21	£2,752,000	£4,798,000	-£7,549,000
2021-22	£2,815,000	£4,908,000	-£7,723,000
2022-23	£2,880,000	£5,021,000	-£7,900,000
2023-24	£2,946,000	£5,136,000	-£8,082,000

Rent increases

7. The central assumption in the main assessment looked at the impact on rents of the central estimate of fees. The following table provides a comparison using the high and low estimates identified in the assessment.

¹⁰⁷ Table ix replicates table 12. Tables x and xi provide a comparison with table ix, based on the lower and higher fee estimates identified.

Table xii: Range of rent increase per month on sample rent of £400 per month¹⁰⁸

	Fee	Action taken by letting agent		Action taken by landlord		Rent increase (if applied over 12 months)	
		25% costs absorbed by agent	75% costs passed to landlord	50% costs absorbed by landlord	50% costs passed to tenant	£ per month	% per month
Letting agent initial fee	£150	£37.50	£112.50	£56.25	£56.25	£4.69	1.2
	£178	£44.50	£133.50	£66.75	£66.75	£5.56	1.4
	£300	£75.00	£225.00	£112.50	£112.50	£9.38	2.3
Letting agent renewal fee	£30	£7.50	£22.50	£11.25	£11.25	£0.94	0.2
	£60	£15.00	£45.00	£22.50	£22.50	£1.88	0.5
	£90	£22.50	£67.50	£33.75	£33.75	£2.81	0.7
Landlord initial fee	£52			£26.00	£26.00	£2.17	0.5
	£104			£52.00	£52.00	£4.33	1.1
	£156			£78.00	£78.00	£6.50	1.6

100% pass on rate

8. The central assumption in the main assessment is that letting agents will pass 75% of the income they lose when tenant fees are banned on to landlords through higher fees to them, and that landlords, faced with these higher charges from letting agents will pass 50% of the increased costs on to tenants through a rent increase, applied over 12 months. This sensitivity analysis looks at the potential increase in costs to tenants of letting agents and landlords passing 100% of their lost fee income, or increased costs, on to tenants.
9. This estimate is carried out based on the central assumption fees.
10. In the summary of redistributed banned fees, below, we can see that the cost to landlords remains the same as the 'do nothing' version, since the increased costs are recouped entirely by charging tenants an increased rate of monthly rent. The cost to tenants also mirrors the projected future costs to tenants of not banning fees, but in this case the cost is levied via increased rental charge stretched out over the year. The rate and percentage rent increase this would entail, based on the sample rent identified for use in the assessment is given in the table below.

¹⁰⁸ This table provides a comparison with table 13, showing the potential impact of the lower and higher fee estimates identified.

Table xiii: Summary costs of redistributed banned fees – 100% pass on rate (to nearest £1,000)¹⁰⁹

	Letting Agents (Cost of revenue loss minus benefit of higher landlord fees)	Landlords (Cost of revenue loss from fees plus increased agent fees minus benefit from higher rents)	Tenants (Cost of higher rents minus benefit of no letting fees)
2019-20	£0	£0	£7,533,000
2020-21	£0	£0	£7,706,000
2021-22	£0	£0	£7,883,000
2022-23	£0	£0	£8,064,000
2023-24	£0	£0	£8,250,000

Table xiv: Percentage rent increase per month on sample rent (100% pass on)¹¹⁰

Fee	Fee passed on	Additional per month	% increase per month
Letting agent initial fee	£178.00	£14.83	3.7
Letting agent renewal fee	£60	£5.00	1.3
Landlord initial fee	£104	£8.67	2.2

Renewal fees

11. The estimation of current and potential redistributed costs of tenant fees are calculated in the assessment based on an assumption that tenants initial tenancies are for 12 months, and at that point are renewed for an additional 12 months. In the estimation of potential redistributed costs, the assumption is made that increased fees to landlords will be recouped by charging that amount to tenants equally over the tenancy term ie across 12 months.
12. This sensitivity analysis will consider the potential increased costs resulting from tenants being granted a 6 month tenancy, which is renewed after 6 months for a further 6 months. In the estimation of potential redistributed costs, it will be assumed that the increased fees charged to landlords by letting agents would be recouped by charging that amount to tenants equally over the tenancy term, which in this case would be 6 months.

¹⁰⁹ This table provides a comparison with table 12, but this time assuming that all the lost fee income is passed on to tenants via an increase in their rent.

¹¹⁰ This table provides a comparison with table 13, showing the impact on rental charge should all the lost fee income be passed on to tenants via an increase in their rent, charged over 12 months. This illustration uses the sample rent identified earlier of £400 per month.

13. It will be assumed that in year one of a tenancy, one initial fee and one renewal fee will be charged, and in subsequent years that two renewal fees will be charged.

14. For this estimate, central fee assumptions will be used.

Table xv: Summary costs of redistributed banned fees – 6 monthly renewal¹¹¹

6 monthly renewal			
	Net costs of option 2 (compared to 'do nothing' option 1 in table vi)		
	Letting Agents	Landlords	Tenants
2019-20	£2,641,000	£4,399,000	-£7,040,000
2020-21	£2,702,000	£4,500,000	-£7,202,000
2021-22	£2,764,000	£4,603,000	-£7,367,000
2022-23	£2,828,000	£4,709,000	-£7,537,000
2023-24	£2,893,000	£4,817,000	-£7,710,000

15. If tenancies are renewed every 6 months, the annual cost of fees is higher. If this is translated into rent increases through the decisions of letting agents and landlords to pass the lost fee income on to tenants through higher rent, these rent increases will be proportionately larger than the ones outlined in the main document. The table below summarises this estimate.

¹¹¹ This table provides a comparison with table 12, but this time assuming that all tenancies are initiated for 6 months and also renewed on that basis.

Table xvi: Effect on rent increases of 6 month renewal¹¹²

	Fee	Action taken by letting agent		Action taken by landlord		Rent increase (if applied over 12 months)	
		25% costs absorbed by agent	75% costs passed to landlord	50% costs absorbed by landlord	50% costs passed to tenant	£ per month	% per month
Letting agent first year fee (initial plus renewal)	£238	£59.50	£178.50	£89.25	£89.25	£7.44	1.9
Letting agent subsequent year fee (2 x renewal)	£120	£30.00	£90.00	£45.00	£45.00	£3.75	0.9
Landlord initial fee	£104	-	-	£52.00	£52.00	£4.33	1.1

¹¹² This table provides a comparison with table 13, but reflecting the increased fees which may be passed on to tenants via an increase in the rent should tenancies be initiated and renewed on a 6 monthly basis.

Annex 2: Proportions of properties let by agents and landlords

Information from Rent Smart Wales as at 07/11/17 has been used to calculate an indicative proportion of properties let and managed by landlords; let by agents and managed by landlords; and let and managed by agents.

Description	Total	Managed by a 'commercial agent' (Limited companies and 'Trading As')	Simplified description	Total	%
Total properties registered	175,373				
Number of rental properties only Let and managed by the landlord	87,147	na	Self managing landlords (including non commercial agent arrangements)	101,371	58 %
Number of rental properties where no information known*	2,261		Unknown	2261	1%
Number of rental properties with a let only agent (where landlord does management)	6,520	6,828	Let only	6,828	4%
Number of rental properties with a let only agent (where landlord does not do management)*	1,049				
Number of rental properties with a letting and management agent (where the landlord does no L&M)	69,308	58,348	Managing agent	64,913	37 %
Number of rental properties with a letting and management agent (where the landlord does also do some L&M):	7,803	5,907			
Number of rental properties with a management agent (but no letting agent) (where the landlord does not also do any L&M):	943	658			
Number of rental properties with a management agent (but no letting agent) (where	342				

the landlord does also do some L&M					
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*This information is known to require cleansing, but is included to account for the total. As data cleanse and registration continues, these figures will be updated.

Rent Smart Wales data is not yet complete, as registration and licensing is continuing. Not all properties in the PRS need to be registered with RSW, due to there being certain types of accommodation included in the Dwelling Stock Estimate which do not require registration and licensing, for example university and hospital halls of residence, so there will always be a shortfall between the dwelling stock estimate and this total.

Unknown properties are eliminated from the table in the body of the text, to give a total of 173,112 which is used to produce the percentages for use in the assessment.

Annex 3: Staff Costs

Welsh Government

Welsh Government Staff costs for 2017/18 are based on average band costs. For reference, they have been converted to a daily equivalent.

Pay Band	Grade	Average gross annual salary	Monthly gross cost	Daily Equivalent (52 weeks, 5 days)
Management Band 2	HEO	£46,492	£3,874	£178.82
Management Band 1	SEO	£58,742	£4,895	£225.93
Executive Band 2	G7	£77,308	£6,442	£297.34

Local Authority

Information on local authority salary scales has been provided by Welsh Government's external Housing Expert Panel group. As salaries provided were for 2014, these have been uprated at 1% pa to provide costing estimates for use in this document. There will be variation between local authorities. For this reason costs will be varied by 10% to account for wage variation between local authorities – these figures are shown in brackets in the table.

Staff type	Salary (Gross) - 2014	Uprated to 2017/18	Hourly equivalent (52 weeks, 37 hours)	Daily equivalent (52 weeks, 5 days)
Admin	£32,990	£33,990 (£30,591-£37,389)	£17.49 (£15.74-£19.24)	£130.73 (£117.66-£143.80)
Technical Officer	£54,122	£55,762 (£50,186-£61,338)	£28.70 (£25.83-£31.57)	£214.47 (£193.02-£235.92)
Environmental Health Officer	£59,751	£61,562 (£55,405-£67,718)	£31.68 (£28.51-£34.85)	£236.78 (£213.10-£260.45)
Service Manager	£83,871	£86,412 (£77,771-£95,054)	£44.47 (£40.02-£48.92)	£332.36 (£299.12-£365.59)
Solicitor	£73,306	£75,527 (£67,975-£83,080)	£38.87 (£34.98-£42.76)	£290.49 (£261.44-£319.54)

Rent Smart Wales

Rent Smart Wales salary scales provided at 2017/18 rates.

Staff type	Salary (Gross) – 2017/18		Hourly equivalent (52 weeks, 37 hours)		Daily equivalent (52 weeks, 5 days)	
Admin	£23,229	£26,484	£12.07	£13.77	£89.34	£101.86
Enforcement officer	£32,016	£36,807	£16.64	£19.13	£123.14	£141.57
Training auditor	£37,926	£41,079	£19.71	£21.35	£145.87	£158.00
Environmental Health Officer	£42,198	£47,468	£21.93	£24.67	£162.30	£182.57
Group Leaders	£51,295	£55,119	£26.66	£28.65	£197.29	£212.00
Manager	£60,217	£72,974	£31.30	£37.93	£231.60	£280.67
Solicitor	£60,217	£72,974	£31.30	£37.93	£231.60	£280.67

Appendix 1

Renting Homes (Fees etc.) (Wales) Bill

Explanatory Notes

INTRODUCTION

1. These Explanatory Notes are for the Renting Homes (Fees etc.) (Wales) Bill which was introduced into the National Assembly for Wales on 11 June 2018. They have been prepared by the Education and Public Services Department of the Welsh Government in order to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.

SUMMARY OF THE BILL

2. The Bill makes it an offence for a landlord or letting agent to require a person to make a payment which is prohibited, or to enter into a contract for services, or to require the grant of a loan, as a condition of the grant, renewal or continuance of a standard occupation contract.
3. A “standard occupation contract” in this context means a standard contract as provided for in the Renting Homes (Wales) Act 2016 (The effect of that Act is to convert pre-existing assured shorthold tenancies into standard contracts; and that new tenancies or licences granted by private landlords, once the 2016 Act is in force, will be standard occupation contracts).
4. Any person guilty of an offence under the Bill is liable on summary conviction to a fine which is not subject to any maximum on the standard scale, except an offence under section 11 (1), which carries a fine not exceeding level 4 on the standard scale.
5. Any payment of money is prohibited for the purposes of the Bill, unless certain exceptions apply, as detailed in the Bill. These encompass a payment by a landlord to a letting agent in respect of letting agency work or property management work (as defined in sections 10 and 12 respectively of the Housing (Wales) Act 2014); and certain payments specified in Schedule 1 to the Bill. These are rent, security deposits, holding deposits and payments in default.

COMMENTARY ON SECTIONS

PART 2: PROHIBITION OF CERTAIN PAYMENTS, ETC.

Section 2 - Prohibitions applying to landlords

6. This section makes it an offence for a landlord to require certain things as a condition of granting a standard occupation contract, or renewing or continuing an existing contract.
7. It is an offence to require a person (whether the contract-holder or a third party) to make a payment to anyone in these circumstances.
8. It is an offence to require a person (whether the contract-holder or a third party) to make a loan to anyone in these circumstances.
9. It is an offence to require a person (whether the contract-holder or a third party) to enter into a contract for services with anyone in these circumstances. The exception to this is if the contract for services provides for any services to be provided by any person with the right to occupy a dwelling. This could include, for example, a caretaker of the dwelling, or a person providing childcare, such as a nanny.
10. A person who commits an offence under this section is liable on summary conviction to a fine, which is not subject to a maximum level on the standard scale. If the offence relates to requiring a prohibited payment to be made, the court may also order the offender to pay the amount of the prohibited payment (or any outstanding amount if part of the payment has been repaid) to the person who made the payment.

Section 3 - Prohibitions applying to letting agents

11. This section makes it an offence for a letting agent to require certain things as a condition of granting an occupation contract, or renewing or continuing an existing contract.
12. It is an offence to require a person (whether the contract-holder or a third party) to make a payment to anyone in these circumstances.

These notes refer to the Renting Homes (Fees etc.) (Wales) Bill which was introduced into the National Assembly for Wales on 11 June 2018

13. It is an offence to require a person (whether the contract-holder or a third party) to make a loan to anyone in these circumstances.
14. It is an offence to require a person to enter into a contract for services with anyone in these circumstances
15. A person who commits an offence under this section is liable on summary conviction to a fine, which is not subject to a maximum level on the standard scale. If the offence relates to requiring a prohibited payment to be made, the court may also order the offender to pay the amount of the prohibited payment to the person who made the payment.

Section 4 - Prohibited and permitted payments

16. This section defines prohibited payments. The effect is that any payment required as a condition of granting, renewing or continuing a standard occupation contract is a prohibited payment, unless it falls into one of two categories:
17. The first category covers a payment by a landlord to a letting agent in respect of “lettings agency work” or “property management work” (both of which terms have the same meaning as in the Housing (Wales) Act 2014) carried out by the agent on behalf of the landlord. This is necessary because without specifying this, the usual fees charged by agents to landlords would be prohibited, in that they are payable as a condition of the agent arranging the grant of a contract.
18. The second category covers the types of payments set out in Schedule 1 (rent; security deposits; holding deposits and payments in default). These are referred to as “permitted payments”.

Schedule 1: Permitted payments

19. Any type of payment not listed in the Schedule is prohibited if it is required as a condition of the grant, renewal or continuance of a standard occupation contract. The permitted payments are as follows.

These notes refer to the Renting Homes (Fees etc.) (Wales) Bill which was introduced into the National Assembly for Wales on 11 June 2018

(a) Rent

20. The Schedule does not define “rent”, on the basis that the term has a natural meaning.
21. It does however place a limit on the amount of rent that will be a “permitted payment”. The intention behind this is to avoid attempts to circumvent the restrictions in the Bill by, say, having fluctuating rent amounts which are used to disguise what would be prohibited payments. The Schedule achieves this by specifying that, where any payment of rent for one period is greater than the amount of rent payable in any other period during the contract, the difference is a prohibited payment.
22. The exception to this is if a change in the amount of rent results from what is referred to in the Schedule as a “permitted variation”. A “permitted variation” is one made by agreement between landlord and contract-holder, or under a term in the contract providing for rent variation, or as a result of an enactment (for instance if another Act required a rent variation, this would be a permitted variation). In order to build in some flexibility, there is power at paragraph 6 of the Schedule to use regulations to change the meaning of “permitted variation” for this purpose.

(b) Security deposits

23. The meaning of “security deposit” is given in paragraph 2(2). It is money paid as security for a contract-holder’s contractual obligations, and for any liability (for instance arising because of damage to a dwelling).
24. But a security deposit is not a permitted payment for the purposes of the Bill if it exceeds an amount specified in regulations under paragraph 3: the intention behind this is to avoid excessive security deposits being demanded.
25. Where a security deposit has been paid, section 45 of the Renting Homes (Wales) Act 2016 requires it to be dealt with in accordance with an authorised deposit scheme.

These notes refer to the Renting Homes (Fees etc.) (Wales) Bill which was introduced into the National Assembly for Wales on 11 June 2018

(c) Holding deposits

26. The meaning of “holding deposit” is given in paragraph 4. A holding deposit is an amount paid to the landlord (or to a person acting on the landlord’s behalf) to reserve a right of first refusal in relation to the grant of the contract of a rental property, subject to suitability checks to be carried out as to the contract-holder, and agreement between the parties to enter into the contract. It must not amount to more than a week’s rent.
27. For provision about how a holding deposit is to be dealt with once paid, see section 9 and Schedule 2.

(d) Payments in default

28. A payment in default is a payment that is required under an occupation contract, as a result of the contract-holder’s “default”. “Default” for this purpose is failure to make a permitted payment by the due date, or to comply with a contractual term. The result is that a contract-holder can be required to make a payment in default.
29. Say for example a term of the contract requires the contract-holder to carry out works or repairs such as unblocking a sink and the kitchen is subsequently flooded because this work was not done. The clean up cost for that work might be £200. Provided the contract stipulates that the contract-holder is liable for the costs of repairing damage resulting from failure to comply with a contractual term, a payment of £200 would be required. The £200 will be a permitted payment.

Section 5 - Non-binding contract terms

30. This section provides that any term of a contract which requires a contract-holder to make a prohibited payment, or to enter into a contract for services or make a loan as prohibited by the Bill, is not binding on the contract-holder. The rest of the contract continues to apply (so far as practicable).

Section 6 - Application of sections 2 to 5 to pre-existing agreements

These notes refer to the Renting Homes (Fees etc.) (Wales) Bill which was introduced into the National Assembly for Wales on 11 June 2018

31. The effect of this section is that sections 2 to 5 do not apply where a requirement to make a payment (or to enter into a contract for services or make a loan) was applied before this Part of the Bill comes into force. Nor do they apply where a requirement of this type is imposed under a standard occupation contract entered into before this Part of the Bill comes into force.
32. So, sections 2 to 5 will not apply to a standard occupation contract that has been converted (because of the effect of the Renting Homes (Wales) Act 2016) from another form of tenancy or licence, provided that the original tenancy or licence was entered into before this Part of the Bill comes into force. This will be the case whether the conversion to a standard occupation contract takes place before or after this Part of the Bill comes into force: the important point is when the original tenancy or licence was itself entered into.

Section 7 - Power to amend definition of permitted payments

33. This section provides that the Welsh Ministers may by regulations amend the list of permitted payments described in Schedule 1. They may add a new type of permitted payment, or remove a type that is listed, or amend a type that is listed. But this does not permit the Welsh Ministers to remove the payment of rent from the categories of permitted payment.
34. The objective behind this is to enable regulations to reflect any unforeseen changes in landlord behaviour and practices (for instance, the adoption of strategies designed to defeat the purposes of the Bill), or to reflect any new practices in the rental housing market.

Section 8 - Meaning of “letting agent”

35. This section defines a letting agent as a person who carries out “lettings work” or “property management” work. Those terms have the meaning given in sections 10 and 12 of the Housing (Wales) Act 2014. The effect is that a letting agent, for the purposes of the Bill, will be a person who is subject to the regulatory requirements of Part 1 of that Act.

PART 3: TREATMENT OF HOLDING DEPOSIT

Section 9 - Treatment of holding deposits

36. The effect of section 9 is that a payment that is a holding deposit (within the meaning given in Schedule 1) is treated as having been made subject to specific terms set out in Schedule 2.

Schedule 2: Treatment of holding deposits

37. Schedule 2 specifies when a holding deposit must be repaid: within seven days of the contract being entered into, or if the contract is not entered into by the “deadline for agreement”, within seven days of the deadline for agreement. The “deadline for agreement” is fifteen days, beginning with the day of the payment of the holding deposit.

38. This means that if no agreement is reached by the end of the fourteenth day of a period starting on the day when the holding deposit is paid, the holding deposit must be repaid by the end of the twenty-first day of that period. The parties involved can however agree that they are to provide for a longer “deadline for agreement”, in which case the date on which repayment is to be made will be calculated taking that into account.

39. There are various exceptions, set out in the Schedule, to these repayment requirements. The holding deposit does not have to be repaid if the deposit is applied towards the first payment of rent under the contract (paragraph 5(a)). Nor does it have to be repaid if it is applied towards the payment of a security deposit under the contract (paragraph 5(b)). In this latter case it will be treated, for the purposes of the deposit protection requirements (see section 45 of the Renting Homes (Wales) Act 2016) as having been paid on the date the contract is made.

40. Paragraph 7 provides that the landlord does not have to repay a holding deposit if the landlord is prohibited by section 22 of the Immigration Act 2014 from letting premises to the prospective contract-holder (because the prospective contract-holder is disqualified from renting privately by reason of his or her immigration status). This exception will, however, only apply where the landlord did not know,

and could not have been expected to know, that was the case prior to accepting the deposit.

41. Paragraph 8 provides that the landlord does not have to repay a holding deposit if the prospective contract-holder provides false or misleading information to the landlord, and this information (or the act of providing false or misleading information) is such that the landlord is “reasonably entitled” to take that information into account in deciding whether to grant the contract. This will be a question of fact in an individual case.
42. Paragraphs 9 and 10 provide that the landlord does not have to repay a holding deposit if the prospective contract-holder decides not to enter into a contract (and notifies the landlord of this) or the contract-holder (but not the landlord) fails to take all reasonable steps to enter into a contract.

PART 4: ENFORCEMENT

Section 10 - Power to require documents or information

43. Section 10 confers powers on an “authorised officer” of a local housing authority. This term is defined in section 16: it means a person authorised in writing by the authority.
44. An authorised officer may require a person who is, or has been, a landlord, contract-holder or letting agent to produce documents or to provide information which is reasonably required by the authority for the purpose of investigating whether any offence under the Bill has been committed. Subsection (8) provides that a reference to a document includes information which is not in legible form (for example, because it is stored on a computer server).
45. A requirement is to be imposed by an authorised officer giving notice to a person. The notice will specify when and where and to whom the documents or information must be produced.

These notes refer to the Renting Homes (Fees etc.) (Wales) Bill which was introduced into the National Assembly for Wales on 11 June 2018

46. The power may not be used to require a person to produce documents that have legal professional privilege, for example, documents containing advice from legal professionals.

Section 11 - Offence of failing to comply with a notice under section 10

47. A failure to comply with a notice issued under section 10 is an offence. It is a defence if a person had a reasonable excuse for failing to comply. On conviction, a person is liable to a fine not exceeding level 4 on the standard scale.

48. A person who intentionally alters, suppresses or destroys any document that that person has been required to produce by a notice under section 10 will commit an offence. Upon conviction of such an offence, the person is liable to a fine, which is not subject to a maximum level on the standard scale. The provision for such a fine reflects the fact that this offence involves a deliberate attempt to deceive or to suppress information, which the court will take into account when setting the actual level of fine.

Section 12 - Offence of providing false or misleading information in relation to a notice under section 10

49. A person who supplies information required by a notice under section 10 which is false or misleading, and who either knows that it is false or misleading or is reckless as to whether it is false or misleading, commits an offence.
50. An offence will also be committed where a person supplies any information to another person, either knowing that the information is false or misleading, or being reckless as to whether it is false or misleading, and knowing also that another person is going to provide the information in reply to a section 10 notice.
51. On conviction of an offence under this section, a person is liable to a fine, again not subject to any limit on the standard scale. The provision for such a fine reflects the fact that the fine will arise where there has been deliberate or reckless attempt to deceive or mislead by those

involved in an offence under this section.

Section 13 - Fixed penalty notices

52. This section provides for fixed penalty notices for offences under section 2 and 3 (but not for offences under Part 4 of the Bill relating to enforcement). The amount of the fixed penalty is £500. This amount (subsection (3)) may be amended in regulations.

53. Subsection (4) provides that a fixed penalty notice given under section 13 is treated as if it were given under section 29 of the Housing (Wales) Act 2014 (“the 2014 Act”). The effect is that where a person is given a notice in respect of an offence under section 2 or 3, no proceedings for an offence may be issued until at least 21 days following the date of the notice. No proceedings may be brought if the fixed penalty is paid before the end of that 21 day period.

54. A notice under section 29 of the 2014 Act must set out a number of matters:

- reasonable information on the circumstances alleged to constitute the offence;
- the period during which proceedings will not be taken;
- the amount of the fixed penalty; and
- details of the identity and address of the person to whom the penalty is payable.

55. Under section 29(6) of the 2014 Act payment may be made by pre-paying and posting a letter containing the amount of the penalty in cash or otherwise, or by another method to the person mentioned in subsection (3)(d) of the 2014 Act at the address mentioned. If posted, the payment is treated as having been made when the letter would ordinarily have been delivered in the post.

56. Receipts from fixed penalty notices can only be used for the local housing authority’s functions relating to the enforcement of the Bill (subsection (5)).

Section 14 - Duty of local housing authority to notify licensing authority of conviction

57. This section requires a local housing authority to notify the licensing authority (or each of them if there is more than one) designated under section 3 of the 2014 Act, when it becomes aware a person has been convicted of an offence under the Bill in respect of a dwelling in its area. Notification of conviction of an offence will be a factor for the licensing authority in determining whether a convicted person is a fit and proper person for the purposes of being granted or retaining a licence to carry out lettings agency or property management activities under section 20 of the 2014 Act.

Section 15 - Duty to have regard to guidance

58. This section provides that in exercising its functions under Part 4, a local housing authority must have regard to any guidance issued by Welsh Ministers.

PART 5: RECOVERY OF AMOUNT BY CONTRACT-HOLDER

Section 17 - Recovery of a prohibited payment or holding deposit

59. This section provides that a person may apply to the county court to recover a prohibited payment or holding deposit. The person making a claim is referred to in the section as “the claimant”.

60. In the case of recovery of a prohibited payment, for the claim to succeed, the court must be satisfied beyond reasonable doubt that a prohibited payment has been made and not repaid, in part or in full. If it is so satisfied, the court may order repayment of the whole payment or (if part of it has already been repaid) of that part of it that remains unpaid.

61. In the case of recovery of a holding deposit, for the claim to succeed, the court must be satisfied on the balance of probabilities that a holding deposit has been paid and there has been failure to repay all or part of that to the claimant in accordance with Schedule 2. (The different test that is applied in this case reflects the fact that failure to repay a

These notes refer to the Renting Homes (Fees etc.) (Wales) Bill which was introduced into the National Assembly for Wales on 11 June 2018

holding deposit is not a criminal offence.) Again, the court may order repayment of the whole holding deposit, or the outstanding amount of the holding deposit taken from the contract-holder.

62. The court may not require the repayment of an amount if that amount has been applied towards rent, or the security deposit under a standard occupation contract.
63. No claim for recovery of a prohibited payment may be made where criminal proceedings have been brought in respect of the disputed payment. This is because the court by whom a person is convicted of an offence under section 2 or 3 in respect of a prohibited payment may order payment of an amount equivalent to the prohibited payment (sections 2(6) and 3(5)).

PART 6: PUBLICISING LETTING AGENTS' FEES

Section 18 - Publicising letting agents' fees

64. Section 18 provides that regulations may amend Chapter 3 of Part 3 of the Consumer Rights Act 2015 ("the 2015 Act") to require a letting agent to ensure that any online advertiser (as defined) publicises certain fees charged by the agent, so far as they relate to dwelling-houses in Wales. The fees concerned are defined in section 85 of the 2015 Act and include fees payable by a landlord or tenant in respect of letting agency work and property management work. The regulations may also amend the 2015 Act to allow more than one penalty to be imposed on a letting agent in relation to the same breach of a duty in Chapter 3 of Part 3 of the 2015 Act so far as the breach relates to dwelling-houses in Wales.

PART 7: FINAL PROVISIONS

Section 19 - Power to make transitional provision in respect of assured tenancies

65. Section 19 provides that regulations may make provision for the Bill to apply in relation to an assured tenancy (including an assured shorthold tenancy) under the Housing Act 1988. Tenancies of this type will be converted into occupation contracts by the Renting Homes (Wales) Act

These notes refer to the Renting Homes (Fees etc.) (Wales) Bill which was introduced into the National Assembly for Wales on 11 June 2018

2016; but depending on the dates on which different provisions of that Act and this Bill are brought into force, transitional provision may be required to ensure that the Bill applies to all of the relevant categories of tenancy in existence at the time the Bill comes into force.

Section 20 - Offences by bodies corporate

66. Section 20 provides that where a body corporate (for instance, a limited company) commits an offence under the Bill, a “senior officer” of the company may also be liable.

Sections 21-24

67. Section 21 makes provision about how regulations under the Bill are to be made in terms of the procedure of the National Assembly for Wales, and describes the ancillary provision (supplemental, incidental, consequential, transitional, transitory or saving provision) that may be made in regulations.

68. Section 22 sets out the defined terms used in the Bill.

69. Section 23 provides that the Bill applies to the Crown, but specifies that the Crown will not be criminally liable for any offence under the Bill. Instead, in the case of contravention by the Crown, the High Court may declare an act to be unlawful.

70. Section 24 sets out the provisions that will come into effect on the date of Royal Assent (this section and the subsequent section dealing with the Bill’s short title) and provides for the remaining provisions of the Bill to come into force by commencement order made by the Welsh Ministers.

Appendix 2

Index of Standing Order requirements

Table 1

Standing order		Section	pages
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Assembly	Member's declaration	1
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation	5-11
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – impact assessment	22-23
26.6(iv)	Set out the consultation, if any, which was undertaken on: <ul style="list-style-type: none"> (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts) 	Chapter 4 – Consultation	12-13
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation	12-13

Standing order		Section	pages
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	The requirement of Standing Order 26.6(vi) does not apply to this Bill given the degree of policy certainty on legislative proposals and consultation work undertaken and the ongoing disadvantageous impact on tenants if legislation is delayed.	12
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Appendix 1 – Explanatory Notes	86-98
26.6(viii)	<p>Set out the best estimates of:</p> <ul style="list-style-type: none"> (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; (b) the administrative savings arising from the Bill; (c) net administrative costs of the Bill’s provisions; (d) the timescales over which such costs and savings would be expected to arise; and (e) on whom the costs would fall 	Part 2 – impact assessment	63

Standing order		Section	pages
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – impact assessment	70
26.6(x)	<p>Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:</p> <ul style="list-style-type: none"> (a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised; (b) why it is considered appropriate to delegate the power; and (c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure); 	Chapter 5 - Power to make subordinate legislation	15-17
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	The requirement of Standing Order 26.6(xi) does not apply to this Bill as there are no specific provisions which charge expenditure on the Welsh Consolidated Fund.	18

Standing order		Section	pages
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Government of Wales Act 2006.	Part 2 – impact assessment	69
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation.	
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	The requirement is Standing Order 26.6C for a Schedule of Amendments is not applicable to this Bill as the Bill does not propose to significantly amend existing primary legislation.	