

ACCOMPANYING DOCUMENTS

Explanatory Notes and an Explanatory Memorandum are printed separately.

Renting Homes (Fees etc.) (Wales) Bill

[AS INTRODUCED]

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Schedule 1 – Permitted Payments

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Renting Homes (Fees etc.) (Wales) Bill

[AS INTRODUCED]

An Act of the National Assembly for Wales prohibiting persons from requiring certain payments to be made or certain other steps to be taken as a condition of the grant, renewal or continuance of standard occupation contracts; to make provision about holding deposits and in relation to requirements to publicise certain fees charged by letting agents; and for connected purposes.

5 **Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

PART 1

OVERVIEW

1 Overview of Act

- 10 (1) This section gives an overview of the main provisions of this Act.
- (2) Part 2 makes it an offence for a landlord or letting agent to require certain payments to be made or certain other steps to be taken as a condition of the grant, renewal or continuance of a standard occupation contract.
- 15 (3) Part 3 makes provision about the repayment of holding deposits (as defined in Schedule 1).
- (4) Part 4 makes provision about enforcement, including provision about powers to require information, and fixed penalties.
- (5) Part 5 makes provision for the recovery of payments prohibited by this Act, and of holding deposits withheld contrary to this Act.
- 20 (6) Part 6 gives the Welsh Ministers a power to make provision by regulations in relation to publicising certain fees charged by letting agents.
- (7) Part 7 makes general provision, including provision about the procedural requirements for making regulations, and about Crown application.

PART 2

25 PROHIBITION OF CERTAIN PAYMENTS ETC.

2 Prohibitions applying to landlords

- (1) It is an offence for a landlord to require a prohibited payment to be made to the landlord, or any other person, as a condition of the grant, renewal or continuance of a standard occupation contract.

- (2) It is an offence for a landlord to require a person to enter into a contract for services with the landlord, or any other person, as a condition of the grant, renewal or continuance of a standard occupation contract.
- (3) But subsection (2) does not apply if the contract for services provides for services to be provided by a person upon whom the standard occupation contract confers, or would confer, the right to occupy a dwelling (whether or not the contract for services also provides for any other person to provide services).
- (4) It is an offence for a landlord to require the grant of a loan to the landlord, or any other person, as a condition of the grant, renewal or continuance of a standard occupation contract.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine.
- (6) The court by which a person (“the offender”) is convicted of an offence under subsection (1) may order the offender to pay the amount of the payment concerned or (in a case where part of the payment has been repaid) the outstanding amount of the payment to the person by whom it was paid.

3 Prohibitions applying to letting agents

- (1) It is an offence for a letting agent to require a prohibited payment to be made to the letting agent, or any other person, as a condition of arranging the grant, renewal or continuance of a standard occupation contract.
- (2) It is an offence for a letting agent to require a person to enter into a contract for services with the letting agent, or any other person, as a condition of arranging the grant, renewal or continuance of a standard occupation contract.
- (3) It is an offence for a letting agent to require the grant of a loan to the letting agent, or any other person, as a condition of arranging the grant, renewal or continuance of a standard occupation contract.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine.
- (5) The court by which a person (“the offender”) is convicted of an offence under subsection (1) may order the offender to pay the amount of the payment concerned or (in a case where part of the payment has been repaid) the outstanding amount of the payment to the person by whom it was paid.

4 Prohibited and permitted payments

- (1) Any payment of money is a prohibited payment unless –
- (a) it is payable by a landlord to a letting agent in respect of letting agency work or property management work carried out by the agent on behalf of the landlord, or
 - (b) it is a permitted payment by virtue of Schedule 1.

(2) That Schedule makes provision about—

- (a) rent;
- (b) security deposits;
- (c) holding deposits;
- (d) payments in default.

5 Non-binding contract terms

(1) A term of a standard occupation contract is not binding on a contract-holder to the extent that (but for this section) it would require a prohibited payment to be made, or a contract for services to be entered into, or a loan to be made, as described in section 2 or 3.

(2) But the contract continues, so far as practicable, to have effect in every other respect.

6 Application of sections 2 to 5 to pre-existing requirements and contracts

Sections 2 to 5 do not apply in respect of—

- (a) a requirement imposed before the coming into force of this Part;
- (b) a requirement forming part of a standard occupation contract entered into before the coming into force of this Part.

7 Power to amend definition of “permitted payment”

(1) Regulations may amend this Act for the purposes of adding, modifying or removing a reference in Schedule 1 to a category of payment.

(2) But the power in subsection (1) does not extend to removing the payment of rent from the categories of payment that are permitted payments under this Act.

8 Meaning of “letting agent”

References in this Act to a “letting agent” are to a person who carries out lettings work or property management work (whether or not that person carries out other work); and for this purpose “lettings work” and “property management work” have the meaning given in the Housing (Wales) Act 2014.

PART 3

TREATMENT OF HOLDING DEPOSITS

9 Treatment of holding deposits

(1) A payment that is a permitted payment by virtue of paragraph 3 of Schedule 1 (which permits the payment of holding deposits) is to be treated as having been made on the terms set out in Schedule 2.

- (2) Subsection (1) does not apply in relation to a payment made before the coming into force of Schedule 2.

PART 4

ENFORCEMENT

Local housing authority powers to require information etc.

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10 Power to require documents or information

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- (1) An authorised officer of a local housing authority may exercise the powers conferred by subsections (2) and (3) in relation to documents or information reasonably required by the authority for the purpose of investigating whether any offence under this Act has been committed.
- (2) An authorised officer may give a notice to a person within subsection (4) requiring that person to produce, at a time and place, and to a person, specified in the notice, any documents which –
- (a) are specified or described in the notice, or fall within a category of document specified or described in the notice, and
- (b) are in the person's custody or under the person's control.
- (3) An authorised officer may give a notice to a person within subsection (4) requiring that person to provide, in a form and manner specified in the notice, and at a time and place and to a person specified in the notice, any information which –
- (a) is specified or described in the notice, or falls within a category of information which is specified in the notice, and
- (b) is known to the person.
- (4) The persons within this section are –
- (a) a person who is or has been a landlord under a standard occupation contract;
- (b) a person who is or has been a contract-holder under a standard occupation contract;
- (c) a person who is or has been a letting agent.
- (5) A notice under subsection (2) or (3) must include information about the possible consequences of not complying with the notice.
- (6) A person to whom any document is produced in accordance with a notice under subsection (2) or (3) may copy the document.
- (7) No person may be required under this section to produce any document or provide any information which the person would be entitled to refuse to produce or provide, in proceedings in the High Court, on grounds of legal professional privilege.

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- (8) In this section, “document” includes information recorded otherwise than in legible form, and in relation to information so recorded, any reference to the production of a document is a reference to the production of a copy of the information in legible form.

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

- 5 (1) It is an offence for a person to fail to do anything required of the person by a notice under section 10.
- (2) In proceedings against a person for an offence under subsection (1) it is a defence that the person had a reasonable excuse for failing to comply with the notice.
- 10 (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) It is an offence for a person to intentionally alter, suppress or destroy any document which the person has been required to produce by a notice under section 10.
- (5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine.
- 15 (6) In this section “document” includes information recorded otherwise than in legible form, and in relation to information so recorded –
- (a) the reference in subsection (4) to the production of a document is a reference to the production of a copy of the information in legible form, and
- 20 (b) the reference in that subsection to suppressing a document includes a reference to destroying the means of reproducing the information.

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

- (1) It is an offence for a person given a notice under section 10, in purported compliance with the notice, to supply information that is false or misleading, if the person –
- 25 (a) knows that the information supplied is false or misleading, or
- (b) is reckless as to whether it is false or misleading.
- (2) It is an offence for a person to supply information that is false or misleading, if the person –
- 30 (a) knows that the information is false or misleading, or is reckless as to whether it is false or misleading, and
- (b) knows that the information is to be used for the purpose of supplying information in purported compliance with the requirements of a notice given to another person under section 10.
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- 35 (4) In this section, “false or misleading” means false or misleading in a material respect.

*Fixed penalty notices***13 Fixed penalty notices**

- 5 (1) Where an authorised officer of a local housing authority has reason to believe that a person has committed an offence under section 2 or 3 in the authority's area, the officer may give that person a fixed penalty notice in respect of the offence.
- (2) A fixed penalty notice, for the purposes of subsection (1), is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty of £500.
- 10 (3) The Welsh Ministers may by regulations substitute a different amount for the amount for the time being specified in subsection (2).
- (4) A fixed penalty notice given under this section is to be treated as if it were given under section 29 of the Housing (Wales) Act 2014 for the purposes of subsections (2), (3) and (6) to (8) of that section (provision about how fixed penalty notices are given), and for this purpose the reference in subsection (8)(a) of that section to "the licensing authority" is to be treated as being a reference to the local housing authority in question.
- 15 (5) Fixed penalty receipts received by a local housing authority by virtue of this section may not be used otherwise than for the purpose of the authority's functions relating to the enforcement of the provisions of this Act.

*Notification of conviction to licensing authority***14 Duty of local housing authority to notify licensing authority of conviction**

- 20 (1) As soon as reasonably practicable after becoming aware that a person has been convicted of an offence under this Act in respect of a dwelling located wholly or partly in its area, a local housing authority must comply with subsection (2).
- 25 (2) The authority must give notification of the conviction to the licensing authority designated under section 3 of Part 1 of the Housing (Wales) Act 2014, or, if there is more than one licensing authority so designated, to each of those authorities.

*Guidance***15 Duty to have regard to guidance**

30 In exercising its functions under this Part a local housing authority must have regard to any guidance issued by the Welsh Ministers.

*Meaning of "authorised officer" in this Part***16 Meaning of "authorised officer"**

35 Any reference in this Part to an authorised officer of a local housing authority is a reference to a person (whether or not an officer of the authority) authorised in writing by the authority for the purposes of this Part.

PART 5

RECOVERY OF AMOUNT BY CONTRACT-HOLDER

17 Recovery of a prohibited payment or holding deposit

(1) A person (the “claimant”) may apply to the county court for the recovery of the amount of—

(a) any prohibited payment made by or on behalf of the claimant in respect of a standard occupation contract;

(b) any holding deposit paid by or on behalf of the claimant in respect of a standard occupation contract.

(2) A court to which an application under subsection (1)(a) is made may, if the court is satisfied beyond reasonable doubt that—

(a) a prohibited payment has been made by or on behalf of the claimant, and

(b) all or part of that payment has yet to be repaid to the claimant,

order the repayment to the claimant, in accordance with the order, of the amount of the payment or (in a case where part of the payment has been repaid) of the outstanding amount of the payment.

(3) A court to which an application under subsection (1)(b) is made may, if the court is satisfied, on the balance of probabilities, that—

(a) a holding deposit has been paid by or on behalf of the claimant, and

(b) there has been a failure to repay all or part of the holding deposit to the claimant in accordance with Schedule 2,

order the repayment to the claimant, in accordance with the order, of the amount of the holding deposit or (in a case where part of the holding deposit has been repaid) of the outstanding amount of the holding deposit.

(4) But subsection (2) does not apply in relation to a prohibited payment if criminal proceedings have been commenced by virtue of section 2 or 3 in respect of that payment, unless those proceedings have been discontinued.

(5) An order under subsection (2) or (3) may not require the repayment of an amount, if that amount has been applied towards a payment of rent, or the security deposit, under the standard occupation contract concerned.

PART 6

PUBLICISING LETTING AGENTS' FEES

18 Publicising letting agents' fees

(1) Regulations may amend Chapter 3 of Part 3 of the Consumer Rights Act 2015 (duty to publicise fees etc.)—

(a) to require a letting agent to ensure that any online advertiser publicises the agent's relevant fees, so far as those fees relate to dwelling-houses in Wales;

(b) to allow more than one penalty to be imposed on a letting agent in relation to the same breach of a duty in that Chapter, so far as the breach relates to dwelling-houses in Wales.

(2) In this section –

(a) “online advertiser”, in relation to a letting agent, means a person who advertises, on the internet, services offered by the agent in relation to dwelling houses in Wales;

(b) “dwelling house”, “letting agent” and “relevant fees” have the same meaning as in Chapter 3 of Part 3 of the Consumer Rights Act 2015.

PART 7

FINAL PROVISIONS

19 Power to make transitional provision in respect of assured tenancies

(1) Regulations may make provision for this Act to apply, subject to any modifications specified by the regulations, in relation to an assured tenancy of a dwelling.

(2) For the purposes of subsection (1), “assured tenancy” has the same meaning as in the Housing Act 1988 (and includes an assured shorthold tenancy).

20 Offences by bodies corporate

(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

(a) a senior officer of the body corporate, or

(b) a person purporting to be a senior officer of the body corporate,

that senior officer or person (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “senior officer” means a director, manager, secretary or other similar officer of the body corporate.

(3) But in the case of a body corporate whose affairs are managed by its members, “director” for the purposes of this section means a member of the body corporate.

21 Regulations

(1) A power to make regulations under this Act is to be exercised by statutory instrument.

(2) A power to make regulations under this Act includes power –

(a) to make different provision for different purposes;

(b) to make supplemental, incidental, consequential, transitional, transitory or saving provision.

(3) A statutory instrument containing regulations under section 7 or section 13 (whether or not it contains regulations made under any other provision of this Act) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, the National Assembly for Wales.

(4) Any other statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

22 Interpretation

(1) In this Act—

“contract-holder” (*“deiliad contract”*) has the same meaning as in the Renting Homes (Wales) Act 2016 (referred to in this section as “the 2016 Act”);

“dwelling” (*“annedd”*) has the same meaning as in the 2016 Act;

“holding deposit” (*“blaendal cadw”*) has the meaning given in Schedule 1;

“landlord” (*“landlord”*) has the same meaning as in the 2016 Act; and if two or more persons jointly constitute the landlord, references in this Act to the landlord are to each of those persons;

“local housing authority” (*“awdurdod tai lleol”*) means the council for a county or county borough in Wales;

“prohibited payment” (*“taliad gwaharddedig”*) has the meaning given in section 4;

“regulations” (*“rheoliadau”*) means regulations made by the Welsh Ministers;

“security deposit” (*“blaendal sicrwydd”*) has the meaning given in Schedule 1;

“standard occupation contract” (*“contract meddiannaeth safonol”*) means a contract that is a standard contract for the purposes of the 2016 Act.

(2) References in this Act to a payment required by a landlord as a condition of the grant, renewal or continuance of a standard occupation contract are to be treated as including references to a payment required under a standard occupation contract.

23 Crown application

(1) This Act applies to the Crown.

(2) No contravention of any provision made by or under this Act makes the Crown criminally liable, but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention.

24 Coming into force

(1) This section and section 25 come into force on the day after the day this Act receives Royal Assent.

(2) The other provisions of this Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

- (3) An order under this section may –
- (a) appoint different days for different purposes;
 - (b) make transitory, transitional or saving provision.

25 Short title

5 The short title of this Act is the Renting Homes (Fees etc.) (Wales) Act 2019.

SCHEDULE 1
(as introduced by section 4)

PERMITTED PAYMENTS

Rent

- 5 1 (1) A payment of rent under a standard occupation contract is a permitted payment.
- (2) But, subject as follows, if the amount of rent payable in respect of a relevant period (“P1”) is more than the amount of rent payable in respect of another relevant period (“P2”), the additional amount payable in respect of P1 is a prohibited payment.
- 10 (3) Where there is more than one relevant period other than P1, P2 is whichever one of those other relevant periods is the period in respect of which the lowest amount of rent is payable.
- (4) In a case where the duration of one relevant period (P1) differs from that of another (P2), to determine—
- (a) whether a prohibited payment has been made by virtue of sub-paragraph (2), and
- 15 (b) if so, the amount of the prohibited payment,
- the following steps are to be taken.

Step 1

20 For each of P1 and P2, the applicable daily rate of rent (the “ADR”) is to be calculated (and in the case of an amount that is not a whole number of pennies, then rounded up to the nearest penny) by dividing the total amount of rent for the period by the number of days in the period.

Step 2

If there is no difference between the ADR for each period, there is no prohibited payment.

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Step 3

But if the ADR for P1 differs from that for P2, determine which of the rates is the lower (the “lower ADR”) and which is the higher (the “higher ADR”).

Step 4

30 For whichever period in respect of which the higher ADR is payable, calculate the amount of rent that would have been payable for it if rent had been payable in respect of that period at the lower ADR.

Step 5

35 Calculate the difference between the amount of rent calculated under Step 4, and the amount of rent actually payable in respect of the period in which the higher ADR is payable.

The resulting amount is a prohibited payment by virtue of sub-paragraph (2).

(5) Where—

- (a) rent is payable monthly in respect of P1 and P2, or P1 and P2 are both periods calculated by reference to the same number of calendar months, and
- (b) the amount of rent payable in respect of P1 and P2 is the same,

P1 and P2 are to be treated for the purposes of Step 2 in sub-paragraph (4) as having the same ADR.

(6) No account is to be taken of any difference between the rent payable in respect of P1 and another relevant period to the extent that it results from a permitted variation of the rent.

(7) In sub-paragraph (6), “permitted variation”, in relation to rent payable under a standard occupation contract, means a variation made—

- (a) by agreement between the landlord and the contract-holder;
- (b) pursuant to a term in the contract which provides for variation of the rent under the contract;
- (c) by or as a result of an enactment.

(8) In this paragraph—

(a) “enactment” means an enactment (whenever enacted or made) comprised in, or in an instrument made under—

- (i) an Act of Parliament,
- (ii) a Measure or an Act of the National Assembly for Wales, and

(b) “relevant period”, in relation to a standard occupation contract, means any period in respect of which a payment of rent falls to be made.

Security deposit

(1) A payment of a security deposit is a permitted payment.

(2) In this Act, “security deposit” means money paid as security for—

- (a) the performance of any obligations of a contract-holder, or
- (b) the discharge of any liability,

arising under or in connection with an occupation contract.

(3) But if the amount of the security deposit exceeds the prescribed limit, the amount of the excess is a prohibited payment.

(4) In sub-paragraph (3), the “prescribed limit” means a limit specified by, or determined in accordance with, regulations.

Holding deposit

A payment of a holding deposit is a permitted payment.

A holding deposit is an amount which—

- (a) before the grant of a standard occupation contract, is paid to a landlord or a person acting on behalf of a landlord;

- (b) is paid for the purpose of reserving a right of first refusal in relation to the granting of the contract, subject to suitability checks to be carried out as to the contract-holder and agreement between the parties to enter into the contract;
- (c) does not exceed an amount equivalent to one week's rent under the contract.

5 *Payment in the event of default*

- 5 (1) A payment that is required, under a standard occupation contract, to be made in the event of a default by the contract-holder is a permitted payment.
- (2) In sub-paragraph (1), "default" means –
- 10 (a) a failure by the contract-holder to make a payment by the due date to the landlord,
or
- (b) a breach by the contract-holder of a term of the contract.

Changing the meaning of "permitted variation" in paragraph 1

- 6 (1) Regulations may amend this Schedule so as to change the meaning of "permitted variation" for the purposes of paragraph 1.
- 15 (2) Regulations under sub-paragraph (1) may (for instance) –
- (a) define a permitted variation by reference to when it is made;
- (b) define a permitted variation by reference to whether it results in an increase or decrease in the amount of rent payable under a standard occupation contract in respect of a relevant period;
- 20 (c) define a permitted variation by reference to whether the variation is made pursuant to a term of the contract as originally agreed between the parties, or pursuant to a change, by agreement, to the original terms on which the contract was entered into.
- 25 (3) Regulations under sub-paragraph (1) may also make consequential amendments to Chapter 3 of Part 6 and Chapter 3 of Part 7 of the Renting Homes (Wales) Act 2016 (variation of standard occupation contracts).

SCHEDULE 2
(as introduced by section 9)

TREATMENT OF HOLDING DEPOSIT

Application

5 1 This Schedule applies where a holding deposit is paid in respect of a standard occupation contract.

Meaning of “deadline for agreement”

- 2 (1) In this Schedule, the “deadline for agreement” means the fifteenth day of the period beginning with the day on which the holding deposit is paid.
- 10 (2) But the parties may agree in writing that a different day is to be the deadline for agreement.
- (3) Regulations may amend sub-paragraph (1) to change the deadline for agreement.

Requirement to repay holding deposit

- 3 Subject as follows, the landlord must repay the holding deposit if –
- 15 (a) the parties enter into the contract before the deadline for agreement, or
(b) the parties fail to enter into the contract before the deadline for agreement.
- 4 The deposit must be repaid within the period of 7 days beginning with –
- (a) where paragraph 3(a) applies, the day on which the contract is made, or
(b) where paragraph 3(b) applies, the deadline for agreement.

20 *Exceptions*

- 5 Paragraph 3(a) does not apply to the extent that the amount of the deposit is applied –
- (a) towards the first payment of rent under the contract, or
(b) towards the payment of a security deposit under the contract.
- 6 If the landlord applies all or part of the amount of the deposit in accordance with
25 paragraph 5(b), the amount applied is treated for the purposes of section 45 of the Renting Homes (Wales) Act 2016 (requirement to use deposit schemes) as having been paid on the date the contract is made.
- 7 Paragraph 3(b) does not apply if –
- 30 (a) the landlord is prohibited by section 22 of the Immigration Act 2014 (persons disqualified by immigration status not to be leased premises) from granting the contract to the contract-holder, and
- (b) the landlord did not know, and could not reasonably have been expected to know, that was the case before the landlord accepted the deposit.

8 Paragraph 3(b) does not apply if the contract-holder provides false or misleading information to the landlord and—

5 (a) the landlord is reasonably entitled to take into account the difference between the information provided by the contract-holder and the correct information in deciding whether to grant a contract to the contract-holder, or

(b) the landlord is reasonably entitled to take the contract-holder's action in providing false or misleading information into account in deciding whether to grant such a contract.

9 Paragraph 3(b) does not apply if the contract-holder notifies the landlord before the deadline for agreement that the contract-holder has decided not to enter into a contract.

10 Paragraph 3(b) does not apply if—

(a) the landlord takes all reasonable steps to enter into a contract before the deadline for agreement, but

15 (b) the contract-holder fails to take all reasonable steps to enter into a contract before that date.