

Explanatory Memorandum to the Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Welsh Government's Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019.

Julie James

Minister for Housing and Local Government

12 November 2019

PART 1

1. Description

- 1.1. This Explanatory Memorandum related to the Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019. The Regulations are made under paragraph 11 of Schedule 2 Renting Homes (Fees etc.) (Wales) Act 2019 which provides the Welsh Ministers with power to make regulations specifying information to be provided to the contract-holder before the payment of a holding deposit.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1. None.

3. Legislative background

- 3.1. The Regulations are made under paragraph 11 of Schedule 2 Renting Homes (Fees etc.) (Wales) Act 2019. They come into force on 13 December 2019.
- 3.2. The Regulations follow the Assembly's negative procedure.

4. Purpose and intended effect

- 4.1. The intention of the regulations is to ensure that a contract-holder does not provide a holding deposit unless prescribed information has been provided to them. Also to provide that a landlord or agent is not able to require a holding deposit unless the relevant information has been provided to the contract-holder.
- 4.2. This allows contract-holders to make an informed choice about whether a tenancy is suitable before making a financial commitment. In particular, it is considered that information relating to the costs associated with the tenancy and the need for a guarantor should be made clear prior to a holding deposit being taken as these have a significant bearing on a contract-holder's ability to take up the tenancy.
- 4.3. If the specified information is not provided (referred to in paragraph 11 of Schedule 2 as "the condition" which must be met) the exceptions to the requirement to repay a holding deposit set out in paragraphs 8, 9 and 10 of Schedule 2 may not be relied upon. The risk of not being able to rely on these exceptions is considered to be a significant incentive to provide the required information the regulations set out.

4.4. The regulations provide that the following information must be provided to a prospective contract-holder:

- amount of holding deposit;
- identify the dwelling in respect of which the deposit is paid;
- name, address, telephone number and any e-mail address of the landlord (and if instructed, the letting agent);
- nature and duration of the contract;
- proposed occupation date;
- amount of rent or other consideration;
- rental period;
- any proposed additional contract terms or proposed modifications or exclusions to fundamental or supplementary terms;
- amount of any security deposit;
- whether a guarantor is required and, if so, any relevant conditions;
- reference checks the landlord (or letting agent) will undertake; and
- information the landlord or letting agent requires from the prospective contract-holder.

4.5. The information must be provided to a prospective contract-holder in writing, either in person or sent by post or electronically.

5. Consultation

5.1. An eight week consultation was undertaken between 24 May 2019 and 19 July 2019 with regards to making regulations in relation to Payments in Default and Holding Deposits.

5.2. In total 303 responses were received to the consultation. The majority of respondents were either landlords or letting agents. Questions 7 and 8 of the consultation related specifically to what information a prospective tenant should be provided with before a holding deposit is taken and how this information should be provided.

5.3. Responses to the question of to what information should be provided to a prospective tenant before a landlord or agent takes a holding deposits were as follows:

- 84% thought that basic details of all parties to be included in the agreement, (prospective tenant, landlord and agent) including contact details should be provided.
- 88% thought that length and type of tenancy to be entered into, including moving in date should be provided.
- 93% thought that the amount of rent should be provided.
- 92% thought that the amount of security deposit should be provided.
- 75% thought that the requirements for a guarantor should be provided.

- 84% thought that the details of the circumstances under which the holding deposit is refundable should be provided.
 - 82% thought that details of how the holding deposit will be used should the tenancy go ahead, including how it will be protected should be provided.
 - 84% thought that details of what will happen following a deposit being paid, including what checks will be undertaken by the landlord / agent should be provided.
- 5.4. Responses in relation to how this information should be provided to the contract-holder was overwhelmingly that the information should be provided in written format.
- 5.5. A detailed analysis of the responses to the consultation is available on the Welsh Government's website. <https://gov.wales/renting-homes-fees-etc-wales-act-2019-default-fees-and-prescribed-information>

6. Stakeholder engagement

- 6.1. Engagement with stakeholders was undertaken during the passage of the Renting Homes (Fees etc) Bill and during the consultation period for the draft regulations.

7. Regulatory Impact Assessment

- 7.1. The Welsh Ministers' Code of Practice on carrying out Regulatory Impact Assessments was considered in relation to the Regulations. As a result, it was not considered necessary to carry out an RIA as to the likely costs and benefits of complying with these Regulations. Costs associated with the primary legislation under which these Regulations are made have been accounted for under the RIA for The Renting Homes (Fees etc.) (Wales) Act 2019.