



Renting Homes (Fees etc.) (Wales) Act 2019

2019 anaw 2

PART 1

OVERVIEW

1 Overview of Act

- (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 in consideration of the grant, renewal or continuance of a standard occupation contract, or pursuant to a term of a standard occupation contract.
- (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.
- (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

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—
 - (a) in consideration of the grant, renewal or continuance of a standard occupation contract, or
 - (b) pursuant to a term of a standard occupation contract which purports to require the payment to be made.
- (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—
 - (a) in consideration of the grant, renewal or continuance of a standard occupation contract, or
 - (b) pursuant to a term of a standard occupation contract which purports to require entry into the contract for services.
- (3) But subsection (2) does not apply if the contract for services concerned 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—
 - (a) in consideration of the grant, renewal or continuance of a standard occupation contract, or
 - (b) pursuant to a term of a standard occupation contract which purports to require the loan to be granted.
- (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—
 - (a) in consideration of arranging the grant, renewal or continuance of a standard occupation contract, or
 - (b) pursuant to a term of a standard occupation contract which purports to require the payment to be made.
- (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—
 - (a) in consideration of arranging the grant, renewal or continuance of a standard occupation contract, or

- (b) pursuant to a term of a standard occupation contract which purports to require entry into the contract for services.
- (3) But subsection (2) does not apply if the contract for services concerned is a contract between a landlord and a letting agent only, in respect of lettings work or property management work to be carried out by the agent on the landlord's behalf.
- (4) It is an offence for a letting agent to require the grant of a loan to the letting agent, or any other person—
 - (a) in consideration of arranging the grant, renewal or continuance of a standard occupation contract, or
 - (b) pursuant to a term of a standard occupation contract which purports to require the loan to be made.
- (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.

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 lettings 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;
 - (e) payments in respect of council tax;
 - (f) payments in respect of utilities;
 - (g) payments in respect of a television licence;
 - (h) payments in respect of communication services.

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—

Status: This is the original version (as it was originally enacted).

- (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”, “lettings work” and “property management work”

For the purposes of this Part and Parts 3 to 5—

“letting agent” (“*asiant gosod eiddo*”) means a person who carries out lettings work or property management work (whether or not the person carries out other work);

“lettings work” (“*gwaith gosod*”) and “property management work” (“*gwaith rheoli eiddo*”) have the same meaning as in Part 1 of the [Housing \(Wales\) Act 2014 \(anaw 7\)](#) (see sections 10 and 12 of that Part).

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

Enforcement authority powers to require information etc.

10 Power to require documents or information

- (1) An authorised officer of an enforcement 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 in respect of a dwelling located in the enforcement authority’s area.

- (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.
- (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

- (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.
- (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.
- (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
- (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—
 - (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—
 - (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.
- (4) In this section, “false or misleading” means false or misleading in a material respect.

Fixed penalty notices

13 Fixed penalty notices

- (1) Where an authorised officer of an enforcement 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 £1000.
- (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 \(anaw 7\)](#) 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 enforcement authority in question.
- (5) Fixed penalty receipts received by an enforcement 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

- (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 in its area, a local housing authority must comply with subsection (2).
- (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 \(anaw 7\)](#), or, if there is more than one licensing authority so designated, to each of those authorities.
- (3) This section does not require a local housing authority to give a licensing authority notification of a conviction if the proceedings which led to the conviction were brought by the licensing authority under section 19.

Guidance

15 Duty to have regard to guidance

In exercising its functions under this Part an enforcement authority must have regard to any guidance issued by the Welsh Ministers.

Meaning of “authorised officer” in this Part

16 Meaning of “authorised officer”

Any reference in this Part to an authorised officer of an enforcement 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.

The enforcement authority for the purposes of this Part

17 Enforcement authorities

- (1) For the purposes of this Part, each of the following is the enforcement authority in relation to the area of a local housing authority—
 - (a) the local housing authority for the area, and
 - (b) the licensing authority for the area.
- (2) But a licensing authority which, by virtue of subsection (1)(b), is the enforcement authority for the area of a local housing authority, may not exercise any function of an enforcement authority in relation to that area, nor bring proceedings under section 19 in relation to that area, without the prior written consent of the local housing authority for the area.
- (3) Consent under subsection (2) may be given generally or in relation to specific cases or functions.
- (4) For the purposes of this section, “licensing authority” means a person designated as a licensing authority under section 3 of Part 1 of the [Housing \(Wales\) Act 2014 \(anaw 7\)](#).

- (5) In this Part, references to the area of an enforcement authority are references to the area or, as the case may be, areas for which it is the enforcement authority.

Information sharing and power to bring criminal proceedings

18 Supply and use of information by enforcement authorities

- (1) If an enforcement authority requests information from another enforcement authority, that other authority must comply with the request unless it considers that doing so would be incompatible with the exercise of its functions (including functions exercisable otherwise than under this Part).
- (2) The information that may be requested of an enforcement authority under subsection (1) is information that has been obtained by that authority—
- (a) under this section, or
 - (b) otherwise in the exercise of its functions under this Part.
- (3) An enforcement authority may use information within subsection (5)(a), (b) or (c) for any purpose connected to the exercise of the authority’s functions under this Part.
- (4) An enforcement authority may, in addition, use information within subsection (5)(a) or (b) for any purpose connected to the exercise of any of its functions under Part 1 of the [Housing \(Wales\) Act 2014 \(anaw 7\)](#) (“the 2014 Act”).
- (5) The information is information—
- (a) that has been supplied to it by another enforcement authority under subsection (1);
 - (b) that has otherwise been obtained by the enforcement authority in the exercise of its functions under this Part;
 - (c) that, by virtue of section 36 of the 2014 Act, it is permitted to use for purposes connected to the exercise of its functions under Part 1 of that Act.
- (6) Section 17(2) does not apply in relation to the functions conferred on an enforcement authority by this section.

19 Power of licensing authority to bring criminal proceedings

An enforcement authority which is a licensing authority may bring criminal proceedings in respect of an offence alleged to have been committed under this Act in respect of a dwelling located in its area (but this is subject to section 17(2)).

Restrictions on termination by landlord of standard occupation contracts

20 Amendment of Renting Homes (Wales) Act 2016: restrictions on terminating contracts

Schedule 3 amends the [Renting Homes \(Wales\) Act 2016 \(anaw 1\)](#) to make provision in connection with prohibited payments and retained holding deposits, and makes further associated amendments.

Guidance to a licensing authority under Part 1 of the Housing (Wales) Act 2014

21 Amendment to section 41 of Housing (Wales) Act 2014

In section 41 of the [Housing \(Wales\) Act 2014 \(anaw 7\)](#) (guidance under Part 1 of Act), after subsection (2) insert—

“(2A) Guidance given to a licensing authority may (among other things) include provision about matters to be taken into account by a licensing authority in deciding whether a failure to repay the amount of any prohibited payment or holding deposit (within the meaning of the Renting Homes (Fees etc.) (Wales) Act 2019) affects a person’s fitness to be licensed under this Part.”

PART 5

RECOVERY OF AMOUNT BY CONTRACT-HOLDER

22 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

23 Publicising letting agents' fees

- (1) Regulations may amend Chapter 3 of Part 3 of the [Consumer Rights Act 2015 \(c.15\)](#) (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

24 Requirement for local housing authority to promote awareness of effect of Act

- (1) A local housing authority must make arrangements for information to be made publicly available in its area, in whatever way the authority thinks appropriate, about the effect of this Act, including about how prohibited payments and holding deposits may be recovered.
- (2) In making arrangements for the purposes of this section, a local housing authority must have regard to any guidance given by the Welsh Ministers.

25 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 \(c. 50\)](#) (and includes an assured shorthold tenancy).

26 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.

27 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, section 13 or paragraphs 2 or 6 of Schedule 1 (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.

28 Interpretation

In this Act—

“contract-holder” (“*deiliad contract*”) has the same meaning as in the [Renting Homes \(Wales\) Act 2016 \(anaw 1\)](#) (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.

29 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.

30 Coming into force

- (1) This section and section 31 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.

31 Short title

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