

# **RENTING HOMES (FEES ETC.) (WALES) ACT 2019**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 3: Treatment of Holding Deposits**

##### ***Section 9 – Treatment of holding deposits***

41. 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. These terms, subject to certain exceptions set out in the Schedule, require the repayment of a holding deposit by the landlord or letting agent who received the deposit.

##### ***Schedule 2: Treatment of holding deposits***

42. **Schedule 2** specifies when a holding deposit must be repaid. Where a contract is entered into before the “deadline for agreement”, the deposit must be repaid within seven days of the contract being entered into. If the contract is not entered into by the “deadline for agreement”, the deposit must be repaid within seven days of the deadline for agreement. The “deadline for agreement” is the fifteenth day of the period beginning with the day of the payment of the holding deposit.
43. The parties involved can however agree in writing that they are to provide for a different “deadline for agreement”, in which case the date on which repayment is to be made will be calculated taking that into account. In addition, the Welsh Ministers may, by regulations, amend the “deadline for agreement”.
44. There are various exceptions to the requirement to repay a holding deposit, set out in the Schedule. In circumstances where a contract is entered into before the deadline, 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 2016 Act) as having been paid on the date the contract is made.
45. The exceptions in paragraphs 7, 8, 9 and 10 relate to circumstances where the parties to the contract have failed to enter into the contract before the deadline.
46. **Paragraph 7** 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 or letting agent and this information (or the act of providing false or misleading information) is such that the landlord is “reasonably entitled” to take that information or the contract-holder’s action into account in deciding whether to grant the contract.

*These notes refer to the Renting Homes (Fees etc.) (Wales)  
Act 2019 (c.2) which received Royal Assent on 15 May 2019*

47. [Paragraph 8](#) provides 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 or letting agent of this before the “deadline for agreement”.
48. [Paragraph 9](#) applies where a landlord has received a holding deposit. The landlord will be entitled to withhold the deposit (and not make a repayment) if the landlord takes all reasonable steps to enter into a contract before the “deadline for agreement”, but the contract-holder fails to take all reasonable steps to do so before that date. In circumstances where a landlord has instructed a letting agent to act in relation to a contract, the reasonableness of the letting agent’s conduct will also have to be taken into account for the purposes of determining whether this paragraph applies (see paragraph 11(5)).
49. [Paragraph 10](#) makes provision which corresponds to that made by paragraph 9 but in relation to cases where a holding deposit has been paid to a letting agent, not a landlord.
50. [Paragraph 11](#) provides that the exceptions in paragraphs 8, 9 and 10 may not be relied upon unless the condition in sub-paragraph (2) of paragraph 11 is met. The condition is that before paying a holding deposit, the landlord or letting agent has provided prescribed information to the contract-holder.
51. The intention behind this provision is to prevent unfairness in relation to contract-holders who, after paying a holding deposit, decide not to enter into a contract because information relevant to the contract was not provided by a landlord or letting agent before the holding deposit was paid.