

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Prohibitions of Certain Payments

Schedule 1 - Permitted payments

19. Any type of payment not listed in the Schedule is prohibited if it is required in consideration of the grant, renewal or continuance of a standard occupation contract, or pursuant to a term of a standard occupation contract (unless it is within section 4(1)(a)). The permitted payments listed in the Schedule are as follows.

Rent

20. The Schedule does not define “rent”, on the basis that the term has a commonly understood meaning.
21. It does however regulate variations in the rent payable in relation to a standard occupation contract. The intention behind this is to avoid attempts to circumvent the restrictions in the Act by, say, having fluctuating rent amounts which are used to disguise what would otherwise 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 of equivalent duration, the difference between the two amounts is a prohibited payment. In circumstances where the rent payable by a contract-holder differs in relation to two periods of a different duration, paragraph 1(4) sets out rules for determining whether the difference in amount is a prohibited payment and, if so, the amount of the prohibited payment.
22. There is an exception to the general rule set out in this paragraph, one which allows for changes in the amount of rent resulting from what is referred to in paragraph 1(7) of the Schedule as a “permitted variation” of rent. A “permitted variation” is one made by agreement between the landlord and the contract-holder, or under a term in the contract providing for rent variation, or by 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 11 of the Schedule to make regulations to change the meaning of “permitted variation” for this purpose.

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, or for any liability under or in connection with the contract (for instance arising because of damage to a dwelling).
24. But a security deposit is not a permitted payment for the purposes of the Act if it exceeds an amount specified by the Welsh Ministers in regulations under paragraph 2(3): the intention behind this is to avoid excessive security deposits being requested.

25. Where a security deposit has been paid, section 45 of the 2016 Act requires it to be dealt with in accordance with an authorised deposit scheme.

Holding deposits

26. The meaning of “holding deposit” is given in paragraph 4. A holding deposit is an amount paid to the landlord or letting agent 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 prospective contact-holder, and agreement between the parties to enter into the contract. It must not amount to more than the equivalent of a week’s rent. If the amount of a holding deposit exceeds the equivalent of a week’s rent under the contract in question, the excess will be a prohibited payment.
27. For provision about how a holding deposit is to be dealt with once paid, see section 9 and Schedule 2.

Payments in default

28. A payment in default is a payment that is required under a standard occupation contract, as a result of the contract-holder’s “default”. “Default” for this purpose is the 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 by a landlord 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 and repair costs 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.
30. In the case of a failure by the contract-holder to pay rent by the due date to the landlord, a payment in default is permitted provided it does not exceed any limit specified by or determined in accordance with regulations. Any excess would be a prohibited payment. The Welsh Ministers may also make regulations to impose a limit in relation to any additional descriptions of default (which are also specified by regulations), so that if the amount of a payment contractually required in the event of the default in question exceeds the prescribed limit, the amount of the excess would be prohibited, although it is required by the contract.

Payments in respect of council tax

31. The meaning of “payments in respect of council tax” is given in paragraph 7. This category of permitted payment authorises a landlord, in a contract, to require the contract-holder to make any payments the contract-holder is liable to pay in respect of council tax by virtue of any of sections 6, 8 or 9 of the Local Government Finance Act 1992. In the 1992 Act, the relevant billing authorities for the purposes of this Act are the councils for the counties and county boroughs of Wales.

Payments in respect of provision of utilities

32. The meaning of “payments in respect of provision of utilities” is given in paragraph 8. This paragraph authorises a landlord, in a contract, to require payments for or in connection with the provision, to the dwelling subject to the contract, of one or more of the utilities mentioned in paragraph 8(3). A payment towards energy efficiency improvements under a green deal plan is permitted if it is required under a standard occupation contract and made in respect of the dwelling subject to the contract.

Payments in respect of a television licence

33. The meaning of “payments in respect of a television licence” is given in paragraph 9. This payment is a payment a contract-holder is required to make to the BBC in respect of a television licence (the requirement applies by virtue of the Communications Act 2003). By virtue of this paragraph a landlord may require a contract-holder to make such payments in relation to the dwelling subject to the contract.

Payment in respect of communication services

34. The meaning of a “communication service” is given in paragraph 10(2). Paragraph 10 authorises a landlord to require payments under a contract if the payments are payments for or in connection with any service which enables the use, in the dwelling subject to the contract, of a landline telephone; the internet; or cable or satellite television.