

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 – Prohibitions of Certain Payments**

##### ***Section 2 – Prohibitions applying to landlords***

4. This section makes it an offence for a landlord to impose certain types of requirement in consideration of granting a standard occupation contract, or renewing or continuing an existing contract, or pursuant to a term of a standard occupation contract.
5. The expressions “standard occupation contract” and “contract-holder” reflect changes to the law on renting homes in Wales introduced by the Renting Homes (Wales) Act 2016 (the “2016 Act”). Generally speaking, tenancies or licences of homes in Wales will, by virtue of the 2016 Act, be rented under occupation contracts, and tenants or licence holders will, for the purposes of the 2016 Act be contract-holders. The drafting of this Act reflects the changes to the law made by the 2016 Act (but at Royal Assent of this Act, the main provisions of the 2016 Act were not in force.)
6. The section provides that it is an offence for a landlord to require a person (whether the contract-holder or a third party) to make a prohibited payment to the landlord or any other person in these circumstances. (A prohibited payment for this purpose is, essentially, any payment that is not within section 4.)
7. It also provides that it is an offence for a landlord to require a person (whether the contract-holder or a third party) to make a loan to the landlord or any other person in these circumstances.
8. It also provides that it is an offence for a landlord to require a person (whether the contract-holder or a third party) to enter into a contract for services with the landlord or any other person in these circumstances. The exception to this is if the services referred to in the contract are provided by any person upon whom the standard occupation contract in question confers, or would confer, the right to occupy a dwelling. This could include, for example, a live in caretaker of the dwelling, or a person providing childcare, such as a resident nanny.
9. A person who commits an offence under this section is liable on summary conviction to a fine, which is not subject to a maximum level on the standard scale. If the offence relates to requiring a prohibited payment to be made, a court may, on conviction, also order the offender to pay the amount of the prohibited payment (or any outstanding amount if part of the payment has been repaid) to the person who made the payment.

##### ***Section 3 – Prohibition applying to letting agents***

10. This section makes it an offence for a letting agent (as defined in section 8) to impose certain types of requirement in consideration of arranging the grant of an occupation

contract, or arranging the renewal or continuance of an existing contract, or pursuant to a term of a standard occupation contract.

11. The section provides that it is an offence for a letting agent to require a person (whether the contract-holder or a third party) to make a prohibited payment to the letting agent or any other person in these circumstances. (Again a prohibited payment for this purpose is, essentially, any payment that is not within section 4.)
12. The section provides that it is an offence for a letting agent to require a person (whether the contract-holder or a third party) to make a loan to the letting agent or any other person in these circumstances.
13. It also provides that 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 in these circumstances.
14. Subsection (3) provides an exception to this general rule in relation to a certain type of contract for services. This exception allows letting agents and landlords to enter into a contract for services if the only parties to the contract are the letting agent and landlord, and the contract relates to lettings work and property management work to be carried out by the agent for the landlord. The intention is to ensure that a letting agent and landlord may contract together for the agent to carry out lettings work etc on the landlord's behalf.
15. A person who commits an offence under this section is liable on summary conviction to a fine, which is not subject to a maximum level on the standard scale. If the offence relates to requiring a prohibited payment to be made, a court, on conviction, may also order the offender to pay the amount of the prohibited payment (or any outstanding amount if part of the payment has been repaid) to the person who made the payment.

#### ***Section 4 – Prohibited and permitted payments***

16. This section specifies that any payment of money required in consideration of granting, renewing or continuing a standard occupation contract, or pursuant to a term of a standard occupation contract, is a prohibited payment, unless it falls into one of two categories:
17. The first category covers a payment by a landlord to a letting agent in respect of “lettings work” or “property management work” (both of which terms have the same meaning as in Part 1 of the Housing (Wales) Act 2014 (“2014 Act”)) carried out by the agent on behalf of the landlord. This is necessary because without specifying this, the usual fees charged by agents to landlords would be prohibited, in that they are payable in consideration of the agent arranging the grant etc. of a contract.
18. The second category comprises permitted payments: the payments described as such by Schedule 1. Subsection (2) of this section gives an overview of the payments currently set out in Schedule 1 (rent, security deposits, holding deposits, payments in default, payments in respect of council tax, payments in respect of utilities (including payments under a Green Deal plan), payments in respect of a television licence and payments in respect of communication services).

#### ***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.

### ***Section 5 – Non-binding contract terms***

35. This section provides that any term of a contract which requires a contract-holder to make a prohibited payment, or to enter into a contract for services or make a loan as prohibited by the Act, is not binding on the contract-holder. The rest of the contract continues to have effect (so far as practicable).

### ***Section 6 – Application of sections 2 and 5 to pre-existing contracts***

36. The effect of this section is that sections 2 to 5 do not apply in respect of a requirement to make a payment, or to enter into a contract for services or make a loan, imposed before this Part of the Act comes into force. Nor do they apply where a requirement of this type is imposed under a standard occupation contract entered into before this Part of the Act comes into force.
37. So, sections 2 to 5 will not apply to a standard occupation contract that has been converted to an occupation contract (because of the effect of the Renting Homes (Wales) Act 2016) from another form of tenancy or licence, provided that the original

tenancy or licence was entered into before this Part of the Act comes into force. This will be the case whether the conversion to a standard occupation contract takes place before or after this Part of the Act comes into force: the important point is when the original tenancy or licence was entered into.

***Section 7 – Power to amend definition of permitted payments***

38. This section provides that the Welsh Ministers may by regulations amend the list of permitted payments described in Schedule 1. The regulations may be used to add a new type of permitted payment, or remove a type of payment that is listed, or amend the description of a type of payment that is listed. But this power cannot be used to remove the payment of rent from the categories of permitted payment.
39. The objective behind this is to enable regulations to reflect any unforeseen changes in landlord behaviour and practices (for instance, the adoption of strategies designed to defeat the purposes of the Act), or to reflect any new practices in the rental housing market.

***Section 8 – Meaning of “letting agent”, “letting works” and “property management work”***

40. This section defines a letting agent as a person who carries out “lettings work” or “property management” work. Those terms have the meaning given in sections 10 and 12 of the 2014 Act. The effect is that a letting agent, for the purposes of the Act, will be a person who, by virtue of carrying out either lettings work or property management work (or both), is subject to the regulatory requirements applicable to letting agents in Part 1 of the Housing (Wales) Act 2014.