

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 4: Enforcement**

##### **Meaning of “enforcement authorities” in this Part**

52. [Sections 10 to 19](#) of this Part confer functions relating to enforcing the provisions of this Act on enforcement authorities, or officers authorised for that purpose by enforcement authorities. The expression “enforcement authorities” is defined by section 17.
53. [Section 17](#) identifies two enforcement authorities in relation to each area of a local housing authority in Wales. One of the two enforcement authorities for an area will be the local housing authority for the area; the other will be the licensing authority for the area.
54. “Licensing authority” in this context means the person designated as the licensing authority for the area under section 3 of Part 1 of the 2014 Act. The exercise of functions by an enforcement authority which is a licensing authority is subject to the control of the local housing authority for the area in question (for more on this see section 17(2)).
55. Depending on the nature of the arrangements made under Part 1 of the 2014 Act for designation of a licensing authority, a single licensing authority under that Part may, for the purposes of this Act, be the enforcement authority for more than one local housing authority area. At Royal Assent, Cardiff County Council was designated under section 3 of the 2014 Act as the licensing authority for the whole of Wales (and by extension, each of the local housing authority areas in Wales).

##### ***Section 10 - Power to require documents or information***

56. [Section 10](#) confers powers on an “authorised officer” of an enforcement authority to require, by notice, documents or other information for the purposes of investigating whether an offence has been committed under the Act in relation to a dwelling located in the enforcement authority’s area. The notice issued by the authorised officer will specify when, where and to whom the documents or information must be produced.
57. The powers conferred by this section are exercisable in relation to a limited category of persons. These persons are identified in subsection (4) and they comprise any person who is, or has been, a landlord, contract-holder or letting agent. Subsection (8) provides that a reference to a document includes information which is not in legible form (for example, because it is stored on a computer server).
58. The powers conferred by this section may not be used to require a person to produce documents that, on the grounds of legal professional privilege, the person would be entitled to refuse to produce or provide in proceeding in the High Court. An example would be documents containing legal advice from a person’s solicitor.

***Section 11 – Offence of failing to comply with a notice under section 10***

59. By virtue of subsection (1), a failure to comply with a notice issued under section 10 is an offence. In any proceedings brought against a person for an offence under subsection (1) it is a defence if a person had a reasonable excuse for failing to comply with the notice. On conviction, a person is liable to a fine not exceeding level 4 on the standard scale.
60. By virtue of subsection (4), a person who intentionally alters, suppresses or destroys any document that that person has been required to produce by a notice under section 10 will commit an offence. Upon conviction of such an offence, the person is liable to a fine, which is not subject to a maximum level on the standard scale. The provision for such a fine reflects the fact that this offence involves a deliberate attempt to deceive or to suppress information, which a court will take into account when setting the level of fine.

***Section 12 - Offence of providing false or misleading information in relation to a notice under section 10***

61. By virtue of subsection (1), a person given a notice under section 10 who supplies false or misleading information in response to the notice, and who either knows that it is false or misleading or is reckless as to whether it is false or misleading, commits an offence.
62. Subsection (2) provides that an offence will also be committed where a person supplies any false or misleading information to another person, either knowing that the information is false or misleading, or being reckless as to whether it is false or misleading, and knowing also that another person is going to provide the information in reply to a section 10 notice.
63. On conviction of an offence under this section, a person is liable to a fine, again not subject to any maximum level on the standard scale. The provision for such a fine reflects the fact there has been deliberate or reckless attempt to deceive or mislead by those involved in an offence under this section.

***Section 13 - Fixed penalty notices***

64. This section provides for fixed penalty notices for offences under section 2 and 3 (but not for offences under Part 4 of the Act). Fixed penalty notices under this section may be given by the authorised officer of an enforcement authority. The amount of the fixed penalty is £1,000. This amount may be amended by regulations made by the Welsh Ministers (see subsection (3)).
65. Subsection (4) provides that a fixed penalty notice given under this section is treated for certain purposes as if it were given under section 29 of the 2014 Act.
66. These purposes relate to the following matters.
67. The first matter is the effect of a fixed penalty notice in relation to potential proceedings against a person for an alleged offence. Applying section 29(2) of Part 1 of the 2014 Act ensures that where a person is given a notice in respect of an offence under section 2 or 3 of this Act, no proceedings in relation to the alleged offence may be issued until the expiry of the period of 21 days following the date of the notice; and a person who has paid the amount before the expiry of that 3 week period cannot be convicted of the offence in question.
68. The second matter is the content of a notice given to a person. Applying section 29(3) of the 2014 Act to a notice under this section will require the notice to set out:
- reasonable information on the circumstances alleged to constitute the offence;
  - the period during which proceedings will not be taken for the offence;

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- the amount of the fixed penalty;
  - details of the identity and address of the person to whom the penalty is payable.
69. The third matter relates to rules about how a payment of the amount of a fixed penalty can be made, and rules about when a payment is to be treated as having been made for particular purposes.
70. Receipts from fixed penalty notices can only be used for the enforcement authority's functions relating to the enforcement of this Act (subsection (5)).

#### ***Section 14 – Duty of local housing authority to notify licensing authority of conviction***

71. This section requires a local housing authority to notify the licensing authority (or each of them if there is more than one) designated under section 3 of Part 1 of the 2014 Act, as soon as reasonably practicable after it becomes aware a person has been convicted of an offence under this Act in respect of a dwelling in its area.
72. There is no requirement under this section for a local housing authority to notify the licensing authority of a conviction if the proceedings which led to the conviction were brought by the licensing authority under section 19 of this Act.
73. Notification of conviction of an offence will be a factor for the licensing authority in determining for the purposes of Part 1 of the 2014 Act whether a convicted person is a fit and proper person for the purposes of being granted or retaining a licence to carry out lettings work or property management work.

#### ***Section 15 - Duty to have regard to guidance***

74. This section provides that in exercising its functions under Part 4, an enforcement authority must have regard to any guidance issued by Welsh Ministers.

#### ***Section 16 – Meaning of “authorised officer”***

75. This section provides that an authorised officer of an enforcement authority for the purposes of Part 4 of the Act, is a person authorised in writing by the enforcement authority.

#### ***Section 17 – Enforcement authorities***

76. As mentioned at the beginning of the notes for this Part (paragraph 52), this section provides that each of the local housing authority and the licensing authority is the enforcement authority in relation to the local housing authority area.
77. However, where the licensing authority is the enforcement authority for the local housing authority area, it must obtain prior written permission from the local housing authority before exercising any enforcement function or bringing proceedings under section 19 in relation to that area. The intention is to prevent duplication in the exercise of functions.

#### ***Section 18 – Supply and use of information by enforcement authorities***

78. This section makes provision about the supply between enforcement authorities of information relevant to enforcing the provisions of this Part, and provision about the purposes for which such information may be used.
79. Subsection (1) allows an enforcement authority to require information from other enforcement authorities. The information to which subsection (1) applies is described by subsection (2) and captures any information obtained by an enforcement authority in the exercise of its functions under this Part, including information which is in an

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authority's possession by virtue of a previous request for information made under subsection (1).

80. An authority to which a request for information is made will be obliged to comply with the request unless it considers that to do so would be incompatible with the exercise of any of its other functions; including functions exercisable by it otherwise than under this Part.
81. Subsections (3) and (4) address the purposes for which information relevant to the enforcement of the provisions of this Part may be used by enforcement authorities.
82. Subsection (3) authorises, for the purposes of the enforcement of this Part, the use of any information described by subsection (5). This includes information which an enforcement authority (in its capacity as a local housing authority or a licensing authority, as the case may be) is permitted by section 36 of the 2014 Act to use for purposes connected to the exercise of its functions under Part 1 of that Act.
83. Subsection (4) authorises the use of information in the opposite direction, so that an enforcement authority may use information within subsection (5)(a) or (b) obtained in the exercise of functions under this Part for the purposes of any of its functions under Part 1 of the 2014 Act.
84. A licensing authority which is an enforcement authority will not require the consent of a local housing authority to exercise functions under this section (see subsection (6)).

### ***Section 19– Power of licensing authority to bring criminal proceedings***

85. This section permits an enforcement authority, if it is a licensing authority, to bring criminal proceedings for an alleged offence under the Act. The section deals with licensing authorities only, because local authorities have available to them a general power under section 222 of the Local Government Act 1972, in their capacity as local authorities, to bring legal proceedings in connection with their areas.

### ***Section 20 – Amendment of Renting Homes (Wales) Act 2016: restrictions on terminating contracts***

86. This section introduces Schedule 3, which makes various amendments to the 2016 Act for the purpose of imposing restrictions, relating to breaches of certain provisions of this Act as described in paragraphs 86-98, which would restrict a landlord's ability to seek possession of dwellings subject to a standard occupation contract.

### ***Schedule 3 - Amendment of Renting Homes (Wales) Act 2016: restrictions on terminating contracts.***

87. **Section 177A** - which will be inserted into the 2016 Act by paragraph 2 – relates to notices given to contract-holders by landlords seeking possession of dwellings subject to periodic standard occupation contracts. A possession notice of this kind would be given by a landlord under section 173 of the 2016 Act (Landlord's notice).
88. **Sections 186A, 186B and 186C** – which will be inserted into the 2016 Act by paragraph 4(1) – relate to notices given by a landlord to end a fixed term standard contract. A possession notice of this kind would be given by a landlord under section 186 of the 2016 Act (Landlord's notice in connection with end of term).
89. **Section 198A** – which will be inserted into the 2016 Act by paragraph 5 – relates to the use by a landlord of a notice under section 194 of the 2016 Act (Landlord's break clause) where a landlord is seeking possession of the dwelling subject to a fixed term standard occupation contract. A contract incorporating a landlord's break clause would allow a landlord to give notice to end the contract before the end of the fixed term.

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90. New sections 177A, 186A to 186C and 198A will be fundamental provisions incorporated, by virtue of the 2016 Act, into the type of standard occupation contracts to which they relate.
91. So in relation to a periodic standard contract which incorporates section 173 of the 2016 Act, the contract would have to incorporate section 177A, unless the parties, in accordance with section 20 of the 2016 Act, agreed otherwise.
92. For a fixed term contract which incorporates section 186, the contract would have to incorporate sections 186A and 186C, unless the parties, in accordance with section 20 of the 2016 Act, agreed otherwise. The position in respect of section 186B is different in that the section must be incorporated into a fixed term contract, and must be incorporated without modification.
93. In relation to a fixed term contract incorporating a landlord's break clause, section 198A would be incorporated into the contract; but again, this would be subject to any contrary agreement between the parties, in accordance with section 20 of the 2016 Act.
94. The restrictions being imposed by sections 177A, 186C and 198A would apply in both of the following cases, cases which would involve circumstances in which a landlord was acting contrary to certain provisions of this Act.
95. The first case is one in which, contrary to section 2(1) of the Act, the landlord has required a prohibited payment to be made in connection with the contract; in consequence, a payment has been made (whether to the landlord or another person); and the payment in question has not been repaid.
96. The second case is one in which a holding deposit paid to the landlord in relation to the contract has not been repaid, and the failure to repay is not authorised by Schedule 2 to the Act (although the general rule is that holding deposits will have to be repaid, Schedule 2 specifies limited circumstances in which a landlord is permitted to keep a holding deposit).
97. For the purposes of sections 177A, 186C and 198A, if all or part of an amount of a prohibited payment or holding deposit has been applied towards rent under the contract or towards a security deposit (or both kinds of payment) the amount so applied is treated as having been repaid.
98. So, for example, a landlord who had withheld the amount of a holding deposit, contrary to Schedule 2 to the Act, would not be prevented by section 177A(1) from giving a contract-holder a section 173 notice in relation to a periodic standard contract, if the total amount had been applied towards the first payment of the contract-holder's rent under the contract.
99. [Paragraphs 3, 4\(2\), \(3\), \(4\)](#) and paragraphs 6 and 7 of Schedule 3 make minor amendments to the 2016 Act in consequence of, or otherwise in connection with, new sections 177A, 186A to 186C and 198A.

### ***Section 21 – Guidance to a licensing authority under Part 1 of the Housing (Wales) Act 2014***

100. [Section 21](#) makes an amendment to section 41 of the 2014 Act providing that guidance given to a licensing authority under Part 1 of the 2014 Act may include provision about matters to be taken into account by a licensing authority in deciding whether a failure to repay a prohibited payment or holding deposit affects a person's fitness to be licensed under Part 1 of the 2014 Act. Part 1 of the 2014 Act makes provision for the regulation of landlords and letting agents who provide private rented housing in Wales.