

RENTING HOMES (AMENDMENT) (WALES) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 15 – Service charges permitted by the Renting Homes (Fees etc.) (Wales) Act 2019 etc.

73. This section makes various amendments to the 2019 Act that relate to service charges under certain standard occupation contracts. It also makes amendments to the Renting Homes (Fees etc.) (Wales) Act 2019 (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019 (S.I. 2019/1151) (“the transitional regulations”).
74. The 2019 Act makes it a criminal offence for a landlord or letting agent to require a prohibited payment under or in connection with a standard occupation contract. A payment is not a prohibited payment if it is a permitted payment within Schedule 1 to the 2019 Act (see Part 2 and Schedule 1 to the 2019 Act).
75. The provisions of the 2019 Act apply to standard occupation contracts. The transitional regulations apply these requirements to assured shorthold tenancies, pending the implementation of the 2016 Act. On the day to be appointed by the Welsh Ministers, most assured shorthold tenancies will convert into standard occupation contracts (see sections 239 to 241 and Schedule 12 to the 2016 Act).
76. [Section 15\(2\)](#) of the Act inserts new paragraph 10A into Schedule 1 to the 2019 Act. This amendment provides that the payment of a service charge is a permitted payment for the purposes of the 2019 Act if it is required under a standard occupation contract and the landlord is a community landlord, or the standard occupation contract is a supported standard contract (within the meaning of section 143 of the 2016 Act).
77. However, a service charge required by a community landlord under a standard occupation contract for accommodation that is not social accommodation (within the meaning of paragraph 15 of Schedule 3 to the 2016 Act) will continue to be a prohibited payment under the 2019 Act.
78. [Section 15\(3\)](#) of the Act makes amendments to the transitional regulations so that the change also applies in relation to assured shorthold tenancies. This is achieved by modifying the way in which new paragraph 10A is read in relation to assured shorthold tenancies.
79. The effect of the amendments are that the payment of a service charge is a permitted payment for the purposes of the 2019 Act if it is required under an assured shorthold tenancy and the landlord is a community landlord, or the assured shorthold tenancy relates to supported accommodation (within the meaning given by sub-paragraphs (3A) and (3B) of the modified new paragraph 10A).
80. However, a service charge required under an assured shorthold tenancy where the landlord is a community landlord is not a permitted payment if the allocation rules

*These notes refer to the Renting Homes (Amendment) (Wales)
Act 2021 (c.3) which received Royal Assent on 7 April 2021*

(within the meaning of paragraph 15 of Schedule 3 to the 2016 Act) did not apply to the making of the tenancy.

81. [Section 15\(4\)](#) of the Act states that the amendments made by section 15(1), (2) and (3) of the Act are treated as if they came into force on 1 September 2019. This is the date on which the 2019 Act came into force. There are two exceptions.
82. Under the transitional regulations, the 2019 Act is modified so that a notice under section 21 of the Housing Act 1988, in relation to an assured shorthold tenancy, cannot be given at a time when a prohibited payment has been made and not refunded.
83. [Section 15\(4\)\(a\)](#) of the Act provides that any such notice given in breach of this restriction before the coming into force of section 15 of the Act continues to be treated as having been given in breach of the restriction.
84. Under section 22(1) of the 2019 Act, it is possible to obtain an order from the Court for the recovery of a prohibited payment. Section 15(4)(b) of the Act provides that if such an order was made before the coming into force of section 15 of the Act, it continues to have effect.
85. [Section 15\(5\)](#) and [\(6\)](#) of the Act imposes a restriction on the giving of a notice under section 21 of the Housing Act 1988. Such a notice cannot be given for a period of six months if, during the period from 1 September 2019 to the coming into force of section 15 of the Act:
 - (a) a landlord under an assured shorthold tenancy has required the payment of a service charge, and
 - (b) as a result of the amendments made by section 15(1), (2) and (3) of the Act being treated as if they came into force on 1 September 2019, the payment required by the landlord is a permitted payment under the 2019 Act.
86. The six month restriction applies from the day on which section 15 of the Act comes into force, which is the day after the day on which the Act received Royal Assent.