Renting Homes (Fees etc.) (Wales) Act 2019

2019 anaw 2

An Act of the National Assembly for Wales prohibiting persons from requiring certain payments to be made or certain other steps to be taken in consideration of the grant, renewal or continuance of a standard occupation contract, or pursuant to a term of a standard occupation contract; to make provision about holding deposits and in relation to requirements to publicise certain fees charged by letting agents; and for connected purposes. [15 May 2019]

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:

PART 1

OVERVIEW

1 Overview of Act

(1) This section gives an overview of the main provisions of this Act.

(2) Part 2 makes it an offence for a landlord or letting agent to require certain payments to be made or certain other steps to be taken in consideration of the grant, renewal or continuance of a standard occupation contract, or pursuant to a term of a standard occupation contract.

(3) Part 3 makes provision about the repayment of holding deposits (as defined in Schedule 1).

(4) Part 4 makes provision about enforcement, including provision about powers to require information, and fixed penalties.

(5) Part 5 makes provision for the recovery of payments prohibited by this Act, and of holding deposits withheld contrary to this Act.

(6) Part 6 gives the Welsh Ministers a power to make provision by regulations in relation to publicising certain fees charged by letting agents.

(7) Part 7 makes general provision, including provision about the procedural requirements for making regulations, and about Crown application.

PART 2

PROHIBITION OF CERTAIN PAYMENTS ETC.

2 Prohibitions applying to landlords

(1) It is an offence for a landlord to require a prohibited payment to be made to the landlord, or any other person—

(a) in consideration of the grant, renewal or continuance of a standard occupation contract, or

(b) pursuant to a term of a standard occupation contract which purports to require the payment to be made.

(2) It is an offence for a landlord to require a person to enter into a contract for services with the landlord, or any other person—

(a) in consideration of the grant, renewal or continuance of a standard occupation contract, or

(b) pursuant to a term of a standard occupation contract which purports to require entry into the contract for services.

(3) But subsection (2) does not apply if the contract for services concerned provides for services to be provided by a person upon whom the standard occupation contract confers, or would confer, the right to occupy a dwelling (whether or not the contract for services also provides for any other person to provide services).

(4) It is an offence for a landlord to require the grant of a loan to the landlord, or any other person—

(a) in consideration of the grant, renewal or continuance of a standard occupation contract, or

(b) pursuant to a term of a standard occupation contract which purports to require the loan to be granted.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine.

(6) The court by which a person ("the offender") is convicted of an offence under subsection (1) may order the offender to pay the amount of the payment concerned or (in a case where part of the payment has been repaid) the outstanding amount of the payment to the person by whom it was paid.

3 Prohibitions applying to letting agents

(1) It is an offence for a letting agent to require a prohibited payment to be made to the letting agent, or any other person—

(a) in consideration of arranging the grant, renewal or continuance of a standard occupation contract, or

(b) pursuant to a term of a standard occupation contract which purports to require the payment to be made.

(2) 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—

(a) in consideration of arranging the grant, renewal or continuance of a standard occupation contract, or

(b) pursuant to a term of a standard occupation contract which purports to require entry into the contract for services.

(3) But subsection (2) does not apply if the contract for services concerned is a contract between a landlord and a letting agent only, in respect of lettings work or property management work to be carried out by the agent on the landlord's behalf.

(4) It is an offence for a letting agent to require the grant of a loan to the letting agent, or any other person—

(a) in consideration of arranging the grant, renewal or continuance of a standard occupation contract, or

(b) pursuant to a term of a standard occupation contract which purports to require the loan to be made.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine.

(6) The court by which a person ("the offender") is convicted of an offence under subsection (1) may order the offender to pay the amount of the payment concerned or (in a case where part of the payment has been repaid) the outstanding amount of the payment to the person by whom it was paid.

4 Prohibited and permitted payments

(1) Any payment of money is a prohibited payment unless—

(a) it is payable by a landlord to a letting agent in respect of lettings work or property management work carried out by the agent on behalf of the landlord, or

(b) it is a permitted payment by virtue of Schedule 1.

(2) That Schedule makes provision about—

(a) rent;

(b) security deposits;

(c) holding deposits;

(d) payments in default;

(e) payments in respect of council tax;

(f) payments in respect of utilities;

(g) payments in respect of a television licence;

(h) payments in respect of communication services.

5 Non-binding contract terms

(1) A term of a standard occupation contract is not binding on a contract-holder to the extent that (but for this section) it would require a prohibited payment to be made, or a

contract for services to be entered into, or a loan to be made, as described in section 2 or 3.

(2) But the contract continues, so far as practicable, to have effect in every other respect.

6 Application of sections 2 to 5 to pre-existing requirements and contracts

Sections 2 to 5 do not apply in respect of—

(a) a requirement imposed before the coming into force of this Part;

(b) a requirement forming part of a standard occupation contract entered into before the coming into force of this Part.

7 Power to amend definition of "permitted payment"

(1) Regulations may amend this Act for the purposes of adding, modifying or removing a reference in Schedule 1 to a category of payment.

(2) But the power in subsection (1) does not extend to removing the payment of rent from the categories of payment that are permitted payments under this Act.

8 Meaning of "letting agent", "lettings work" and "property management work"

For the purposes of this Part and Parts 3 to 5—

"letting agent" ("*asiant gosod eiddo*") means a person who carries out lettings work or property management work (whether or not the person carries out other work);

"lettings work" ("*gwaith gosod*") and "property management work" ("*gwaith rheoli eiddo*") have the same meaning as in Part 1 of the Housing (Wales) Act 2014 (anaw 7) (see sections 10 and 12 of that Part).

PART 3

TREATMENT OF HOLDING DEPOSITS

9 Treatment of holding deposits

(1) A payment that is a permitted payment by virtue of paragraph 3 of Schedule 1 (which permits the payment of holding deposits) is to be treated as having been made on the terms set out in Schedule 2.

(2) Subsection (1) does not apply in relation to a payment made before the coming into force of Schedule 2.

PART 4

ENFORCEMENT

Enforcement authority powers to require information etc.

10 Power to require documents or information

(1) An authorised officer of an enforcement authority may exercise the powers conferred by subsections (2) and (3) in relation to documents or information reasonably required by the authority for the purpose of investigating whether any offence under this Act has been committed in respect of a dwelling located in the enforcement authority's area.

(2) An authorised officer may give a notice to a person within subsection (4) requiring that person to produce, at a time and place, and to a person, specified in the notice, any documents which—

(a) are specified or described in the notice, or fall within a category of document specified or described in the notice, and

(b) are in the person's custody or under the person's control.

(3) An authorised officer may give a notice to a person within subsection (4) requiring that person to provide, in a form and manner specified in the notice, and at a time and place and to a person specified in the notice, any information which—

(a) is specified or described in the notice, or falls within a category of information which is specified in the notice, and

(b) is known to the person.

(4) The persons within this section are—

(a) a person who is or has been a landlord under a standard occupation contract;

(b) a person who is or has been a contract-holder under a standard occupation contract;

(c) a person who is or has been a letting agent.

(5) A notice under subsection (2) or (3) must include information about the possible consequences of not complying with the notice.

(6) A person to whom any document is produced in accordance with a notice under subsection (2) or (3) may copy the document.

(7) No person may be required under this section to produce any document or provide any information which the person would be entitled to refuse to produce or provide, in proceedings in the High Court, on grounds of legal professional privilege.

(8) In this section,"document" includes information recorded otherwise than in legible form, and in relation to information so recorded, any reference to the production of a document is a reference to the production of a copy of the information in legible form.

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

(1) It is an offence for a person to fail to do anything required of the person by a notice under section 10.

(2) In proceedings against a person for an offence under subsection (1) it is a defence that the person had a reasonable excuse for failing to comply with the notice.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) It is an offence for a person to intentionally alter, suppress or destroy any document which the person has been required to produce by a notice under section 10.

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine.

(6) In this section "document" includes information recorded otherwise than in legible form, and in relation to information so recorded—

(a) the reference in subsection (4) to the production of a document is a reference to the production of a copy of the information in legible form, and

(b) the reference in that subsection to suppressing a document includes a reference to destroying the means of reproducing the information.

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

(1) It is an offence for a person given a notice under section 10, in purported compliance with the notice, to supply information that is false or misleading, if the person—

(a) knows that the information supplied is false or misleading, or

(b) is reckless as to whether it is false or misleading.

(2) It is an offence for a person to supply information that is false or misleading, if the person—

(a) knows that the information is false or misleading, or is reckless as to whether it is false or misleading, and

(b) knows that the information is to be used for the purpose of supplying information in purported compliance with the requirements of a notice given to another person under section 10.

(3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(4) In this section, "false or misleading" means false or misleading in a material respect.

Fixed penalty notices

13 Fixed penalty notices

(1) Where an authorised officer of an enforcement authority has reason to believe that a person has committed an offence under section 2 or 3 in the authority's area, the officer may give that person a fixed penalty notice in respect of the offence.

(2) A fixed penalty notice, for the purposes of subsection (1), is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty of £1000.

(3) The Welsh Ministers may by regulations substitute a different amount for the amount for the time being specified in subsection (2).

(4) A fixed penalty notice given under this section is to be treated as if it were given under section 29 of the Housing (Wales) Act 2014 (anaw 7) for the purposes of subsections (2), (3) and (6) to (8) of that section (provision about how fixed penalty notices are given), and for this purpose the reference in subsection (8)(a) of that section to "the licensing authority" is to be treated as being a reference to the enforcement authority in question.

(5) Fixed penalty receipts received by an enforcement authority by virtue of this section may not be used otherwise than for the purpose of the authority's functions relating to the enforcement of the provisions of this Act.

Notification of conviction to licensing authority

14 Duty of local housing authority to notify licensing authority of conviction

(1) As soon as reasonably practicable after becoming aware that a person has been convicted of an offence under this Act in respect of a dwelling in its area, a local housing authority must comply with subsection (2).

(2) The authority must give notification of the conviction to the licensing authority designated under section 3 of Part 1 of the Housing (Wales) Act 2014 (anaw 7), or, if there is more than one licensing authority so designated, to each of those authorities.

(3) This section does not require a local housing authority to give a licensing authority notification of a conviction if the proceedings which led to the conviction were brought by the licensing authority under section 19.

Guidance

15 Duty to have regard to guidance

In exercising its functions under this Part an enforcement authority must have regard to any guidance issued by the Welsh Ministers.

Meaning of "authorised officer" in this Part

16 Meaning of "authorised officer"

Any reference in this Part to an authorised officer of an enforcement authority is a reference to a person (whether or not an officer of the authority) authorised in writing by the authority for the purposes of this Part.

The enforcement authority for the purposes of this Part

17 Enforcement authorities

(1) For the purposes of this Part, each of the following is the enforcement authority in relation to the area of a local housing authority—

(a) the local housing authority for the area, and
(b) the licensing authority for the area.

(2) But a licensing authority which, by virtue of subsection (1)(b), is the enforcement authority for the area of a local housing authority, may not exercise any function of an enforcement authority in relation to that area, nor bring proceedings under section 19 in relation to that area, without the prior written consent of the local housing authority for the area.

(3) Consent under subsection (2) may be given generally or in relation to specific cases or functions.

(4) For the purposes of this section, "licensing authority" means a person designated as a licensing authority under section 3 of Part 1 of the Housing (Wales) Act 2014 (anaw 7).

(5) In this Part, references to the area of an enforcement authority are references to the area or, as the case may be, areas for which it is the enforcement authority.

Information sharing and power to bring criminal proceedings

18 Supply and use of information by enforcement authorities

(1) If an enforcement authority requests information from another enforcement authority, that other authority must comply with the request unless it considers that doing so would be incompatible with the exercise of its functions (including functions exercisable otherwise than under this Part).

(2) The information that may be requested of an enforcement authority under subsection (1) is information that has been obtained by that authority—
(a) under this section, or
(b) otherwise in the exercise of its functions under this Part.

(3) An enforcement authority may use information within subsection (5)(a), (b) or (c) for any purpose connected to the exercise of the authority's functions under this Part.

(4) An enforcement authority may, in addition, use information within subsection (5)(a) or (b) for any purpose connected to the exercise of any of its functions under Part 1 of the Housing (Wales) Act 2014 (anaw 7) ("the 2014 Act").

(5) The information is information—
(a) that has been supplied to it by another enforcement authority under subsection (1);
(b) that has otherwise been obtained by the enforcement authority in the exercise of its functions under this Part;
(c) that, by virtue of section 36 of the 2014 Act, it is permitted to use for purposes connected to the exercise of its functions under Part 1 of that Act.

(6) Section 17(2) does not apply in relation to the functions conferred on an enforcement authority by this section.

19 Power of licensing authority to bring criminal proceedings

An enforcement authority which is a licensing authority may bring criminal proceedings in respect of an offence alleged to have been committed under this Act in respect of a dwelling located in its area (but this is subject to section 17(2)).

Restrictions on termination by landlord of standard occupation contracts

20 Amendment of Renting Homes (Wales) Act 2016: restrictions on terminating contracts

Schedule 3 amends the Renting Homes (Wales) Act 2016 (anaw 1) to make provision in connection with prohibited payments and retained holding deposits, and makes further associated amendments.

Guidance to a licensing authority under Part 1 of the Housing (Wales) Act 2014

21 Amendment to section 41 of Housing (Wales) Act 2014

In section 41 of the Housing (Wales) Act 2014 (anaw 7) (guidance under Part 1 of Act), after subsection (2) insert—

"(2A) Guidance given to a licensing authority may (among other things) include provision about matters to be taken into account by a licensing authority in deciding whether a failure to repay the amount of any prohibited payment or holding deposit (within the meaning of the Renting Homes (Fees etc.) (Wales) Act 2019) affects a person's fitness to be licensed under this Part."

PART 5

RECOVERY OF AMOUNT BY CONTRACT-HOLDER

22 Recovery of a prohibited payment or holding deposit

(1) A person (the "claimant") may apply to the county court for the recovery of the amount of—

(a) any prohibited payment made by or on behalf of the claimant in respect of a standard occupation contract;

(b) any holding deposit paid by or on behalf of the claimant in respect of a standard occupation contract.

(2) A court to which an application under subsection (1)(a) is made may, if the court is satisfied beyond reasonable doubt that—

(a) a prohibited payment has been made by or on behalf of the claimant, and

(b) all or part of that payment has yet to be repaid to the claimant,

order the repayment to the claimant, in accordance with the order, of the amount of the payment or (in a case where part of the payment has been repaid) of the outstanding amount of the payment.

(3) A court to which an application under subsection (1)(b) is made may, if the court is satisfied, on the balance of probabilities, that—

(a) a holding deposit has been paid by or on behalf of the claimant, and

(b) there has been a failure to repay all or part of the holding deposit to the claimant in accordance with Schedule 2,

order the repayment to the claimant, in accordance with the order, of the amount of the holding deposit or (in a case where part of the holding deposit has been repaid) of the outstanding amount of the holding deposit.

(4) But subsection (2) does not apply in relation to a prohibited payment if criminal proceedings have been commenced by virtue of section 2 or 3 in respect of that payment, unless those proceedings have been discontinued.

(5) An order under subsection (2) or (3) may not require the repayment of an amount, if that amount has been applied towards a payment of rent, or the security deposit, under the standard occupation contract concerned.

PART 6

PUBLICISING LETTING AGENTS' FEES

23 Publicising letting agents' fees

(1) Regulations may amend Chapter 3 of Part 3 of the Consumer Rights Act 2015 (c.15) (duty to publicise fees etc.)—

(a) to require a letting agent to ensure that any online advertiser publicises the agent's relevant fees, so far as those fees relate to dwelling-houses in Wales;

(b) to allow more than one penalty to be imposed on a letting agent in relation to the same breach of a duty in that Chapter, so far as the breach relates to dwelling-houses in Wales.

(2) In this section—

(a) "online advertiser", in relation to a letting agent, means a person who advertises, on the internet, services offered by the agent in relation to dwelling houses in Wales;

(b) "dwelling house", "letting agent" and "relevant fees" have the same meaning as in Chapter 3 of Part 3 of the Consumer Rights Act 2015.

PART 7

FINAL PROVISIONS

24 Requirement for local housing authority to promote awareness of effect of Act

(1) A local housing authority must make arrangements for information to be made publicly available in its area, in whatever way the authority thinks appropriate, about the effect of this Act, including about how prohibited payments and holding deposits may be recovered.

(2) In making arrangements for the purposes of this section, a local housing authority must have regard to any guidance given by the Welsh Ministers.

25 Power to make transitional provision in respect of assured tenancies

(1) Regulations may make provision for this Act to apply, subject to any modifications specified by the regulations, in relation to an assured tenancy of a dwelling.

(2) For the purposes of subsection (1), "assured tenancy" has the same meaning as in the Housing Act 1988 (c. 50) (and includes an assured shorthold tenancy).

26 Offences by bodies corporate

(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a senior officer of the body corporate, or

(b) a person purporting to be a senior officer of the body corporate,

that senior officer or person (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), "senior officer" means a director, manager, secretary or other similar officer of the body corporate.

(3) But in the case of a body corporate whose affairs are managed by its members, "director" for the purposes of this section means a member of the body corporate.

27 Regulations

(1) A power to make regulations under this Act is to be exercised by statutory instrument.

(2) A power to make regulations under this Act includes power—

(a) to make different provision for different purposes;

(b) to make supplemental, incidental, consequential, transitional, transitory or saving provision.

(3) A statutory instrument containing regulations under section 7, section 13 or paragraphs 2 or 6 of Schedule 1 (whether or not it contains regulations made under any other provision of this Act) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, the National Assembly for Wales.

(4) Any other statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

28 Interpretation

In this Act—

"contract-holder" ("*deiliad contract*") has the same meaning as in the Renting Homes (Wales) Act 2016 (anaw 1) (referred to in this section as "the 2016 Act");

"dwelling" ("*annedd*") has the same meaning as in the 2016 Act;

"holding deposit" ("*blaendal cadw*") has the meaning given in Schedule 1;

"landlord" ("*landlord*") has the same meaning as in the 2016 Act; and if two or more persons jointly constitute the landlord, references in this Act to the landlord are to each of those persons;

"local housing authority" ("*awdurdod tai lleol*") means the council for a county or county borough in Wales;

"prohibited payment" ("*taliad gwaharddedig*") has the meaning given in section 4;

"regulations" ("*rheoliadau*") means regulations made by the Welsh Ministers;

"security deposit" ("*blaendal sicrwydd*") has the meaning given in Schedule 1;

"standard occupation contract" ("*contract meddiannaeth safonol*") means a contract that is a standard contract for the purposes of the 2016 Act.

29 Crown application

(1) This Act applies to the Crown.

(2) No contravention of any provision made by or under this Act makes the Crown criminally liable, but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention.

30 Coming into force

(1) This section and section 31 come into force on the day after the day this Act receives Royal Assent.

(2) The other provisions of this Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

(3) An order under this section may—

(a) appoint different days for different purposes;

(b) make transitory, transitional or saving provision.

31 Short title

The short title of this Act is the Renting Homes (Fees etc.) (Wales) Act 2019.

SCHEDULE 1

(as introduced by section 4)

PERMITTED PAYMENTS

Rent

1 (1) A payment of rent under a standard occupation contract is a permitted payment.

(2) But, subject as follows, if the amount of rent payable in respect of a relevant period ("P1") is more than the amount of rent payable in respect of another relevant period ("P2"), the additional amount payable in respect of P1 is a prohibited payment.

(3) Where there is more than one relevant period other than P1, P2 is whichever one of those other relevant periods is the period in respect of which the lowest amount of rent is payable.

(4) In a case where the duration of one relevant period (P1) differs from that of another (P2), to determine—

(a) whether a prohibited payment has been made by virtue of sub-paragraph (2), and

(b) if so, the amount of the prohibited payment,

the following steps are to be taken.

Step 1

For each of P1 and P2, the applicable daily rate of rent (the "ADR") is to be calculated (and in the case of an amount that is not a whole number of pennies, then rounded up to the nearest penny) by dividing the total amount of rent for the period by the number of days in the period.

Step 2

If there is no difference between the ADR for each period, there is no prohibited payment.

Step 3

But if the ADR for P1 differs from that for P2, determine which of the rates is the lower (the "lower ADR") and which is the higher (the "higher ADR").

Step 4

For whichever period in respect of which the higher ADR is payable, calculate the amount of rent that would have been payable for it if rent had been payable in respect of that period at the lower ADR.

Step 5

Calculate the difference between the amount of rent calculated under Step 4, and the amount of rent actually payable in respect of the period in which the higher ADR is payable.

The resulting amount is a prohibited payment by virtue of sub-paragraph (2).

(5) Where—

(a) rent is payable monthly in respect of P1 and P2, or P1 and P2 are both periods calculated by reference to the same number of calendar months, and

(b) the amount of rent payable in respect of P1 and P2 is the same,

P1 and P2 are to be treated for the purposes of Step 2 in sub-paragraph (4) as having the same ADR.

(6) No account is to be taken of any difference between the rent payable in respect of P1 and another relevant period to the extent that it results from a permitted variation of the rent.

(7) In sub-paragraph (6), "permitted variation", in relation to rent payable under a standard occupation contract, means a variation made—

(a) by agreement between the landlord and the contract-holder;

(b) pursuant to a term in the contract which provides for variation of the rent under the contract;

(c) by or as a result of an enactment.

(8) In this paragraph—

(a) "enactment" means an enactment (whenever enacted or made) comprised in, or in an instrument made under—

(i) an Act of Parliament,

(ii) a Measure or an Act of the National Assembly for Wales, and

(b) "relevant period", in relation to a standard occupation contract, means any period in respect of which a payment of rent falls to be made.

Security deposit

2 (1) A payment of a security deposit is a permitted payment.

(2) In this Act, "security deposit" means money paid as security for—

(a) the performance of any obligations of a contract-holder, or

(b) the discharge of any liability,

arising under or in connection with an occupation contract.

(3) But if the amount of the security deposit exceeds the prescribed limit, the amount of the excess is a prohibited payment.

(4) In sub-paragraph (3), the "prescribed limit" means a limit specified by, or determined in accordance with, regulations.

Holding deposit

3 A payment of a holding deposit is a permitted payment.

4 A holding deposit is an amount which—

(a) before the grant of a standard occupation contract, is paid to a landlord or a letting agent;

(b) is paid for the purpose of reserving a right of first refusal in relation to the granting of the contract, subject to suitability checks to be carried out as to the prospective contract-holder and agreement between the parties to enter into the contract;

(c) does not exceed an amount equivalent to one week's rent under the contract.

5 Where an amount required in purported compliance with this paragraph exceeds an amount equivalent to one week's rent under the contract, the amount of the excess is a prohibited payment, with the remainder falling to be treated under Schedule 2.

Payment in the event of default

6 (1) A payment that is required, under a standard occupation contract, to be made in the event of a default by the contract-holder is a permitted payment, but this is subject to sub-paragraph (3).

(2) In this paragraph, "default" means—

(a) a failure by the contract-holder to make a payment by the due date to the landlord, or

(b) a breach by the contract-holder of a term of the contract.

(3) In the case of a default to which sub-paragraph (4) applies, if the amount of a payment required in the event of the default exceeds the prescribed limit, the amount of the excess is a prohibited payment.

(4) This sub-paragraph applies to—

(a) a failure by the contract-holder to make a payment of rent by the due date to the landlord;

(b) any additional description of default which is specified by regulations.

(5) In sub-paragraph (3), the "prescribed limit" means a limit specified by, or determined in accordance with, regulations.

Payment in respect of council tax

7 (1) A payment that a contract-holder is required to make to a billing authority in respect of council tax is a permitted payment if the contract-holder is liable to make the payment by virtue of any of sections 6, 8 or 9 of the Local Government Finance Act 1992 (c. 14).

(2) In this paragraph "billing authority" has the same meaning as in Part 1 of the Local Government Finance Act 1992 (see section 1(2) of that Act).

Payment in respect of provision of utilities

8 (1) A payment for or in connection with the provision of a utility is a permitted payment if—

(a) it is required under a standard occupation contract, and

(b) it is made in respect of the dwelling subject to the contract.

(2) A payment towards energy efficiency improvements under a green deal plan (within the meaning of section 1 of the Energy Act 2011 (c.16)) is a permitted payment if—

(a) it is required under a standard occupation contract, and

(b) it is made in respect of the dwelling subject to the contract.

(3) In this Act "utility" means any of the following—

(a) electricity, gas or other fuel;

(b) water or sewerage.

Payment in respect of television licence

9 (1) A payment that a contract-holder is required to make to the British Broadcasting Corporation in respect of a television licence is a permitted payment if the contract-holder is required by the contract to make the payment.

(2) In this paragraph "television licence" means a licence for the purposes of section 363 of the Communications Act 2003 (c. 21).

Payment in respect of communication service

10 (1) A payment for or in connection with a communication service is a permitted payment if—

(a) it is required under a standard occupation contract, and

(b) it is made in respect of the dwelling subject to the contract.

(2) In this paragraph, a "communication service" means a service enabling any of the following to be used—

(a) a telephone other than a mobile telephone;

(b) the internet;

(c) cable television;

(d) satellite television.

Changing the meaning of "permitted variation" in paragraph 1

11 If regulations made under section 7 amend this Schedule so as to change the meaning of "permitted variation" for the purposes of paragraph 1, they may also make consequential amendments to Chapter 3 of Part 6 and Chapter 3 of Part 7 of the Renting Homes (Wales) Act 2016 (anaw 1) (variation of standard occupation contracts).

SCHEDULE 2

(as introduced by section 9)

Treatment of Holding Deposit

Application

1 (1) This Schedule applies where a holding deposit is paid in respect of a standard occupation contract.

(2) References in this Schedule to a contract-holder, in relation to a holding deposit, are to the person whose right of first refusal has been reserved by the holding deposit.

Meaning of "deadline for agreement"

2 (1) In this Schedule, the "deadline for agreement" means the fifteenth day of the period beginning with the day on which the holding deposit is paid.

(2) But the parties may agree in writing that a different day is to be the deadline for agreement.

(3) Regulations may amend sub-paragraph (1) to change the deadline for agreement.

Requirement to repay holding deposit

3 Subject as follows, the person who received the holding deposit must repay it if—

(a) the parties enter into the contract before the deadline for agreement, or

(b) the parties fail to enter into the contract before the deadline for agreement.

4 The deposit must be repaid within the period of 7 days beginning with—

(a) where paragraph 3(a) applies, the day on which the contract is made, or

(b) where paragraph 3(b) applies, the deadline for agreement.

Exceptions

5 Paragraph 3(a) does not apply to the extent that the amount of the deposit is applied—

(a) towards the first payment of rent under the contract, or

(b) towards the payment of a security deposit under the contract.

6 If all or part of the holding deposit is applied in accordance with paragraph 5(b), the amount applied is treated for the purposes of section 45 of the Renting Homes (Wales) Act 2016 (anaw 1) (requirement to use deposit schemes) as having been paid on the date the contract is made.

7 Paragraph 3(b) does not apply if the contract-holder provides false or misleading information to the landlord or letting agent and—

(a) the landlord is reasonably entitled to take into account the difference between the information provided by the contract-holder and the correct information in deciding whether to grant a contract to the contract-holder, or

(b) the landlord is reasonably entitled to take the contract-holder's action in providing false or misleading information into account in deciding whether to grant such a contract.

8 Paragraph 3(b) does not apply if the contract-holder notifies the landlord or letting agent before the deadline for agreement that the contract-holder has decided not to enter into a contract.

9 Paragraph 3(b) does not apply in relation to a holding deposit paid to a landlord if—

(a) the landlord takes all reasonable steps to enter into a contract before the deadline for agreement, but

(b) the contract-holder fails to take all reasonable steps to enter into a contract before that date.

10 Paragraph 3(b) does not apply in relation to a holding deposit paid to a letting agent if—

(a) the agent takes all reasonable steps to assist the landlord to enter into a contract before the deadline for agreement, and

(b) the landlord takes all reasonable steps to enter into a contract before that date, but

(c) the contract-holder fails to take all reasonable steps to enter into a contract before that date.

Supplemental provision about exceptions in paragraphs 8 to 10

11 (1) The exceptions specified in paragraphs 8, 9 and 10 may not be relied upon unless the condition in sub-paragraph (2) is met.

(2) The condition is that, before payment of the holding deposit, information within sub-paragraph (3) has been provided to the contract-holder by either the landlord or (if one has been instructed by the landlord in relation to the contract) the letting agent.

(3) Information within this sub-paragraph is information specified in, or of a description specified in, regulations.

(4) Information is not to be treated as having been provided to the contract-holder, for the purposes of sub-paragraph (1), unless it has been provided in whatever way (if any) is specified in the regulations.

(5) In a case where a landlord has instructed a letting agent in relation to a contract, the exception in paragraph 9 may, in addition, not be relied upon unless the agent takes all reasonable steps to assist the landlord to enter into a contract before the deadline for agreement.

SCHEDULE 3

(as introduced by section 20)

AMENDMENTS TO THE RENTING HOMES (WALES) ACT 2016

1 The Renting Homes (Wales) Act 2016 (anaw 1) is amended as follows.

Restriction on giving notice for possession: periodic standard contracts

2 After section 177 (restriction on landlord under a periodic contract giving notice for possession: breach of security and deposit requirements), insert—

"**177A Restrictions on section 173: prohibited payments and holding deposits**

(1) The landlord may not give a notice under section 173 at a time when—

(a) the landlord has required a prohibited payment (within the meaning given by the Renting Homes (Fees etc.) (Wales) Act 2019) to be made as described in section 2 or 3 of that Act,

(b) as a result of the requirement, a prohibited payment has been made to the landlord or to any other person, and

(c) the prohibited payment has not been repaid.

(2) The landlord may not give a notice under section 173 at a time when—

(a) a holding deposit (within the meaning given by the Renting Homes (Fees etc.) (Wales) Act 2019) paid in relation to the contract has not been repaid, and

(b) the circumstances are such that the failure to repay the deposit amounts to a breach of the requirements of Schedule 2 to that Act.

(3) In determining for the purposes of this section whether a prohibited payment or a holding deposit has been repaid, the payment or deposit is to be treated as having been repaid to the extent (if any) that it has been applied towards either or both of the following—

(a) a payment of rent under the contract;

(b) a payment required as security in respect of the contract.

(4) This section is a fundamental provision which is incorporated as a term of all periodic standard contracts which incorporate section 173 as a term of the contract."

3 In section 126 (notice procedure for variation, under section 125, of occupation contract by landlord), in subsection (2), for "or section 177 (breach of security and deposit requirements)" substitute ", section 177 (breach of security and deposit requirements) or section 177A (prohibited payments and holding deposits)".

Restrictions on giving notice in connection with end of fixed term standard contracts

4 (1) After section 186 (landlord's notice in connection with end of term), insert—

"**186A Restrictions on section 186: breach of information requirements**

(1) If the landlord does not comply with section 31(1) or (2) (duty to provide written statement of contract), the landlord may not give notice under section 186 before the end of the restricted period.

(2) The restricted period is six months starting with the day on which the landlord gives a written statement of the contract to the contractholder.

(3) The landlord may not give the contract-holder notice under section 186 at any time when the landlord has not provided a notice required under section 39 (duty to provide information).

(4) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts which incorporate section 186(1) as a term of the contract.

186B Restrictions on section 186: breach of security and deposit requirements

(1) The landlord may not give notice under section 186 at a time when security required by the landlord in a form not permitted by section 43 has not been returned to the person by whom it was given.

(2) The landlord may not give notice under section 186 at a time when any of subsections (3) to (5) apply unless—

(a) a deposit paid in connection with the contract has been returned to the contract-holder (or any person who paid the deposit on his or her behalf) either in full or with such deductions as may have been agreed, or

(b) an application to the county court has been made under paragraph 2 of Schedule 5 and has been determined by the county court, withdrawn, or settled by agreement between the parties.

(3) A deposit has been paid in connection with the contract but the initial requirements of an authorised deposit scheme have not been complied with.

(4) A deposit has been paid in connection with the contract but the landlord has not provided the information required by section 45(2)(b).

(5) A deposit paid in connection with the contract is not being held in accordance with an authorised deposit scheme.

(6) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts which incorporate section 186(1) as a term of the contract; and section 20 provides that this section—

(a) must be incorporated, and

(b) must not be incorporated with modifications.

186C Restrictions on section 186: prohibited payments and holding deposits

(1) The landlord may not give a notice under section 186 at a time when—

(a) the landlord has required a prohibited payment (within the meaning given by the Renting Homes (Fees etc.) (Wales) Act 2019) to be made as described in section 2 or 3 of that Act,

(b) as a result of the requirement, a prohibited payment has been made to the landlord or to any other person, and

(c) the prohibited payment has not been repaid.

(2) The landlord may not give a notice under section 186 at a time when—

(a) a holding deposit (within the meaning given by the Renting Homes (Fees etc.) (Wales) Act 2019) paid in relation to the contract has not been repaid, and

(b) the circumstances are such that the failure to repay the deposit amounts to a breach of the requirements of Schedule 2 to that Act.

(3) In determining for the purposes of this section whether a prohibited payment or a holding deposit has been repaid, the payment or deposit is to be treated as having been repaid to the extent (if any) that it has been applied towards either or both of the following—

(a) a payment of rent under the contract;

(b) a payment required as security in respect of the contract.

(4) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts which incorporate section 186(1) as a term of the contract."

(2) In section 20 (incorporation and modification of fundamental provisions), in subsection (3), after paragraph (m), insert—

"(ma) section 186B (breach of deposit requirements: restriction on giving notice in connection with end of fixed term standard contracts),".

(3) In section 135 (limitation on variation), in subsection (2), after paragraph (i), insert—

"(ia) section 186B (breach of deposit requirements: restriction on giving notice in connection with end of fixed term standard contracts),".

(4) For section 183(2) (relevance of events under fixed term standard contract), substitute—

"(2) Sections 179 and 180 apply to a notice under section 186(1), and to a possession claim made on the ground in section 186(5) in reliance on such a notice, as they apply to a notice under section 173, and to a possession claim made on the ground in section 178 in reliance on a notice under section 173."

Restriction on using landlord's break clause in fixed term standard contracts

5 After section 198 (restrictions on use of landlord's break clause: security and deposit requirements), insert—

"**198A Restrictions on use of landlord's break clause: prohibited payments and holding deposits**

(1) The landlord may not give notice under a landlord's break clause at a time when—

(a) the landlord has required a prohibited payment (within the meaning given by the Renting Homes (Fees etc.) (Wales) Act 2019) to be made as described in section 2 or 3 of that Act,

(b) as a result of the requirement, a prohibited payment has been made to the landlord or to any other person, and

(c) the prohibited payment has not been repaid.

(2) The landlord may not give notice under a landlord's break clause at a time when—

(a) a holding deposit (within the meaning given by the Renting Homes (Fees etc.) (Wales) Act 2019) paid in relation to the contract has not been repaid, and

(b) the circumstances are such that the failure to repay the deposit amounts to a breach of the requirements of Schedule 2 to that Act.

(3) In determining for the purposes of this section whether a prohibited payment or a holding deposit has been repaid, the payment or deposit is to be treated as having been repaid to the extent (if any) that it has been applied towards either or both of the following—

(a) a payment of rent under the contract;

(b) a payment required as security in respect of the contract.

(4) This section is a fundamental provision which is incorporated as a term of all fixed term standard contracts with a landlord's break clause."

Restrictions on a court hearing landlord's claim for possession

6 In section 204 (restrictions on court hearing a landlord's claims for possession)—

(a) in subsection (1)(a)(vii), after "177" insert ", 177A";

(b) in subsection (1)(a)(ix), for "section 186", substitute "sections 186, 186A, 186B and 186C;

(c) in subsection (1)(a)(xiii), after "198" insert ", 198A".

Miscellaneous consequential provision

7 In Schedule 1 (overview of fundamental provisions incorporated as terms of occupation contracts)—

(a) in Part 2 (periodic standard contracts), in table 4, in the notes for the entry for sections 173 to 180 (termination by notice given by landlord)—

(i) for "and 176" substitute ", 176, 177 and 177A";

(ii) for "section 176" substitute "section 177";

(b) in Part 3 (fixed term standard contracts), in table 5—

(i) in the first column of the entry for section 186, for "Section 186", insert "Sections 186, 186A, 186B and 186C";

(ii) in the notes for the entry for section 186, at the end, insert "If section 186(1) is not incorporated, sections 186A, 186B and 186C do not apply. If a contract incorporates section 186(1), sections 186A, 186B and 186C must be incorporated, and section 186B must be incorporated without modification.";

(iii) in the notes for the entry for sections 195 to 201 (termination by notice given by landlord under landlord's break clause), for "section 196 (breach of deposit rules)" substitute "section 198 (breach of security and deposit requirements)".