These notes refer to the Renting Homes (Fees etc.) (Wales) Act 2019 (c.2) which received Royal Assent on 15 May 2019

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Overview

3. This section gives an overview of the main provisions of the Act.

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.

Part 3: Treatment of Holding Deposits

Section 9 – Treatment of holding deposits

41. The effect of section 9 is that a payment that is a holding deposit (within the meaning given in Schedule 1) is treated as having been made subject to specific terms set out in Schedule 2. These terms, subject to certain exceptions set out in the Schedule, require the repayment of a holding deposit by the landlord or letting agent who received the deposit.

Schedule 2: Treatment of holding deposits

42. Schedule 2 specifies when a holding deposit must be repaid. Where a contract is entered into before the "deadline for agreement", the deposit must be repaid within seven days of the contract being entered into. If the contract is not entered into by the "deadline for agreement", the deposit must be repaid within seven days of the deadline for agreement. The "deadline for agreement" is the fifteenth day of the period beginning with the day of the payment of the holding deposit.

43. The parties involved can however agree in writing that they are to provide for a different "deadline for agreement", in which case the date on which repayment is to be made will be calculated taking that into account. In addition, the Welsh Ministers may, by regulations, amend the "deadline for agreement".

44. There are various exceptions to the requirement to repay a holding deposit, set out in the Schedule. In circumstances where a contract is entered into before the deadline, the

holding deposit does not have to be repaid if the deposit is applied towards the first payment of rent under the contract (paragraph 5(a)), nor does it have to be repaid if it is applied towards the payment of a security deposit under the contract (paragraph 5(b)). In this latter case it will be treated, for the purposes of the deposit protection requirements (see section 45 of the 2016 Act) as having been paid on the date the contract is made.

45. The exceptions in paragraphs 7, 8, 9 and 10 relate to circumstances where the parties to the contract have failed to enter into the contract before the deadline.

46. Paragraph 7 provides that the landlord does not have to repay a holding deposit if the prospective contract-holder provides false or misleading information to the landlord or letting agent and this information (or the act of providing false or misleading information) is such that the landlord is "reasonably entitled" to take that information or the contract-holder's action into account in deciding whether to grant the contract.

47. Paragraph 8 provides that the landlord does not have to repay a holding deposit if the prospective contract-holder decides not to enter into a contract and notifies the landlord or letting agent of this before the "deadline for agreement".

48. Paragraph 9 applies where a landlord has received a holding deposit. The landlord will be entitled to withhold the deposit (and not make a repayment) if the landlord takes all reasonable steps to enter into a contract before the "deadline for agreement", but the contract-holder fails to take all reasonable steps to do so before that date. In circumstances where a landlord has instructed a letting agent to act in relation to a contract, the reasonableness of the letting agent's conduct will also have to be taken into account for the purposes of determining whether this paragraph applies (see paragraph 11(5)).

49. Paragraph 10 makes provision which corresponds to that made by paragraph 9 but in relation to cases where a holding deposit has been paid to a letting agent, not a landlord.

50. Paragraph 11 provides that the exceptions in paragraphs 8, 9 and 10 may not be relied upon unless the condition in sub-paragraph (2) of paragraph 11 is met. The condition is that before paying a holding deposit, the landlord or letting agent has provided prescribed information to the contract-holder.

51. The intention behind this provision is to prevent unfairness in relation to contract-holders who, after paying a holding deposit, decide not to enter into a contract because information relevant to the contract was not provided by a landlord or letting agent before the holding deposit was paid.

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;
- 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 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.

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.

Part 5: Recovery of Amount by Contract-Holder

Section 22 - Recovery of a prohibited payment or holding deposit

101. This section provides that a person may apply to the county court to recover a prohibited payment or holding deposit which has been paid by or on behalf of the person in relation to a standard occupation contract. The person making such a claim is referred to in the section as "the claimant".

102. In the case of recovery of a prohibited payment, for the claim to succeed, the court must be satisfied beyond reasonable doubt that a prohibited payment has been made and that all or part of the amount of the payment has not been repaid. If it is so satisfied, the court may order repayment of the whole payment or (if part of it has already been repaid) of that part of it that remains unpaid. An order could only be made, if the court was satisfied that a prohibited payment had been required from a contract-holder, which is itself an offence. Additionally, the fact that repayment had been ordered could be a matter taken into account by a licensing authority in determining whether a landlord or agent, as the case may be, was a fit and proper person to hold a licence for the purposes of Part 1 of the 2014 Act.

103. In the case of recovery of a holding deposit, for the claim to succeed, the court must be satisfied on the balance of probabilities that a holding deposit has been paid and there has been failure to repay all or part of that to the claimant in accordance with Schedule 2. (The different test that is applied in this case reflects the fact that failure to repay a holding deposit is not a criminal offence, unlike the position in respect of requiring a person to make a prohibited payment contrary to section 2 or 3 of the Act.) Again, the court may order repayment of the whole holding deposit, or the outstanding amount of any holding deposit taken from the contract-holder.

104. The court may not require the repayment of an amount if that amount has been applied towards rent, or the security deposit under a standard occupation contract.

105. No claim for recovery of a prohibited payment may be made where criminal proceedings have been brought in respect of the disputed payment, unless the proceedings have been discontinued. This is because the court by whom a person is convicted of an offence under section 2 or 3 in respect of a prohibited payment may

order payment of an amount equivalent to the prohibited payment (sections 2(6) and 3(6)).

Part 6: Publicising Letting Agents' Fees

Section 23 – Publicising letting agents' fees

106. This section provides that the Welsh Ministers may by regulations amend Chapter 3 of Part 3 of the Consumer Rights Act 2015 ("the 2015 Act") to require a letting agent to ensure that any online advertiser (as defined) publicises certain fees charged by the agent, so far as they relate to dwelling-houses in Wales. The fees concerned are defined in section 85 of the 2015 Act and include fees payable by a landlord or tenant in respect of letting agency work and property management work. The regulations may also amend the 2015 Act to allow more than one penalty to be imposed on a letting agent in relation to the same breach of a duty in Chapter 3 of Part 3 of the 2015 Act so far as the breach relates to dwelling-houses in Wales.

Part 7: Final Provisions

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

107. This section provides that a local housing authority must make arrangements for information to be made publicly available in its area about the effect of the Act, including information about how a prohibited payment and holding deposit may be recovered.

108. It will be a matter for each local housing authority to determine how best to make information available, but in making arrangements for making information available, local housing authorities will have to have regard to any guidance issued by the Welsh Ministers.

Section 25 - Power to make transitional provision in respect of assured tenancies

109. Section 25 provides that regulations made by the Welsh Ministers may make provision for the Act to apply in relation to an assured tenancy (including an assured shorthold tenancy) under the Housing Act 1988.

110. The 2016 Act – in section 239 – provides for the abolition of assured tenancies in relation to any dwellings to which the Act applies (the meaning of "dwelling" in this context is provided by section 246 of the 2016 Act). The main provisions of the 2016 Act were not in force when this Act gained Royal Assent.

111. Regulations under this section would allow provision to be made to apply the Act to assured shorthold tenancies under the 1988 Act, until the abolition of assured tenancies under the 2016 Act.

Section 26 - Offences by bodies corporate

112. Section 26 provides that where a body corporate (for instance, a limited company) commits an offence under the Act, a "senior officer", or person purporting to be a senior officer, of the company may also be liable to be prosecuted for the offence, in the circumstances described by subsection (1).

Sections 27- 30 – Regulations, Interpretation, Crown application and Coming into force

113. Section 27 makes provision about procedural matters relevant to making regulations under the Act. It also describes the ancillary provision (supplemental, incidental,

consequential, transitional, transitory or saving provision) that may be made in regulations under the Act.

114. Section 28 sets out the defined terms used in the Act.

115. Section 29 provides that the Act applies to the Crown, but specifies that the Crown will not be criminally liable for any offence under the Act. Instead, in the case of contravention by the Crown of a provision made by or under the Act, the High Court may declare the act or omission to be unlawful.

116. Section 30 sets out the provisions that will come into effect on the day after the day the Act receives Royal Assent (this section and the subsequent section dealing with the Act's short title) and provides for the remaining provisions of the Act to come into force by commencement order made by the Welsh Ministers.