

REPORT TO:	Executive Board
REPORT NO:	COPR/38/19
DATE:	10 September 2019
LEAD MEMBER:	Councillor David J Griffiths (Place - Housing) Cllr Hugh Jones (People – Communities, Partnerships, Public Protection and Community Safety)
CONTACT OFFICER:	Robert Johnston (Tel: 297425)
SUBJECT:	Renting Homes (Fees etc) (Wales) Act 2019
WARD:	All

1. PURPOSE OF THE REPORT

To seek Executive Board approval for delegated authority to be issued to the Chief Officer Planning & Regulatory and to the single licensing authority in Wales (Rent Smart Wales) in respect of this new legislation.

2. EXECUTIVE SUMMARY

- 2.1 The Renting of Homes (Fees etc) (Wales) Act 2019 came into force on 5 May 2019. From 1 September 2019, it bans letting agents and landlords who manage their own properties from charging any fees before, during or after a tenancy unless specifically exempt in the Act. Such a banned payment is called a 'prohibited payment'.
- 2.1 Letting agents and self-managing landlords are also banned from requiring a tenant to take out a loan or enter into a contract for services.
- 2.2 Enforcement of these new requirements, which is undertaken by the Council and Rent Smart Wales (as the Single Licencing Authority) will contribute to more secure tenancies for private tenants.

3 RECOMMENDATIONS

- 3.1 **That Members delegate authority for enforcing the provisions of the Renting of Homes (Fees etc) (Wales) Act 2019 to the Chief Officer Planning & Regulatory and update the Council's constitution accordingly.**

- 3.2 That Members authorise Cardiff City Council, as the Single Licensing Authority for Wales (Rent Smart Wales), to exercise any function of an enforcement authority, in relation to Wrexham County Borough Council's area, for the purposes of the Renting Homes (Fees etc.) (Wales) Act 2019, including (but without limitation) taking enforcement activity and bringing criminal proceedings pursuant to section 19 of that Act.**

REASONS FOR RECOMMENDATIONS

- (i) To enable the new legislation to be implemented quickly and efficiently. The Public Protection service, located within the Planning & Regulatory department, has responsibility for the enforcement of Housing and Trading Standards legislation
- (ii) To ensure that enforcement powers are also delegated to Rent Smart Wales, with whom the department work in partnership, for the enforcement of this legislation.

4. BACKGROUND INFORMATION

Prohibited Payments

- 4.1 Welsh Government (WG) advises that any costs associated with renting in the private sector should be reasonable, affordable and transparent. This new Act was brought in to achieve this aim by enabling Local Authorities to regulate such costs through informal and formal means, as outlined below.
- 4.2 The Act defines permitted payments that can be required by letting agents and self-managing landlords as:
- rent
 - holding deposits
 - security deposits
 - payments in respect of utilities (e.g. council tax, television, licence and communication services)
 - payments in default (where tenant has done something wrong e.g. lost keys, late payment of rent)
- WG intends to introduce regulations to define such payments by the end of 2019.
- 4.3 Any payments other than those listed above would be banned and prohibited. Where any rent payment, in one period, is greater than the amount of rent payable in any other period during the contract, the difference (a 'rent fluctuation') is also considered a prohibited payment. There is an exception where there is a 'permitted variation' agreed between landlord and tenant.
- 4.4 'Holding deposits' are limited to one week's rent and must be re-paid within seven days of the contract being agreed. If the tenancy contract is not agreed, the deposit must, subject to limited exceptions, be repaid within 15 days.
- 4.5 There will be no change to existing legislation governing 'security deposits', but Welsh Ministers now have the power to cap them. There are no plans to legislate for a cap, but WG will be monitoring trends in deposits and will only regulate if necessary.

- 4.6 Failure to comply with the provisions in the Act, in the following ways, will restrict the landlord's ability to serve a valid notice of possession ("no fault", Section 21 possessions):
- A prohibited payment has been required and paid, but not re-paid by the letting agent/self-managing landlord
 - A holding deposit has not been repaid

4.7 This change will protect tenants by reducing financial exploitation.

Enforcement

4.8 The Council is responsible for enforcing this legislation in partnership with Rent Smart Wales (RSW). All 22 Welsh Councils have agreed to a memorandum of understanding with RSW in relation to the regulation of the private rented Housing sector. The Housing (Wales) Act 2014 delegated authority report was approved by Executive Board in 2014 (HHPPE/104/14), this Act made provision for the appointment of a Licensing Authority for the scheme in which Cardiff City Council were appointed as the Licensing Authority in 2015 and subsequently set up RSW for this purpose.

4.9 RSW will take enforcement action in place of Local Authorities in limited circumstances:

- where RSW is undertaking an audit of an agent and find evidence of non-compliance
- where RSW is taking enforcement action for Housing (Wales) Act 2014 offences (e.g. no registered with RSW) and tenant fee contraventions are found
- other exceptional circumstances to be agreed on a case by case basis with the relevant Local Authority

4.10 Local Authorities are primarily responsible for enforcing the requirements and have a duty to inform the Licensing Authority (Rent Smart Wales (RSW)) if they take enforcement action. Rent Smart Wales will also inform Local Authorities if they serve a fixed penalty notice or prosecute.

4.11 There are two formal enforcement options available to the Council and RSW:

- Issue of a fixed penalty notice (FPN) of £1,000, the payment of which would avoid prosecution proceedings. The fixed penalty payment receipts will be used for this enforcement function by Public Protection (in accordance with the Act). However, non-payment would lead to prosecution (also the only appeal mechanism).
- Prosecution for offences under the Act which could result in a fine not subject to a minimum on the standards scale of fines (except for failure to provide information required by statutory notice, in which case a fine up to level 4 on the standard scale could be imposed by a judge)

4.12 Sections 17(2) and (3) of the Renting Homes (Fees etc) (Wales) Act 2019 enable Rent Smart Wales to take the above mentioned enforcement actions but it will be necessary for this authority to authorise RSW (Cardiff City Council) to do so.

4.13 The above enforcement action will be taken in accordance with the departmental enforcement policy to ensure consistency, proportionality and fairness.

5. Implications

- 5.1 **Policy Framework** – Enforcement of these new requirements will contribute to more secure tenancies for private tenants (Local Housing Strategy reference T3A11) and the Council Plan well-being objectives Pe2 - Supporting people to live active, independent lives within their community. E3: Helping tackle poverty.
- 5.2 **Budget** – The necessary resources are currently available within the Public Protection service.
- 5.3 **Legal** – Legal and probity issues have been considered. By virtue of the Regulation of Private Rented Housing (Designation of Licensing Authority)(Wales) Order 2015 Cardiff City Council is designated as the Licensing Authority for the whole of Wales. The service operates under the name Rent Smart Wales hosted by Cardiff Council and ensures compliance with the Housing (Wales) Act 2014 in partnership with all 22 Welsh local authorities. Formal authorisation is required in respect of this latest piece of legislation Renting Homes (Fees etc.)(Wales) Act 2019 in order to ensure that all relevant powers can be exercised when they come into force on 1st September.
- 5.4 **Staffing** – There are currently sufficient staff in Public Protection to implement the requirements for enforcement of this new legislation.
- 5.5 **Equality/Human Rights** – An equality impact assessment has been carried out and is included as reference EP/EIA00114/2019, a summary of which is given in Appendix 1.
- 5.6 **Risks** – All relevant risks have been considered and addressed.

6 CONSULTATION

- 6.1 None was considered necessary; this is a new statutory requirement.

7 EVALUATION OF OPTIONS

This is not applicable as the authority has a statutory duty to enforce the provisions of this Act.

EIA ref EP/EIA00114/2019

Screening Tool				
	Q1. Could this proposal have a +ve or -ve effect on how functions are delivered to any of these groups?	Q2. Could this discriminate against any of these groups?	Q3. Could this proposal advance the equality of opportunity for these groups?	Q4. Could this promote good relations between these groups and the wider community?
Age CYP	No Impact	No Impact	No Impact	No Impact
Age Adults	No Impact	No Impact	No Impact	No Impact
Disability	No Impact	No Impact	No Impact	No Impact
Gender / Sex	No Impact	No Impact	No Impact	No Impact
Pregnancy & Maternity	No Impact	No Impact	No Impact	No Impact
Race / Ethnicity	No Impact	No Impact	No Impact	No Impact
Religion / Belief	No Impact	No Impact	No Impact	No Impact
Sexual Orientation	No Impact	No Impact	No Impact	No Impact
Marriage & Civil Partnership	No Impact	No Impact	No Impact	No Impact
Gender Reassignment	No Impact	No Impact	No Impact	No Impact
Carers	No Impact	No Impact	No Impact	No Impact
Poverty	+	No Impact	No Impact	No Impact
Welsh Language	No Impact	No Impact	No Impact	No Impact

Screening Impacts			
Question	Type	Category	Description
1	Positive	Poverty	Enforcing the requirements of the Act will ensure tenants in private sector rental properties (mostly low income) do not have to pay banned payments to landlords and section 21 possessions cannot be pursued by landlord /letting Agents in certain circumstances prescribed by the act.