

---

**CABINET MEETING: 21 NOVEMBER 2019**

---

**THE RENTING HOMES (FEES ETC.) (WALES) ACT 2019;  
IMPLEMENTATION ARRANGEMENTS FOR CARDIFF COUNCIL AND  
RENT SMART WALES**

**FINANCE, MODERNISATION AND PERFORMANCE (COUNCILLOR  
CHRIS WEAVER)**

**AGENDA ITEM: 7**

---

**Reason for this Report**

1. To delegate authority to the Shared Regulatory Service (SRS) and Rent Smart Wales in respect of new legislation, namely Renting Homes (Fees etc.) (Wales) Act 2019.
2. To accept authorisation from 21 local authorities, in respect of this new legislation, to permit the Single Licensing Authority for the Housing (Wales) Act 2014 (Rent Smart Wales) to use the new enforcement powers across Wales.

**Background**

3. The Renting Homes (Fees etc) (Wales) Act 2019 came into force on 5 May 2019. Since the 1 September 2019, letting agents and landlords who manage their own properties are prevented 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'.
4. 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.
5. Enforcement of these new requirements, can be undertaken by the Council and Rent Smart Wales (as the Single Licencing Authority) and will contribute to a fairer and more transparent experience for tenants relying on the private rented sector. The Act places a duty on Local Housing Authorities to make information publicly available, including details of how prohibited payments and holding deposits can be recovered. The SRS will place the required information on the SRS website and create links to the Council website to allow the Council to meet that duty.

6. Welsh Government (WG) believes 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.
7. 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 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)
8. Any payments other than those listed above are 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.
9. '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.
10. There will be no change to existing legislation governing 'security deposits'.

## **Issues**

11. Offences are committed where landlords and/or agents fail to comply with the Act.
12. Local authorities are responsible for enforcing this legislation in partnership with Rent Smart Wales (RSW). The legislation places the duty for enforcement on each local authority, with a power to share the responsibility with Rent Smart Wales. The 22 local authorities are now in the process of making arrangements in accordance with their own constitutional arrangements to authorise Rent Smart Wales to enforce the provisions of the Act.
13. RSW will take enforcement action in place of Local Authorities in limited circumstances:
  - ✓ where RSW is undertaking an audit of a letting and managing agent and find evidence of non-compliance
  - ✓ where RSW is taking enforcement action for Housing (Wales) Act 2014 offences (e.g. not 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

14. Local Authorities are primarily responsible for enforcing the requirements and have a duty to inform the Rent Smart Wales if they take enforcement action. Rent Smart Wales will also have a duty to inform Local Authorities if they serve a fixed penalty notice or prosecute under the new Act.
15. There are two formal enforcement options:
  - ✓ 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.
  - ✓ 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).

### **Reason for Recommendations**

16. This report seeks to ensure that appropriate authorisations and delegations are in place for enforcing the provisions of the Renting of Homes (Fees etc.) (Wales) Act 2019 for Cardiff Council and Rent Smart Wales.
17. 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 is necessary for Cardiff Council to delegate responsibility to Rent Smart Wales (Cardiff City Council) to do so on behalf of Cardiff Council and to accept the authorisation from the 21 other local authorities.
18. Enforcement action should be taken in accordance with the relevant enforcement policies to ensure consistency, proportionality and fairness. There will be a need to make consequential amendments to the Enforcement Polices to reflect this additional responsibility.

### **Financial Implications**

19. The additional regulatory burden of this legislation has been the subject of the financial assessment by Welsh Government. It is considered that the fixed penalty (£1000 per offence) or court cost awards will cover the financial impact incurred.

### **Legal Implications**

21. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

## **HR Implications**

22. There are no HR implications for this report. No additional staff resources are anticipated at this stage. The legislation will be enforced on a reactive basis following complaint and prioritised accordingly or as part of an ongoing case investigation.

## **RECOMMENDATIONS**

Cabinet is recommend to agree:

1. That the Head of the Shared Regulatory Service be given delegated authority for enforcing the provisions of the Renting Homes (Fees etc.) (Wales) Act 2019 and that the Council's constitution and the Joint Working Agreement be updated accordingly.
2. That the Corporate Director Resources be given delegated authority for enforcing the provisions of the Renting Homes (Fees etc.) (Wales) Act 2019 on behalf of Cardiff Council and that the Council's constitution be updated accordingly.
3. That Cardiff Council, as the Single Licensing Authority for Wales for the purposes of the Housing (Wales) Act 2014 accepts authorisation to exercise any function of the other 21 local authorities 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.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>CHRIS LEE</b> <b>Corporate Director Resources</b>
	15 November 2019

*The following background papers have been taken into account:*

Renting Homes (Fees etc.) (Wales) Act 2019  
Welsh Government published guidance: Renting Homes (Fees etc.) (Wales) Act 2019 - Guidance for landlords and agents