

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO CABINET

19 NOVEMBER 2019

REPORT OF THE HEAD OF LEGAL AND REGULATORY SERVICES

AMENDMENT TO THE SCHEME OF DELEGATION OF FUNCTIONS – RENTING HOMES (FEES ETC.) (WALES) ACT 2019

1. Purpose of report

1. The purpose of this report is to inform Cabinet of the new legislation, namely the Renting Homes (Fees etc.) (Wales) Act 2019 and to amend the Scheme of Delegation of Functions accordingly.

2. Connection to corporate improvement objectives/other corporate priorities

- 2.1 This report assists in the achievement of the following Corporate Priority:
 - Helping people to be more self-reliant. This legislation prevents residents becoming vulnerable to unfair trading practices and supports individuals to build resilience and develop solutions to meet needs and enjoy independent life as much as they can.

3. Background

- 3.1 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'.
- 3.2 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.
- 3.3 Enforcement of these new requirements can be undertaken by the Council and Rent Smart Wales (as the Single Licencing Authority). They 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.
- 3.4 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.

3.5 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)

3.6 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.

3.7 '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. There will be no change to existing legislation governing 'security deposits'.

4. Current situation/proposal

4.1 Offences are committed where landlords and/or agents fail to comply with the Act. 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. This is a new piece of legislation that makes provision to protect tenants and is currently outside the scope of the existing Scheme of Delegation of Functions. Additionally, the other local authorities in Wales are now in the process of planning, in accordance with their own constitutional arrangements, to authorise Rent Smart Wales to enforce the provisions of the Act.

4.2 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

4.3 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. 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).

4.4 It is proposed that the Scheme of Delegation of Functions be updated accordingly to insert the following function into Scheme B2 as a cabinet function allocated to the Monitoring Officer to ensure that the relevant statutory enforcement powers under the Act are used appropriately:

3.56	To do anything which the Council has the power to do (including the power to serve any notice) that is necessary for the enforcement of any of the provisions contained within the Renting Homes (Fees etc) (Wales) Act 2019.
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4.5 The Joint Working Agreement for the Shared Regulatory Services will also need to be varied due to there being an extension of delegations to the Service. In accordance with the JWA the Participants will need to agree to make the changes and enter into a Deed of Variation to be appended to the Agreement.

5. Effect upon policy framework and procedure rules

5.1 There is no effect upon the policy framework and procedure rules.

6. Equality Impact Assessment

6.1 There are no equality implications arising from this report.

7. Well-being of Future Generations (Wales) Act 2015 implications

7.1 The Act relates directly to several of the well-being objectives:

The Act will remove a financial barrier to renting a property in a tenant's area of choice. Being able to tell, up front, what the ongoing cost of a property is, without the potential for unexpected high fees to be levied both up-front and throughout a tenancy, will allow tenants to budget for a property in their chosen area. Considering health, the impact is likely to be generally positive, due to the potential benefits to those on a low income, who will be able to access more appropriate PRS accommodation, fitted to their needs, which may contribute to better health outcomes.

- 7.2 Reducing the financial barrier to suitable accommodation will also be intended to alleviate pressure on finances, meaning funds would instead be available to spend on food, fuel and other essential health-related outgoings. A reduction in income for landlords could mean less responsible behaviour towards the environment, but legal obligations would still apply. The private rented sector provides housing for a higher proportion of younger people (under 35) than other tenures. Ensuring that the upfront barriers to accommodation are reduced, and that the ongoing costs of that accommodation are predictable and stable, will help younger people, particularly those with a lower income, to effectively budget for their accommodation.

8. Financial implications

- 8.1 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. 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.

9. Recommendations

It is recommended that Cabinet note the report and:

- 9.1 Approve the amendment to the Scheme of Delegation of Functions as set out in paragraph 4.4 of the report;
- 9.2 Approve that the Monitoring Officer have delegated authority so as to authorise relevant officers to exercise as and when may be required, the carrying out of those statutory enforcement powers;
- 9.3 Delegate authority to the Monitoring Officer to approve and finalise and execute the terms of the Deed of Variation as set out in paragraph 4.5 of the report.

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Background documents: None