

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 8 October 2018	Committee Clerk
Meeting time: 14.30	0300 200 6362
	SeneddCLA@assembly.wales

Election of a temporary Chair

1 Introduction, apologies, substitutions and declarations of interest

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

14.30 (Page 1)

CLA(5)–24–18 – Paper 1 – Statutory instruments with clear reports
Negative Resolution Instruments

2.1 SL(5)258 – The M4 Motorway (Eastbound and Westbound Exit Slip Roads at Junction 28 (Tredegar Park Interchange), Newport) (40 MPH Speed Limit) Regulations 2018

3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

14.35

Negative Resolution Instruments

3.1 SL(5)257 – The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018

(Pages 2 – 30)

CLA(5)–24–18 – Paper 2 – Report

CLA(5)–24–18 – Paper 3 – Regulations



4 Paper(s) to note

14.40

4.1 Letter from the Leader of the House and Chief Whip – Scrutiny of regulations made under the European Union (Withdrawal) Bill

(Page 31)

CLA(5)-24-18 – Paper 5 – Letter from the Leader of the House and Chief Whip, 2 October 2018

5 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

14.45

6 Renting Homes (Fees etc.) (Wales) Bill – Draft report

(Pages 32 – 96)

CLA(5)-24-18 – Paper 6 – Draft report

CLA(5)-24-18 – Paper 7 – Impact Assessment Gateway document

7 Update on changes to Standing Orders relating to section 116C Orders in Council

15.15

(Pages 97 – 152)

CLA(5)-24-18 – Paper 8 – Update paper

CLA(5)-24-18 – Paper 8a – Letter from the Chair of the Business Committee, 1 March 2018

CLA(5)-24-18 – Paper 8b – Letter to Chair of the Business Committee, 12 April 2018

CLA(5)-24-18 – Paper 8c – Letter from the Chair of the Business Committee, 24 April 2018

CLA(5)-24-18 – Paper 8d – Report of the Business Committee

Statutory Instruments with Clear Reports

8 October 2018

SL(5)258 – The M4 Motorway (Eastbound and Westbound Exit Slip Roads at Junction 28 (Tredegar Park Interchange), Newport) (40 MPH Speed Limit) Regulations 2018

Procedure: Negative

These Regulations impose a maximum speed limit of 40 miles per hour (instead of the general 70 miles per hour speed limit imposed on motorways by the Motorways Traffic (Speed Limit) Regulations 1974) on the lengths of the M4 motorway slip roads specified in the Schedule to these Regulations.

These Regulations also amend the M4 Motorway (West of Junction 23A (Magor) to East of Junction 29 (Castleton)) (Variable Speed Limits) Regulations 2015. The effect of the amendment is to remove a small length of the westbound off slip road at junction 28 (Tredegar Park) of the M4 from the section of road which is subject to a variable speed limit. A maximum speed of 40 miles per hour applies to that length of slip road under these Regulations.

Parent Act: Road Traffic Regulation Act 1984

Date Made: 24 September 2018

Date Laid: 27 September 2018

Coming into force date: 19 October 2018



Agenda Item 3.1 Town and Village Greens (Landowner Statements) (Wales) Regulations 2018

Background and Purpose

Land may be registered as a town or village green in the circumstances specified in section 15 of the Commons Act 2006 ("the 2006 Act"). A characteristic of each of those circumstances is that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, must have indulged 'as of right' in lawful sports and pastimes on the land in question for a period of at least 20 years.

Section 15A(1) of the 2006 Act permits the owner of such land to deposit with the commons registration authority a statement, the effect of which is to bring to an end any period during which persons have indulged as of right in lawful sports and pastimes on the land to which the statement relates. The statement must be accompanied by a map.

These Regulations make provision in respect of the deposit of statements under section 15A(1) of the 2006 Act and associated matters.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(i) - that there appears to be doubt as to whether it is intra vires

Statements deposited by landowners¹ with commons registration authorities under these Regulations must include the landowner's name, address, telephone number and e-mail address. The statements are then included on public registers which commons registration authorities across Wales are required to keep in both electronic and paper form.

This means that, where the landowner is only able to supply a home address, a home or personal telephone number and a personal e-mail address, those personal details will be publicly available for anyone to see.

This is an interference with the privacy rights of landowners under Article 8 of the European Convention on Human Rights. Article 8 is a qualified right, meaning interference with Article 8 is capable of being justified.

However, the Explanatory Memorandum provides no justification for including personal details such as home addresses, home or personal telephone numbers and personal e-mail addresses in a public register. While there may be sound reasons for including such personal information on a public register in the particular context of these Regulations, the lack of justification leaves the Committee with little choice but to question whether there is a breach of Article 8 rights. Consequently, we have little choice but to raise the question as to whether the Regulations are intra vires.

¹ The issues we raise in this report in respect of landowners applies equally to those depositing statements on behalf of landowners.



We ask the Welsh Government to set out its justification by reference to the following four questions, i.e. the four questions used by the Supreme Court in a series of cases (including *R (on the application of Tigere) v Secretary of State for Business, Innovation and Skills*²) when deciding questions of justification.

The four questions are:

1. does the measure have a legitimate aim sufficient to justify the limitation of a fundamental right;
2. is the measure rationally connected to that aim;
3. could a less intrusive measure have been used; and
4. bearing in mind the severity of the consequences, the importance of the aim and the extent to which the measure will contribute to that aim, has a fair balance been struck between the rights of the individual and the interests of the community?

On the subject of consultation around this issue, we note paragraph 3.3 of the [Welsh Government's summary of consultation responses](#) which states that "a number" of consultation respondents "suggested additional information which could be included [in the landowner statement], such as...The email address and telephone number of the landowner(s)".

However, it is unclear whether respondents understood that anything they suggested should be included in the statement deposited by landowners to commons registration authorities would then also be included in the public register. Further, it is unclear whether respondents understood that this could lead to personal information such as a home telephone number, a mobile telephone number and a personal e-mail address being included in a public register.

In this regard, we also note—

1. that the direct question of what additional information should be included in the register (i.e. consultation question 4) did not seem to result in anyone suggesting that the register should include the email addresses and telephone numbers of landowners, and
2. as a result, that paragraph 5.7 of the Explanatory Memorandum seems to over-simplify the issue.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

We note there is a conflict between the system for registering town and village greens and the planning system, and that the Welsh Government has identified this as "problematic, given registration can be used solely as a means to frustrate or prevent lawful development proposed and approved via the planning process."³

Implications arising from exiting the European Union

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

² [2015] UKSC 57

³ See paragraph 1.2 of the [Consultation Document](#)



Government Response

The Welsh Government notes and accepts the comments made in respect of Article 8 of the European Convention on Human Rights, and therefore undertakes to make an amending statutory instrument as soon as practicable.

Legal Advisers

Constitutional and Legislative Affairs Committee

28 September 2018



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 1021 (W. 212)

COMMONS, WALES

**The Town and Village Greens
(Landowner Statements) (Wales)
Regulations 2018**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Land may be registered as a town or village green in the circumstances specified in section 15 of the Commons Act 2006 (“the 2006 Act”). A characteristic of each of those circumstances is that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, must have indulged ‘as of right’ in lawful sports and pastimes on the land in question for a period of at least 20 years.

Section 15A(1) of the 2006 Act permits the owner of such land to deposit with the commons registration authority a statement, the effect of which is to bring to an end any period during which persons have indulged as of right in lawful sports and pastimes on the land to which the statement relates. The statement must be accompanied by a map.

These Regulations make provision in respect of the deposit of statements under section 15A(1) of the 2006 Act and associated matters.

Regulation 3 prescribes the form of statement that may be deposited with the commons registration authority and the form of the map which must accompany it.

Regulation 4 enables the commons registration authority to prescribe a reasonable fee in relation to the deposit of a statement

Regulation 5 makes provision relating to when a statement is to be treated as having been deposited with the commons registration authority.

Regulation 6 makes provision relating to the manner in which the commons registration authority must manage and publicise the deposit of a statement.

Regulation 7 contains requirements relating to specific information that must be included in the register required under section 15B(1) of the 2006 Act.

Regulation 8 makes provision relating to the manner in which that register required under section 15B(1) of the 2006 Act must be kept by the commons registration authority, including requirements relating to paper and electronic versions.

Regulation 9 makes provision which permits the commons registration authority to remove an entry from that register, or any part of an entry, in the case of a material error, subject to prior notice.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 1021 (W. 212)

COMMONS, WALES

**The Town and Village Greens
(Landowner Statements) (Wales)
Regulations 2018**

Made 19 September 2018

Laid before the National Assembly for Wales
24 September 2018

Coming into force 22 October 2018

The Welsh Ministers, in exercise of the powers conferred on the appropriate national authority by sections 15A, 15B and 59 of the Commons Act 2006(1), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018 and they come into force on 22 October 2018.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the 2006 Act” (“*Deddf 2006*”) means the Commons Act 2006;

“the authority” (“*yr awdurdod*”) means the commons registration authority;

(1) 2006 c. 26. Sections 15A and 15B were inserted by section 15 of the Growth and Infrastructure Act 2013 (c. 27). Section 15A was amended by section 53 of the Planning (Wales) Act 2015 (anaw 4) (“the 2015 Act”). For the definition of “prescribed” see sections 15A(9) and 15B(5). See the definitions of “regulations” and “appropriate national authority” in section 61(1). Section 55 of, and paragraph 9 of Schedule 7 to, the 2015 Act amended section 61(1) so that the “appropriate national authority” means the Welsh Ministers in relation to Wales.

“notice of deposit” (“*hysbysiad adneuo*”) has the meaning given in regulation 6(3)(b);

“register” (“*cofrestr*”) means the register which the authority is required to keep under section 15B(1) of the 2006 Act with respect to maps and statements deposited under section 15A of that Act;

“relevant land” (“*tir perthnasol*”) means the land to which the statement in question relates;

“relevant owner” (“*perchennog perthnasol*”) means the owner depositing a statement;

“statement” (“*datganiad*”) means a statement under section 15A(1) of the 2006 Act.

Prescribed forms of statement and map

3.—(1) A statement under section 15A(1) of the 2006 Act must be—

- (a) in the form set out in Schedule 1, or in a form substantially to the like effect, with such insertions or omissions as are necessary in a particular case; and
- (b) signed—
 - (i) by, or by a duly authorised representative of, every owner of the relevant land who is an individual; and
 - (ii) by the secretary or some other duly authorised officer of every owner of the relevant land which is a body corporate or an unincorporated association.

(2) The map which must accompany the statement in accordance with section 15A(3) of the 2006 Act must be an Ordnance Map, at a scale of not less than 1:10,560, showing the boundary of the relevant land in coloured edging.

Fees

4.—(1) The authority may determine a reasonable fee for the deposit of a statement.

(2) The relevant owner must pay any fee determined in accordance with paragraph (1) to the authority.

Timing of deposit

5. A statement is to be regarded as having been deposited under section 15A(1) of the 2006 Act on the day when the following have been received by the authority—

- (a) a statement which complies with regulation 3(1);
- (b) a map which complies with regulation 3(2); and

- (c) any fee payable in accordance with regulation 4.

Managing and publicising the statement

6.—(1) Where the authority considers that any of the requirements referred to in regulation 3 or 4(2) have not been complied with, it must give notice to the relevant owner to that effect.

(2) Such notice must—

- (a) identify the requirement in question; and
- (b) set out the reasons why the authority considers that any requirement has not been complied with.

(3) As soon as practicable after receiving a statement in accordance with regulation 3(1), a map in accordance with regulation 3(2) and any fee required by regulation 4, the authority must—

- (a) send an acknowledgement of receipt to the relevant owner; and
- (b) give notice that a statement has been deposited (“notice of deposit”) in accordance with paragraph (4).

(4) The authority must—

- (a) publish notice of deposit on its website;
- (b) serve notice of deposit on any person who has previously asked to be informed of all statements that have been deposited with the authority and who has given the authority an email or postal address for that purpose;
- (c) display notice of deposit for at least 60 days—
 - (i) at or near at least one obvious place of entry to the relevant land; or
 - (ii) in any case where there are no such places, at or near at least one conspicuous place on the boundary of such land.

(5) The notices required by paragraph (4) must be in the form set out in Schedule 2, or in a form substantially to the like effect, with such insertions or omissions as are necessary in a particular place.

(6) Where a notice displayed under paragraph (4)(c) is, without any fault or intention of the authority, removed, obscured or defaced before the period of 60 days has elapsed, the authority is to be treated as having complied with the requirements of that paragraph.

Information to be contained in the register

7.—(1) The register must include—

- (a) the contact details of the person in the authority to whom enquiries about the register may be made;
- (b) an index to the register; and
- (c) any other information which the authority considers appropriate.

(2) The register must contain the following information with respect to each map and statement deposited with the authority—

- (a) a copy of the map and any legend accompanying or forming part of the map;
- (b) a copy of the statement;
- (c) the name and address, including the postcode, of the relevant owner;
- (d) the date on which the statement and map were deposited with the authority;
- (e) details of the land delineated on the map, including—
 - (i) the Ordnance Survey six-figure grid reference of a point within the area delineated;
 - (ii) the name of the electoral ward, district or community in which the land is situated;
 - (iii) the address and postcode of those buildings on the land to which a postcode has been assigned; and
 - (iv) the name of the town or city which is nearest to the point referred to in paragraph (i).

Manner of keeping the register

8.—(1) The register must—

- (a) be kept in electronic and paper form;
- (b) be kept in parts so that each part—
 - (i) relates to land within a particular electoral ward, district or community; and
 - (ii) contains the information referred to in regulation 7.

(2) The authority must keep the register in such manner as is suitable to enable a copy of any of the particulars contained in the register to be taken by or for any person who requests a copy in person at the relevant office.

(3) The paper version of the register must be kept at the relevant office.

(4) In this regulation “relevant office” (“*swyddfa berthnasol*”) means—

- (a) where the authority has specified an office for the purpose of these Regulations on its website, the office so specified;
- (b) otherwise, the principal office of the authority.

Removal of entries from the register

9.—(1) The authority may remove an entry from the register, or any part of an entry, if it is satisfied that the map or statement in question contains a material error.

(2) Before removing an entry from the register, the authority must give to the relevant owner not less than 28 days notice of its intention to do so.

Lesley Griffiths

Cabinet Secretary for Energy, Planning and Rural
Affairs, one of the Welsh Ministers

19 September 2018

SCHEDULE 1
Form of Statement

Regulation 3(1)(a)

Form of statement under section 15A(1) of the Commons Act 2006

Please read the following guidance before completing this form

1. Parts A to C must be completed in all cases.
2. The statement must be signed and dated by, or by a duly authorised representative of, every owner of land to which the statement relates who is an individual; and by the secretary or some other duly authorised officer of every owner of land to which the statement relates where that owner is a body corporate or an unincorporated association.
3. In the case of land in joint ownership, all the joint owners must complete paragraphs 2 and 3 of Part A and complete and sign Part C, unless a duly authorised representative completes and signs the form on behalf of all the owners of the land. Paragraph 2 of Part A must be completed in full to clearly explain the capacity of the person submitting the statement for deposit (e.g. trustee, landowner's managing agent, executor etc.).
4. 'Owner' is defined in section 61(3) of the Commons Act 2006 and broadly means a legal owner of the freehold interest in the land.
5. Where the statement relates to more than one parcel of land, a description of each parcel should be included in paragraph 5 of Part A and the remainder of the form should be completed to clearly identify which statement relates to which parcel of land. This may require the insertion of additional wording. Multiple parcels of land must be clearly identified by coloured edging on any accompanying map.
6. A statement must be accompanied by an ordnance map, which must be at a scale of not less than 1:10,560 showing the boundary of the land to which the statement relates in coloured edging.
7. A statement must be accompanied by the requisite fee – please consult the relevant Commons Registration Authority for further details.

PART A: Information relating to the person submitting the statement for deposit and land to which the statement relates

1. Name of the commons registration authority (or authorities) to which the statement is addressed:

2. Status of person submitting the statement for deposit (tick relevant box or boxes):
I am:
 - (a) The owner of the land described in paragraph 5
 - (b) Submitting the statement for deposit on behalf of [*insert name of the landowner*] who is

the owner of the land described in paragraph 5 in my capacity as *[insert details]*

3. Name, full postal address (including postcode), email address and contact telephone number of the owner(s) of the land to which the statement relates. If there is more than one landowner, the names, full postal addresses (including postcodes), email addresses and contact telephone numbers of all landowners must be stated:
4. Name, full postal address (including postcode), email address and contact telephone number of any person submitting the statement for deposit on behalf of the owner(s):
5. Description of the land to which the statement relates (including full address and postcode):
6. Ordnance Survey six-figure grid reference(s) of a point within the area of the land to which the statement relates (if known):

PART B: Statement under section 15A(1) of the Commons Act 2006

[I am / *[insert name of owner]* is] the owner of the land described in paragraph 5 of Part A of this form and shown coloured *[insert colour]* on the map accompanying this statement.

[I / *[insert name of owner of the land]*] [wish/wishes] to bring to and end any period during which persons may have indulged as of right in lawful sports and pastimes on the whole or any part of the land shown coloured *[insert colour]* on the accompanying map.

(delete wording in square brackets as appropriate and/or insert information as required)

PART C: Statement of truth

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

I believe the facts and matters contained in this form are true

Signature (of the person making the statement of truth):

Full name (printed):

Date (day / month / year):

You should keep a copy of the completed form

PART D: Additional information relevant to the statement

Insert any additional information relevant to the statement

SCHEDULE 2

Regulation 6(5)

Form of Notice of Deposit

Notice of landowner deposits under section 15A(1) of the Commons Act 2006

[Insert name of relevant Commons Registration Authority]

A statement under section 15A(1) of the Commons Act 2006 (“the 2006 Act”) has been deposited in relation to the land described below and shown *[insert colouring]* on the accompanying map.

PLEASE NOTE:

Deposits made under section 15A(1) of the 2006 Act may affect the ability to register such land as a town or village green under section 15 of that Act.

Description of the land(s) (including full address and postcode):

The statement was submitted [for deposit by *[insert name of owner]* / [on behalf of *[insert name of stated owner]*] and was received by this authority on *[insert date]*.

The authority maintains a register of maps and statements under section 15B of the 2006 Act.

The register can be accessed online at *[insert web address and link]* or can be inspected free of charge at the address and times indicated below:

[Insert address of where the register can be viewed]

[Insert opening times of the address where the register can be viewed]

Signed on behalf of *[name of authority]*:

Name and position of signatory:

Date:

Explanatory Memorandum to:

The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Department for Environment and Rural Affairs and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Town and Village Greens (Landowner Statements) (Wales) Regulations 2018.

I am satisfied the benefits justify the likely costs.

Lesley Griffiths AM
Cabinet Secretary for Energy, Planning and Rural Affairs

24 September 2018

Part 1 – Explanatory Memorandum

1. Description

1.1 The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018 (“the Regulations”) provision to

- Enable landowners to deposit a statement to their commons registration authority, the effect of which brings to an end any period during which persons have indulged in lawful sports or pastimes on the land as of right, thereby restricting the ability for land to be registered as a town or village green; and
- Detail the processes and procedures required for landowner statements to be submitted.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 The Explanatory Memorandum covers the following statutory instrument:

- The Town and Village Greens (Landowner Statements) (Wales) Regulations 2018.

2.2 The Regulations are subject to the negative resolution procedure and is therefore subject to annulment by a resolution in accordance with Standing Order 27.2

3. Legislative background

3.1 The Welsh Ministers make the Regulations in exercise of the powers conferred on them by the following provisions of the Commons Act 2006 (“the 2006 Act”):

- Section 15A(1) (as amended by section 52(1) of the Planning (Wales) Act 2015), (3), (6), 7(3)(c) and (d), and (9);
- Section 15B(1), (4)(b) and (5); and
- Section 59(2).

3.2 In accordance with section 59(6) of the 2006 Act, the Regulations are subject to the negative procedure.

4. Purpose and intended effect of the legislation

Policy rationale

4.1 The general purpose of the legislation is to:

- Prevent the town and village green registration system being used to stop or delay planned development;
- Reduce the financial burden on local authorities in considering applications, as well as the costs to landowners whose land is affected by applications; and
- Remove the unnecessary uncertainty and delays, which are difficult for those affected in the community.

Effect of legislation

4.2 Section 15(1) of the 2006 Act provides that any person may apply to the commons registration authority to register land where, amongst other things, a significant number of inhabitants of any locality, or any neighbourhood within a locality have indulged in lawful sports or pastimes on the land for a period of at least 20 years.

4.3 In broad terms, section 29 of the Commons Act 1876 and section 12 of the Inclosure Act 1857 provide that development on town or village greens constitutes nuisance. It is therefore the case that development can be wilfully frustrated by registering the land in question as a town or village green.

4.4 However, section 15A(1) enables the owner of any such land to deposit with the authority a statement, the effect of which is to bring to an end any period during which persons have indulged in lawful sports or pastimes on the land to which the statement relates. Under section 15(3), the statement must be accompanied by a map identifying the land to which the statement relates.

4.5 The Regulations therefore provides for:

- Prescribing the form in which a statement and map must be deposited with the commons registration authority (regulation 3 and Schedule 1);
- enabling the authority to specify a reasonable fee for the deposit of a statement (regulation 4);
- a statement is to be regarded as having been deposited with the authority when a compliant statement, map and fee have been received by the authority (regulation 5);
- the manner in which the deposit of a statement is to be managed and publicised by the authority, including various notice requirements (regulation 6 and Schedule 2);

- the information that is to be contained in the register that is required to be kept by the authority under section 15B of the 2006 Act (regulation 7);
- the manner in which that register is to be kept by the authority (regulation 8); and
- removal of an entry (or any part of an entry) from the register by the authority if it is satisfied that the statement or map contains a material error, and notice requirements relevant to their removal (regulation 9).

5. Consultation

- 5.1 Proposals to reform the Town and Village regime in Wales were first consulted on in December 2013 as part of the ‘Positive Planning’ consultation paper, containing the draft Planning (Wales) Bill.
- 5.2 The ‘Positive Planning’ consultation paper proposed amending the Commons Act 2006, in relation to Wales, to:
- Prohibit applications being made to register land as a town or village green, where land has entered the planning system i.e. been identified for development in a development plan or has received planning permission; and
 - Enable landowners to submit declarations to Commons Registration Authorities, which would have the effect of rendering all use of land indicated inconsistent with the ‘as of right’ criterion required for town and village green registration.
- 5.3 The proposals put forward in the consultation paper were well received by respondents, with the majority agreeing with the proposals to reform the town and village green regime in Wales. The proposals were carried forward into the Planning (Wales) Act 2015.
- 5.4 The ‘Town and Village Greens’ consultation paper was launched on 23 October 2017 and was open for responses until 2 February 2018. The consultation paper proposed commencing the relevant sections from the Planning (Wales) Act 2015 relating to town and village greens, and set out detailed proposals for the processes and procedures for submitting landowner statements.
- 5.5 In considering those stakeholders most likely to be impacted by the proposals (both individuals and organisations), a list was drawn up which included all LPAs in Wales, public bodies and special interest groups. Consultees were asked to assign themselves to one of six broad categories indicated in the table below, which shows the breakdown of responses by category. The consultation generated 22 responses.

5.6 A summary of the consultation and government response will be published alongside this Explanatory Memorandum and Regulatory Impact Assessment and can be found here:

<https://beta.gov.wales/registration-town-and-village-greens>

5.7 Overall, there was clear support for the proposals set out in the consultation paper, with each of the 7 questions receiving positive responses (either “Yes” or “Yes, subject to comment”). These proposals included:

- The information contained within a landowner statement and how one should be deposited;
- The ability for Commons Registration Authorities (“CRAs”) to charge fees;
- How registers should be kept and what information they should contain; and
- Procedures when submitting incorrect or incomplete information.

REGULATORY IMPACT ASSESSMENT

Town and Village Greens

- 6.1 Information contained in this Regulatory Impact Assessment has been taken from the Explanatory Memorandum and Regulatory Impact Assessment which accompanied the Planning (Wales) Act 2015, to reflect more recent data.
- 6.2 Two options have been considered:
- Option 1 – Do nothing, retain the status quo and not commence relevant sections from the Planning (Wales) Act 2015.
 - Option 2 – Commence relevant sections from the Planning (Wales) Act 2015.

Option 1 – Do nothing, retain the status quo and not commence relevant sections from the Planning (Wales) Act 2015.

Description

- 6.3 Under this option there would be no changes to the town and village green system in Wales as set out in section 15 of the Commons Act 2006 (“the 2006 Act”).
- 6.4 Commons Registration Authorities (“CRAs”) are responsible for maintaining the registers of Common Land and Town or Village Greens (“TVGs”) in Wales. There are 22 CRAs in Wales, corresponding with each Unitary Authority. They undertake the determination process for applications to register land as a TVG.
- 6.5 At present, anyone can apply to a CRA for land to be registered as a TVG under section 15(1) of the 2006 Act if specific criteria apply, and there is no fee for doing so. The process is quasi-judicial in that applications require appraisal of both the facts and the law for a decision to be made. The criteria for determining TVG applications are that the local inhabitants have used the land ‘as of right’ for a period of at least 20 years. This assumes long, uninterrupted use, without permission, force or secrecy.
- 6.6 Where a site is registered as a TVG, it is granted protection by the Inclosure Act 1857 and the Commons Act 1876 from development or disturbance. The site may be de-registered under section 16 of the Commons Act 2006 in exchange for other land which will be registered as a TVG by order of the Welsh Ministers.

Cost

Welsh Government

- 6.7 There is no cost to the Welsh Government in relation to applications for TVG registration as they have no role to play in their determination. CRAs may engage a Planning Inspector to hold an inquiry into an application for registration, with the Inspector reporting to the CRA and not the Welsh Government or Planning Inspectorate. The CRA will reimburse the Planning Inspectorate directly for the Inspector's costs.

Local Planning Authorities

- 6.8 Although the CRA is normally within the same authority as the Local Planning Authority ("LPA"), they must both co-operate on applications where land is registered as a TVG. The cost of the LPA contacting the CRA where there is a planning proposal would form part of their administrative duties, this is anticipated to be a standardised notification memorandum or letter for a national park authority, and is estimated to cost local planning authorities £49 a year.
- 6.9 The estimated cost of an LPA producing a notification letter is based on 10 minutes for a planning officer to check if land has entered the planning system and 20 minutes to form a response. A planning officer has an average hourly rate of £17. Therefore, to respond to town and village green applications per year for LPAs would be:

$$£8 \times 6.1 \text{ (average number of applications per year)} = £49$$

Commons Registration Authorities

- 6.10 The 22 CRAs are responsible for maintaining the register of TVGs in Wales under section 1 of the Commons Act 2006. They bear the cost of the registration process, which can include administrative and management-level staff processing the application, internal and external legal advice, and the costs associated with a public inquiry and/or committee hearing, where applicable.
- 6.11 An application to register land as a TVG is often administered by a legal officer of a CRA and is decided by the authority. Some TVG applications are decided through a public inquiry, often in cases where the CRA owns the land or to demonstrate transparency in reaching a decision.
- 6.12 Evidence that we have received from 19 of the 22 CRAs suggests that there were 16 TVG applications between 2015 and 2016 in Wales. This equates to 5.3 applications per year. Assuming an equal distribution of applications and adjusting the figures to reflect the remaining 3 CRAs, suggests a total of 6.1 applications per year in Wales. Each application took an average of 2 years to consider.

- 6.13 The cost of administering an application for a TVG may vary on a case by case basis, depending on whether that application went to a public inquiry or otherwise. The cost to the Planning Inspectorate of undertaking a public inquiry has not been assessed as part of this impact assessment, as their costs are borne by the CRAs.

Table 1

A	Number of TVG applications per year	6.1	Average number of applications received per year from 19 CRA returns (5.3), averaged to 22 CRAs. ((22 / 19) x 5.3)
B	Share of applications going to public inquiry	49%	Average number of applications going to inquiry per year (2.6) divided by the 5.3 TVG applications per year
C	Estimated average cost of public inquiries	£29,000	Based on the average of the case studies received from CRAs which went to public inquiry.
D	Basic CRA processing costs, excluding public inquiries	£1,400	Based on CIPFA benchmarking survey of CRAs.
E	Estimated cost to CRA per application	£15,600	(B x C) + D
F	Total annual cost to CRAs	£95,200	A x E

Development Industry

- 6.14 There are direct costs to landowners and developers arising from the current TVG registration system, irrespective of the outcome of an application. Such costs are incurred through activities such as objecting to a TVG application, legal costs, delays to development or even the total abandonment of a project.
- 6.15 Developers acquire land at a certain value, which reflects the potential of that land for development. The potential development value of land can reduce, in some cases significantly, upon registration as a TVG. This is perceived to be due to the difficulties in being able to develop land registered as a TVG because of the protection afforded to it. This can leave developers with a devalued area of land which can be difficult to dispose of. Whilst this cost is not quantified due to the commercially sensitive nature of land transactions, it is an issue that has been raised by developers when making observations on the TVG regime.

- 6.16 The most frequent direct costs to landowners or developers arise from professional fees paid to address objections to TVG applications. This may involve the instruction of a solicitor, Counsel, a surveyor and providing evidence to prove that the land has not been in uninterrupted recreational use, without permission, force or secrecy for 20 years. Those costs will increase further where the application is heard at a public inquiry.
- 6.17 Other costs to landowners or developers relate to the abandonment or delaying of plans to develop land. Such costs are difficult to quantify and vary depending on the development type and financial model of each proposal, as well as the length of delay or whether the development must be restricted or abandoned altogether. Losses to developers resulting from delays may include contracting costs, the loss of potential rental or investment income, extra finance costs and project management fees. Abandonment of a development where building work is completed, or partially completed may result in further costs, including the total loss of investment and depreciation in land value.
- 6.18 Evidence submitted by developers in England to DEFRA's consultation on the registration of new town or village greens indicated that the average cost of a TVG application to the developer is £48,588. This cost does not include the loss of development land value. There is no reason to assume that this figure would be substantially different for applications in Wales given that the procedure for the determination of TVG applications follows a similar process.

Table 2

A	Number of TVG applications per year	6.1	Average number of applications received per year from 19 CRA returns (5.8), averaged to 22 CRAs ((22 / 19) x 5.3)
B	Estimates cost to developer per TVG application	£48,588	Based on consultation responses to DEFRA's consultation on the registration of new TVG (July 2011)
C	Costs to the developer	£296,400	A x B

Applicants for TVG registration

- 6.19 Responses to DEFRA's consultation on the registration of town and village greens (TVGs) indicated that the time taken to produce a TVG application ranges from 9 days to 22 days, based on three responses. It is assumed that a similar figure applies to Wales, given the similar requirements to put together an application. However, this range and amount of responses is not considered sufficient to provide quantified estimates of applicants' costs.

Further, it is difficult to estimate the cost of a person's time, given that little is known of their background, skills, qualifications and availability.

- 6.20 Whilst there is no application fee for the production of a TVG application, it is expected that an applicant collects evidence forms from residents, generates support, prepares an application, gives evidence at a public inquiry and incurs legal costs.

Third Parties

- 6.21 There are costs to third parties for engaging in the process in terms of time spent and any donation that they make towards a campaign for the registration of a TVG.
- 6.22 It is difficult to quantify the cost of third party participation in the process as there is no evidence available as to the average amount of time that a member of the public would spend contesting or supporting a TVG application. Much is dependent on whether third parties share similar characteristics to either the applicant or the developer.

Benefits

Welsh Government

- 6.23 There are no identifiable benefits to the Welsh Government.

Local Planning Authorities

- 6.24 The existing TVG registration system impacts on LPAs by introducing delays where an application to register a TVG is made where land has entered the planning system.

Commons Registration Authorities

- 6.25 There are no known benefits to CRAs.

Development Industry

- 6.26 Unless a landowner voluntarily registers their land as a TVG, there are very few benefits that the landowner may accrue from the registration of a TVG. Aside from the recreational benefit that registration as a TVG may bring the development value of that land may decrease.
- 6.27 Whilst our evidence suggests that the determination of an application to register a TVG may be costly and time-consuming, the determination of such an application will resolve any uncertainty about the status of the land, be it a

successful or unsuccessful application. This will provide the landowners with certainty and confidence in any future plans for their sites.

- 6.28 For those developers who are looking to gain consent for development on their land, a disadvantage will arise through the increased difficulty in gaining permission for development on that land and through the time spent objecting to applications to register a TVG.

Applicants for TVG registration

- 6.29 Whilst there are no evident financial benefits to the present system, benefits to the applicant arise in situations where the land is registered as a TVG, and is protected from development and interference. This may promote health and wellbeing locally, or may be motivated by a desire to maintain the value of existing property in the area.
- 6.30 Where an application is unsuccessful, any delay caused by the period for determination of the TVG application may be seen as generating short-term benefits. Any delay allows for continued use for recreation, and the potential for the abandonment of development proposals, should the delay cause a scheme to be unviable. Any delay caused may also allow time for publicity and for local support to be generated to secure the land for future recreational use.
- 6.31 There is presently no fee for TVG applications, allowing any potential applicant to register a TVG at no cost.
- 6.32 Whilst there is a cost to the applicant (reflecting the time spent completing the application and gathering evidence), the perceived benefit to them far outweighs the costs incurred to register a TVG.

Third Parties

- 6.33 Depending on the stance of the third party, they will share similar assessed benefits to either the landowner or to the applicant for a TVG registration.

Option 2 – Commence relevant sections from the Planning (Wales) Act 2015.

Description

- 6.34 This option would see the commencement of sections 52 and 53 of, and Schedule 6 to the 2015 Act, together with relevant subordinate legislation.
- 6.35 Section 52 of the 2015 Act amends section 15A of the 2006 Act so the ability to deposit landowner statements applies in Wales. The deposit of a landowner statement brings an end to any period during which persons have undertaken

sports and pastimes on the land in question as of right and limits the time period in which an application to register land as a TVG can be submitted.

- 6.36 Section 53 of the 2015 Act amends section 15C of the 2006 Act and introduces Schedule 6 to the 2015 Act into the 2006 Act. Section 15C of the 2006 Act excludes the right of a person to apply for the registration of a TVG, in certain circumstances (trigger events), unless a corresponding terminating event is applied.
- 6.37 Regulations will provide the necessary detail for deposit of landowner statements under section 15A of the 2006 Act.

Cost

Welsh Government

- 6.38 This option will result in a one-off cost to the Welsh Government by providing guidance on the reforms this option proposes for CRAs.
- 6.39 Based on the average daily salary for a HEO grade officer and the time taken to produce guidance, it is estimated to cost the Welsh Government will be approximately £1200¹.

Local Planning Authorities

- 6.40 LPAs would incur similar costs as those identified in Option 1, however, we would expect to see a reduction in the number of applications submitted to register land as a town or village green under this option. Therefore, we would anticipate the £49 cost to LPAs in Option 1 to be reduced.

Commons Registration Authorities

- 6.41 CRAs would expect to incur similar costs to those identified in Option 1, however, as with LPAs, these cost would be expected to reduce based on the anticipated reduction of applications submitted to register land as a town or village green. However, as we are unable to calculate a projected reduction in application numbers, we cannot put a monetary figure to these costs.
- 6.42 Similarly, there will no additional costs to CRAs for undertaking the work which would arise from this option, as they would have the ability to charge a relevant fee to applicants which would recover their costs for providing this service.

¹ Based on the average weekly salary of an HEO employee, multiplied by 2 weeks to produce guidance

Development Industry

- 6.43 Where a landowner wishes to deposit a statement to a CRA under this option, they will also be required to submit a relevant fee to offset the costs incurred by the CRA.
- 6.44 However, it is not possible to quantify these costs to applicants as our evidence indicates CRAs have different people in different roles undertaking work relating to commons land, which results in different costs. For example, there may be solicitors, rights of way officers and dedicated commons land officers doing the same work and setting standard fees would not achieve true cost recovery.
- 6.45 Therefore, any fee set by CRAs to achieve cost recovery will vary from authority to authority. For example, a sample of CRAs in England sees fees ranging from £220 to £504, however, these costs are discretionary and will only apply if landowners deposit a statement.

Applicants for TVG registration

- 6.46 The costs to applicants to register land as a TVG will be the same as option 1. However, because this option seeks to prevent applications being submitted to register land as a TVG solely as a means to prevent lawful development, we would anticipate there being a reduction in the number of these applications being submitted due to the implementation of trigger events.

Third parties

- 6.47 There are no identifiable costs to third parties under this option.

Benefits

Welsh Government

- 6.48 This option will have a positive impact to the Welsh Government as the overlap between the commons registration system and the planning regime will be removed.
- 6.49 Furthermore, it also provides greater certainty for proposed developments which may be put before the Welsh Ministers. For example, if a large housing development was proposed, the Welsh Government can have greater certainty this development will go ahead, without the threat of a TVG application being put forward to prevent development.

Local Planning Authorities

- 6.50 The main benefit to LPAs is land allocated for development in their Local Development Plans will no longer be subject to potential TVG applications.
- 6.51 This allows Local Development Plans to be implemented as adopted and would reduce the amount of abortive work carried out by LPAs where proposed development, as allocated in a development plan, is subsequently restricted or abandoned because the land becomes registered as a TVG.

Commons Registration Authorities

- 6.52 This option will result in a reduction of applications submitted to register land as a TVG. However, although CRAs would now have to process landowner statements deposited under section 15A of the Commons Act 2006, they would require far less time and resource, when compared to TVG applications.

Development Industry

- 6.53 Where an application is submitted to register land as a TVG, this creates uncertainty among the development industry as to the future of the land, particularly where it has entered the planning process. This option will therefore provide more certainty for developers.
- 6.54 Furthermore, the submission of landowner statements under section 15A of the Commons Act 2006 will be entirely at the discretion of landowners. They would be able to protect their land from TVG registration and retain the development value of the land, which would be lost as a result of TVG registration.

Applicants for TVG registration

- 6.55 Although this option seeks to prevent the submission of applications to register land as a TVG solely to prevent lawful development, there will continue to be opportunities for these applications to be submitted within a prescribed timeframe.
- 6.56 Similarly, landowners may also allow continued recreational use of their land by the public if they wish, which is a benefit to the community.

Justification for two options

- 6.57 The principle for reforming the TVG system in Wales has already been established through the implementation of the 2015 Act².
- 6.58 Therefore, the only potential options available would be to retain the current system for TVG, or bring into force those relevant provisions contained within the 2015 Act which seek to address the issues surround the registration of TVGs creating barriers to development.

Summary and preferred option

- 6.59 The current TVG registration system provides legal protection to land from development and interference on sites which have been used for recreational purposes by local or nearby residents for the preceding 20 years, or over.
- 6.60 Registered TVGs can have positive impacts on people and communities, though promoting health and wellbeing, as well as providing a public good.
- 6.61 There is however, evidence that the TVG registration system is being used as a method for preventing the development of land. TVGs can be registered on sites which have deemed planning permission, on which building work may have commenced or have been completed. The system may also be used to undermine land which is subject to a Local Development Order or a Development Consent Order. The Commons Act 2006 and planning legislation are at cross purposes. Development which is considered acceptable under planning legislation can be subject to delays and abandonment with associated economic benefits. It also places a burden of substantial costs on developers and landowners.
- 6.62 Landowners can also suffer a significant loss in the value of their land following registration as a TVG, given that it would be extremely difficult to develop that land thereafter. In those circumstances, a TVG can be proven to be a barrier to development.
- 6.63 Option 2 is the preferred option as it will allow for continued recreational use of land by the public while giving landowners a proactive mechanism for working constructively with the community. Option 2 is considered to be a less restrictive approach to the community and those who engage in the planning system. Whilst it does not address all issues of overlap between the TVG registration system and the planning system, additional protection to development from such applications would be added compared with the existing situation.
- 6.64 Option 2 also draws a clear line that an application to register a TVG cannot be made where relevant trigger events have occurred.

² Sections 52 and 53 of, and Schedule 6 to the Planning (Wales) Act 2015.

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Agenda Item 4.1



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair of Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

02 October 2018

Dear Mick,

Scrutiny of regulations made under the European Union (Withdrawal) Act 2018

Thank you for your letter of 19 September and for our helpful discussion on this matter when we met on 20 September. I note your comments and the decision of Business Committee regarding the revisions to Standing Orders necessary to facilitate the scrutiny of these regulations. The Welsh Government hopes to commence laying draft statutory instruments for sifting shortly, subject to the agreement of the revised Standing Orders in Plenary. We look forward to working with you.

Yours sincerely,

Julie James AC/AM
Arweinydd y Tŷ a'r Prif Chwip
Leader of the House and Chief Whip

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Julie.James@llyw.cymru
Correspondence.Julie.James@gov.Wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 6

Document is Restricted

Welsh Government Impact Assessment Gateway


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1. What action is the Welsh Government considering and why?
2. How have you applied the 5 ways of working under the sustainable Development Principle?
3. What will be the social, cultural, economic and environmental effects?
4. What are the main impacts for people in Wales?
5. In light of the impact identified, how will the proposal maximise contribution to the well-being objectives and the seven well-being goals and/or mitigate any negative impacts?
6. How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?
7. Declaration

Title of proposal:	Renting Homes (Fees, etc.) (Wales) Bill
Official completing the gateway (name):	Private Sector Housing Team
Department:	Housing Policy
Head of Division/SRO (name):	Emma Williams
Cabinet Secretary/Minister responsible	Rebecca Evans AM
Date	2 May 2018

1. What action is the Welsh Government considering and why?

How will action by the Welsh Government improve the social, economic, environmental and cultural well-being of Wales?

 *What issue does the proposal seek to address?*

 *Set out objectives and intended effects*

The Welsh Government is working to achieve a vision of a vibrant, transparent and accessible Private Rented Sector (PRS). Having already legislated to improve management standards and simplify tenancy agreements in the PRS, the Welsh Government believes that now is the time to act on expensive up front fees and charges. Such fees present a significant barrier to entering the PRS, and this legislation is intended to remove that barrier.

The PRS has become increasingly important in recent years, and is set to continue to grow as the population increases in future. Between 2000/01 and 2014/15 the number of privately rented dwellings in Wales has more than doubled, and now accounts for around 15% of dwelling stock.¹ Wales' population is projected to increase over the next 20 years, possibly by around 5%. The number of households in Wales is projected to grow faster than the overall population, led by an expected increase in single person households of over 30% over the same period.²

The Welsh Government commissioned research into fees charged to tenants from the Cambridge Centre for Housing and Planning Research, published in August 2017³, which found:

¹ Census data: <http://gov.wales/docs/statistics/2014/140225-2011-census-characteristics-households-en.pdf>. Dwelling stock estimates: <http://gov.wales/docs/statistics/2017/170427-dwelling-stock-estimates-2015-16-en.pdf>

² Future Trends Report 2017, Welsh Government: <http://gov.wales/docs/statistics/2017/170505-future-trends-report-2017-en.pdf>

³ Clarke et al, *Research into letting agent fees to tenants*. Cardiff: Welsh Government, GSR report number 48/2017. <http://gov.wales/statistics-and-research/research-letting-agent-fees-tenants/?lang=en>

- There is evidence that upfront fees to tenants exacerbate difficulties in accessing the PRS. There is a wide disparity between fees charged by agents for nominally similar activities.
- There is no compelling evidence as to why tenants should pay fees rather than the landlord. The majority of the work undertaken by agents is work that the landlord would otherwise be doing themselves, and is therefore a service provided for a landlord.
- The landlord chooses the agent and can negotiate on fees, or choose a different agent if unhappy with the offer. Tenants are rarely able to choose an agent independently of a property.
- There appears little justification for renewal fees in any circumstances, or for exit fees except in a situation where a tenant leaves early.
- There is a strong case for allowing agents or landlords to charge a small holding deposit, and for allowing agents to charge tenants who damage things, or who want to leave part-way through a fixed term contract.
- If fees to tenants were banned, agents could recoup the costs of setting up new tenancies in the fees they charge to landlords. Even if these were then passed on to tenants via higher rents, this is perceived as being preferable to charging fees as it improves transparency and facilitates comparability between options for tenants.
- There would be an increased incentive for landlords to self-manage if their fees increased. However, this research suggests that most landlords, if otherwise happy with the service their agent provides, would be unlikely to do so.
- Increased fees to landlords, in conjunction with other recent tax reform, may cause some landlords to sell up and overall this is likely to exert a small downward pressure on the speed of growth of the PRS in Wales.

Additionally, evidence from the Citizen's Advice Bureau suggests that fees have increased in recent years at an above-inflationary rate.⁴ The same research revealed that fees caused significant financial difficulty to renters, meaning 64% of survey respondents had to borrow from friends and family, had difficulty paying other bills, went overdrawn or took out a loan to cover the charges. It has also been suggested that the rate of deposit charged has increased over time.⁵

The Bill intends to remove or reduce the financial barriers which potential tenants face in trying to access accommodation of their choice, which is likely to have wide ranging positive impacts on well being goals.

The main provisions of the Bill:

- Ban fees payable by tenants in connection with the granting, continuing and renewing of tenancies (by letting agents and landlords).

⁴ Citizen's Advice Bureau, *Still Let Down: How letting agents are still exploiting private renters – and what this tells us about consumer protection*, 2015. <https://www.citizensadvice.org.uk/cymraeg/about-us/policy/policy-research-topics/housing-policy-research/still-let-down/>

⁵ Department for Communities and Local Government (UK Government), *Banning letting agent fees paid by tenants: a consultation paper*, April 2017, p20. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607479/Banning_letting_agent_fees_paid_by_tenants_consultation.pdf

Centre for Economics and Business Research 'Protecting Generation Rent. A Report for money.co.uk', January 2016. Shows the average UK increase is 16% between 2010-2015. For Wales this is between 5-6%. <http://1c48262defeb1866bc52-67e2d31b8004cbc50ed34ec085b9754f.r83.cf3.rackcdn.com/Protecting-Generation-Rent.pdf>

- Give Welsh Ministers powers to regulate the amount of security deposit that can be taken.
- Provide exceptions to the ban to allow for:
 - Rent
 - A returnable holding deposit capped at the equivalent of one week's rent
 - A security deposit
 - Payments in default of the standard occupation contract
- A person guilty of an offence will, on conviction, be liable to a fine. Local Housing Authorities will have powers to issue Fixed Penalty Notices to discharge the liability of a person who has committed an offence, and will also have information powers to assist with their enforcement action.

 *Explain how the proposal fits with the National Strategy and well-being objectives*

Prosperity for all identifies Housing as one of the Welsh Government's five priority areas, recognising that good quality housing brings a wide range of benefits to health, learning and prosperity. Given that the PRS is becoming a more widespread tenure and is set to increase in size further over the coming years, addressing barriers to tenants being able to find and secure property in the sector is an important step.

The Bill also relates directly to several of the well-being objectives:

- Build healthier communities and better environments
 - The Bill 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. 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.
- Support young people to make the most of their potential
 - The PRS provides housing for a higher proportion of younger people (under 35) than other tenures. Ensuring that the up front 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.

2. How have you applied the five ways of working?

How have you applied the five ways of working described by the Well-being of Future Generations Act?

Long term

The PRS has increased substantially over the last decade, and is set to continue to play an important part in the Welsh housing market in future, particularly considering both the projected increase in population, and the trend towards an even larger increase in number of households over time.

Research has identified that letting agent fees have been increasing substantially over time, and thus are likely in future to present an even greater barrier to potential tenants than at present. Similarly, there is a suggestion that deposits have increased over time, so allowing Welsh Ministers to impose a cap at a later date will ensure that any significant changes in that area can be addressed.

Working to make the PRS an attractive and affordable tenure of choice will assist in dealing with the increasing housing demands we expect in the next 20 years.

Prevention

Recent research has shown that those who are homeless or at risk of homelessness find it particularly difficult to bring together the funds necessary to secure accommodation in the PRS.⁶ With changes in the Housing (Wales) Act 2014 to encourage wider use of the PRS to assist in homeless prevention and remedy, making this option as affordable as possible will assist in prevention, and where prevention is impossible early remedy, of homelessness.

Integration

Welsh Government is working to modernise and regulate the PRS more widely to make it safe, affordable, and effective. The changes brought about by this Bill complement other legislative changes being made by the Welsh Government to make the private rented sector better: Housing (Wales) Act 2014, Renting Homes (Wales) Act 2016.

The ban will also support our work on homelessness, by making it easier for those without access to large lump sums to access the PRS, either independently, or via access to bond assurance schemes run by local authorities. Groups such as refugees, who have access to benefits or other income, but are unlikely to have significant savings, will be assisted similarly.

Collaboration

The legislation continues the drive to make the PRS more transparent and accessible. The innovative thinking that paved the way to the establishment of Rent Smart Wales makes it easier to identify where private rented properties are, and who is responsible for letting and managing those properties. All agents now have to be licensed, which means their staff have to be suitably trained. This means that we can contact all licensed agents and landlords to remind them of any changes in the legislation that impacts on them and what it means for them. Therefore all parts of the sector can easily be invited to comment

⁶ 'Access costs emerged as a key barrier preventing homeless people from accessing the private rented sector... The requirement for a deposit alone was often enough to prevent access to a private rented tenancy, but agent fees and advance rent were also significant barriers.' Reeve, K et al, *Home No less will do*, Crisis, July 2016. https://www.crisis.org.uk/media/237166/home_no_less_will_do_crisis.pdf

on proposals and participate in policy development. Rent Smart Wales also maintains a stakeholder group, which includes representation from the main landlord, agent, tenants and support groups and this group has been involved at every stage in the process and will continue to be so.

Involvement

All the main groups have been fully consulted on the proposal and by involving Rent Smart Wales we can directly contact everyone who is likely to be adversely affected by these proposals as well as many who will benefit.

The formal consultation issued in relation to proposals to act on fees charged to tenants gathered nearly 700 responses, with a good range of responses from affected groups including tenants, landlords, letting agents, advice and representative bodies.

Consultation Summary

Details of the consultation were shared widely by Rent Smart Wales, with all registered or licensed landlords and letting agents emailed directly to invite comments (at the time around 80,000 landlords and 2,600 letting agents in total). The views of tenants groups, as well as other key stakeholders, were actively sought to ensure that a variety of interests were captured to inform the development of policy.

A more detailed analysis of the consultation is available on the Welsh Government website⁷, but key findings from the consultation confirmed that:

- 56% of all respondents agreed with an outright ban on fees.
- 55% of respondents were of the view that a ban on fees would lead to an increase in rents, though many respondents thought that the rise would be negligible and was preferable to up-front fees.
- 90% of respondents believed that fees charged as a result of a default on the part of a tenant, or for services provided at the request of a tenant, should continue to be allowed.
- 64% of respondents agreed that holding deposits should be allowed, though there were concerns about both the amount of holding deposit required and the terms by which they were returnable.
- 91% of tenants said that they have been charged fees to rent properties.
- When fees were charged, tenants said that, on average, they were charged £249 to begin a tenancy, £108 to renew a tenancy, and £142 at the end of a tenancy.
- Two-thirds of tenants were made aware of fees before they entered into an agreement.
- 62% of tenants said that fees have affected their ability to move into a rented property, while 86% said that fees have affected their ability to use an agent.
- 99% of agents charge fees to tenants – an average of £181 per tenancy.
- Only 19% of landlords charge fees to tenants – an average of £66 per tenancy.
- Landlords are generally unaware of what fees their agent (if they use one) charge to tenants. 61% of landlords did not know what their tenants were charged.
- 92 -95% of agents charge fees to landlords. Agents say that the average fee charged for letting a property is £233, whereas landlords say it is £265.
- 61% of landlords say that an increase in fees charged to them would affect their

⁷ <https://beta.gov.wales/sites/default/files/consultations/2018-02/180226-fees-charged-to-tenants-responses.pdf>

decision on using an agent in future.

In addition to the consultation exercise, a stakeholder discussion was held in Cardiff City Hall on 12 December 2017 to test the understanding of how any future legislation might work in practice. The discussion also focused on providing quality assurance of the information being used to inform the RIA; testing key assumptions about the impact of the Bill. Participants in the discussion included a wide range of representatives operating in the PRS, including ARLA, NLA, RLA, The Property Ombudsman, Rent Smart Wales, WLGA, CAB, Shelter Cymru, NUS Wales, TPAS, Let Down in Wales, MyDeposit, Deposit Protection Service and Tai Pawb.

3. What will be the social, cultural, economic and environmental effects?

3.1 Social

3.1.1 How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal impact on people and communities?

The intention of the Bill is to make private sector housing more accessible, by reducing the up front costs required to secure a property. Although this will positively impact many tenants in the PRS, it will have a particular impact on those with a low income, or who find it difficult or impossible to gather the up front costs required to secure a property at present.

Current and potential private sector tenants

The largest group affected by this Bill will be those renting in the PRS – there are currently reckoned to be around 202,000 PRS households in Wales. Fees can be charged throughout a tenancy, but are most often charged in relation to the setup of a tenancy, including for referencing, preparing the agreement, inventory, viewings and related tasks. Some tenants are also charged for tenancy renewal and exit. Estimates of the average fees charged on tenancy setup vary: research for Welsh Government puts the initial figure at £178, but other estimates from Citizens Advice Bureau and Shelter put this figure at £337 and £355 respectively.⁸

Letting Agents

⁸ Research for Welsh Government looks at Wales-only information, but CAB and Shelter research is based on UK wide data. Clarke et al, *Research into letting agent fees to tenants*. Cardiff: Welsh Government, GSR report number 48/2017, p 16. <http://gov.wales/statistics-and-research/research-letting-agent-fees-tenants/?lang=en>.

Citizen's Advice Bureau, *Still Let Down: How letting agents are still exploiting private renters – and what this tells us about consumer protection*, 2015. <https://www.citizensadvice.org.uk/cymraeg/about-us/policy/policy-research-topics/housing-policy-research/still-let-down/>

Shelter, *Letting agencies: the price you pay*, 2013, p10.

https://england.shelter.org.uk/__data/assets/pdf_file/0006/671649/Letting_agencies_-_The_price_you_pay.pdf

Letting agent fees are more regularly charged and at higher rates than those charged by landlords. Research speculates that fees could account for one fifth of letting agent income, and therefore the Bill will necessitate a change in business practices of letting agents.⁹ Potential consequences include: reduction in service to tenants, increase in fees to landlords, reduction in staffing, reduction in profits.

Landlords

There is evidence that some landlords charge fees to tenants, however research suggests that the proportion of landlords charging fees, and the amount charged, is much lower than letting agent fees.¹⁰ However, landlords may feel more of an impact from the Bill if letting agents choose to pass on some or all of the fees which they would have charged to tenants to landlords instead. Landlords being charged increased fees may choose to accept the fees, either absorbing them or charging a higher rent (although market forces may not allow a higher rent to be charged), or they may alternatively choose to switch letting agent to one charging less, remove their properties from letting agents and self-manage, or divest of their portfolio entirely. Several of these potential outcomes would have an impact on tenants, either through rental charge or availability of properties.

Benefit claimants

One potential negative impact of a ban on fees would be if it resulted in a rent increase. Those in receipt of Housing Benefit or the housing costs element of Universal Credit may be disproportionately adversely affected by rent increases, as the amounts payable by these benefits are governed by Local Housing Allowance rates, which are usually set at the 30th percentile of rents in the Broad Rental Market Area, but which have been frozen by UK Government from 2016 until 2020 at the 2015 rates. Therefore as rents increase, the chargeable rent in an area will increasingly not be reflected by the LHA rate which people can claim, and therefore those tenants will need to either find accommodation reflecting a much lower level in the rental market or will need to make up a shortfall in rent from other income sources, which are also being restricted by the benefit freeze and cumulative effects of welfare reform.¹¹

Vulnerable Groups

Letting agents argue that fees are justified by the services that they render to tenants directly, among which they list helping tenants with wider tasks such as 'finding local schools or overseeing an international move... [they also] suggested that they would no longer be able to help those on lower incomes or in receipt of housing benefit as helping these tenants is more time-consuming'.¹² If this were to occur, those who are vulnerable for different reasons, such as not speaking English, being unable to deal with their own

⁹ Capital Economics, *Letting the market down? Assessing the economic impacts of the proposed ban on letting agents fees*, ARLA Propertymark, 2017, p38. <http://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>
CBRE, *Banning letting agent fees to tenants: Impact of implementation*, 2017, p 10.

<https://www.cbreresidential.com/uk/sites/uk-residential/files/Agent%20Letting%20Fees%20final.pdf>

¹⁰ Research for Welsh Government found that 10% of landlords surveyed charge fees, with a median fee charged of £125. Clarke et al, *Research into letting agent fees to tenants*. Cardiff: Welsh Government, GSR report number 48/2017, p 27. <http://gov.wales/statistics-and-research/research-letting-agent-fees-tenants/?lang=en>

¹¹ For an examination of how LHA rates reflect the current chargeable rents in BRMA's across Wales see Community Housing Cymru, *Postcode Lottery: The impact of applying the Local Housing Allowance rates to general needs social housing tenants in Wales*, October 2017, https://chcymru.org.uk/uploads/events_attachments/The_impact_of_applying_LHA_rates_to_the_social_rented_sector_-_October_2017.pdf

¹² Clarke, et al: p 44.

benefit claims or through age, disability or other reasons may find it harder to complete the tasks necessary to secure a property, or may come to rely more heavily on those support services which they are able to access to do so. However, landlords are in a position to choose a letting agent which provides the services they require for the tenants they wish to attract, if landlords find that letting agents are not supporting tenants appropriately they are in a strong position to shop around to achieve the service they require. Additionally, alternative sources of advice and assistance are available to those vulnerable tenants to meet that need, such as those provided by local councils, and charities such as Shelter and Citizens Advice Bureau. Therefore the risk to tenants posed by a diminishing of services is not considered to be substantial.

3.1.2 Children's Rights

See Annex 1

3.1.3 Equality

See Annex 2

3.1.4 Rural Proofing

3.1.4.1 How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal impact on rural individuals and communities?

The recent increase in the size of the PRS in comparison with other tenures is most obvious in urban centres of South Wales, but the PRS has grown in all parts of the country.¹³ Therefore, the Bill is expected to have a positive effect in rural areas, due to its working to make renting a more accessible and affordable option across the PRS.

As part of this assessment, contact was made with the Rural Housing Enablers group at their meeting in December 2017. No negative impact in rural areas was identified.

A full rural proofing impact assessment is not considered to be required for this proposal.

3.1.5 Health

3.1.5.1 How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal impact health determinants?

The proposals are expected to have an overall positive benefit on health, with a particular contribution to make in reducing health inequalities. People such as those on lower incomes, other vulnerable groups and those in poorer health are more likely to be reliant

¹³ Christine Whitehead and Kath Scanlon, *The Potential Role of the Private Rented Sector in Wales*, Public Policy Institute for Wales, September 2015. <https://sites.cardiff.ac.uk/ppiw/files/2015/11/Report-The-Role-of-the-Private-Rented-Sector-FINAL.pdf>

on the PRS, either in the short term or longer term, and so are expected to be key beneficiaries from the proposal.

Research on the health impacts of housing shows that the self-reported health of adults who are private renters is poorer than in other tenures.

Private rented sector tenants experience poorer mental health and wellbeing, are more likely to suffer from life-limiting health problems or disabilities, to smoke and to visit the dentist or optician less often than adults in other tenures. Private renting adults in the 45-64 age group experienced these poorer health factors at a rate higher than other age groups.

Children in the private rented sector are more likely to suffer mental health problems than in other sectors. The rate of hazards presenting health and safety risks to occupiers in the private rented sector was higher than in any other sector when measured in 2008, and the cost of remedying these hazards was £2,500 per dwelling, more than in any other sector of tenure. The levels of general disrepair in the private rented sector are also higher and more costly to fix than in other sectors.¹⁴

This Bill is just one of the ways the Welsh Government is working to improve the private rented sector, and is closely allied with the Renting Homes (Wales) Act 2016, which, once fully commenced will introduce model contracts and new fitness for human habitation regulations which will help to address inconsistency and confusion in the sector and help drive up standards. It also builds on Part 1 of the Housing (Wales) Act 2014, which introduced the mandatory registration of landlords and licensing of managing landlords and agents, to improve the standards of management in the sector. This Bill will be another important contributor to this improvement agenda.

Lifestyles

Reducing the financial barrier to finding accommodation of choice should make it easier for prospective tenants to gather the funds required to move to a property more suitable to their needs (especially considering that research has shown that fees have been identified as a reason why people do not move).¹⁵

Unexpected fees can cause financial distress, which can lead to worry and stress, and which can sometimes extend to more serious mental health problems. Making costs predictable, and removing the potential for unexpected fees to be levied throughout a tenancy should make it easier for tenants to budget, and to fully understand their financial responsibilities to a property before they take on a tenancy. This should have a positive impact on mental health. There are also potential physical health benefits from removal of fees, resulting from the income saved which would be available to spend on good quality food, recreational activity (including physical activity) and other essential health-related

¹⁴ Information from the Health Impact Assessment for the proposed Wales Agent and Landlord Licensing Scheme (created by Part 1 of the Housing (Wales) Act 2014): http://whiasu.publichealthnetwork.cymru/files/6514/9554/0684/proposed_Wales_Agent_and_Landlord_Licensing_Scheme.pdf

¹⁵ See footnote 6, above. Fees were also identified as a deterrent to moving by CBRE, *Banning letting agent fees to tenants, Impact of implementation*, March 2017, p6. <https://www.cbreresidential.com/uk/sites/uk-residential/files/Agent%20Letting%20Fees%20final.pdf>

outgoings.

Social and community influences on health

Removing the barrier of fees to potential tenants looking for property may assist them to locate property in an area of their choice, supporting people to remain in their community, or to move to a community of their choice. Could therefore indirectly contribute to aspects such as strengthening family networks and wider community networks?

It is possible that stripping fees out of the system may incline letting agents to more regularly offer longer tenancies, or allow tenancies to roll over into periodic tenancies, as the financial inducement to charge for setting up another fixed period tenancy will be removed. The increased security of a longer term tenancy could have a positive impact on the health of tenants.

As mentioned above, there is the potential that letting agents will pass a proportion of the lost fees to the landlord to pay, and that they in turn may pass those costs on to tenants through a higher rental charge. There is also a possibility for a shrinkage of the PRS should landlords decide that they are not able to cope with higher fees and stop letting properties. In both of these instances, there may be potential for property of choice to be more difficult to secure. These potential outcomes will be mitigated by the requirement for the local market to accept a rent increase, and the likelihood that property being divested by landlords will be retained as PRS stock, since as noted in the introduction to this document, the demand for PRS accommodation, and correspondingly the business opportunity available to prospective landlords, is due to increase substantially over the coming years.

Mental wellbeing

As mentioned above, tenants in the PRS are likely to experience poorer mental health and wellbeing. Alleviating the stress which unexpected and expensive fees are likely to cause tenants is likely to have a positive impact on mental wellbeing.

Living/environmental conditions affecting health

The ability to move house more readily may help tenants to address problems associated with the condition of their current property, or to access property which more adequately meets the tenant's needs. Considerations which may be taken into account in searching for property, which could have a positive health outcome may include built environment, neighbourhood design, noise, air and water quality, green space, community safety etc. Should rents increase, this may exert pressure on the availability of properties which are affordable for those who rely on housing benefit or the housing costs element of Universal Credit. However, taking away the up-front financial barrier to a tenancy, and ensuring that the rental cost is the only cost tenants need to budget for over the lifetime of their tenancy, is still likely to make it easier for potential tenants to identify and secure appropriate, affordable property.

Economic conditions affecting health

The Bill should help tenants to access property of their choice by removing the up-front fees charged, which can be a significant barrier to accessing the sector. This could help benefit the local economy by making it easier for people to access property in a location of their choice, close to work, family, support structures and facilities. There could be economic benefits to tenants too if tenants are able to more easily move to access employment. These impacts would be particularly beneficial to those on a low income, who currently may struggle or find it impossible to move due to fees.

Again, there is the potential that banning fees may contribute to an increase in rents, which would be problematic for those tenants reliant on being able to rent property close the Local Housing Allowance rate for their area and property size, meaning that they would be excluded from the market due to their economic status.

Access and quality of services

As discussed under living/environmental conditions above, any improvement in the ability of tenants to move could allow them to secure better access to the services they use, such as medical services, public amenities, education and retail.

Macroeconomic, environmental and sustainability factors

It is not expected that any landlords choosing to divest of property either due to the inability to charge fees or any increased fees charged by letting agents will have a material impact on the availability of property in the PRS, since it is likely that property will be retained within the PRS, especially given that the tenure is projected to become more popular and grow significantly in the coming years. Therefore there are no significant impacts are identified at this time.

3.1.5.2 Could there be a differential health impact on particular groups?

There is the potential that ending fees will have an impact on the rental level charged for accommodation, which could have an impact on those with a lower income dependent on benefits. However, whether this is likely to translate to a definite health impact is not certain.

Census data shows that the PRS has a proportionately higher population of younger people, and those from ethnically diverse backgrounds than the population as a whole. The PRS also includes a large number of students. These groups will particularly benefit from the proposal, as will those, as mentioned above, who have a low income or do not have the ability to save the sums required to pay fees in order to access or move within the sector. This group will include those who are homeless or at risk of homelessness. It is considered that the health benefits considered in the previous section will be felt most by these groups.

Similarly, as discussed in the previous section, if a ban on fees leads letting agents and landlords to make decisions which impact rent levels, this could undermine some of the

benefits afforded by the lack of fees for those tenants reliant on support from housing benefit or housing costs element of universal credit to pay their rent. However it is still considered that the move will assist in making the PRS more accessible, and that knowing the predictable charges which will be levied throughout a tenancy at the beginning will assist tenants to locate and secure accommodation most suitable to their needs and budget.

A full health impact assessment is not considered to be required for this proposal.

3.1.6 Privacy

3.1.6.1 Will the proposal involve processing information that could be used to identify individuals?

No

3.2 Cultural

The Well-being of Future Generations Act goal for culture is 'A society that promotes and protects culture, heritage and the Welsh language and which encourages people to participate in the arts and sports and recreation'. Culture includes museums, archives, libraries and the arts; heritage includes the built historic environment as well as intangible heritage such as traditions; arts encompasses performance and creative sectors including music, literature, theatre and art, whilst sports and recreation include both elite and community sports as well as opportunities to participate in wider outdoor recreation.

3.2.1 How will the proposal actively contribute to the goal to promote and protect culture and heritage and encourage people to participate in the arts sports and recreation? (for Welsh Language see section 3.2.3)

The Bill intends to allow tenants to make informed decisions about the ongoing costs of a rental property, without needing to consider unexpected fees. This should assist in tenants being able to more easily budget for their accommodation. Removing the barrier that upfront fees represent should also help prospective tenants to move into and within the PRS more easily. Both of these elements should help tenants look for property which meets their needs, and to more easily identify whether such property is within their financial means. This could include whether cultural, sporting or recreational activities are a priority for them when looking for property.

3.2.2. Is it possibly that the proposal might have a negative impact on the promotion and protection of culture and heritage, or the ability of people to participate in arts, sport and recreation? If so, what action can you take to avoid or reduce that impact (for example by providing alternative opportunities)?

Should letting agents and landlords decide to recoup lost fee income or increased costs of using a letting agent through an increase in the rent, this could have an impact on the properties that some tenants are able to afford. This is likely to have the most impact on those (as discussed elsewhere in this document) who are reliant on support from housing benefit or the housing costs element of universal credit to afford property in the area of their choice. However, it is considered to be beneficial that the upfront, regular or unexpected fees are removed, to allow tenants to make an informed choice about affordability before they commit to a property.

3.2.3 Welsh Language

See Annex 3.

3.3 Economic

When developing policy, you need to make an overall assessment based on the best available evidence of monetary and non-monetary, short and long term costs and benefits. You should consider how businesses of different types, local government, the third sector and the public in general will be affected. You should establish which groups or sectors will be disadvantaged and which will benefit. You should also establish what costs may be borne by Welsh Government itself and identify that you have the relevant budget to cover these costs.

3.3.1 Is legislation proposed?

Yes – a Regulatory Impact Assessment will be published as part of the Explanatory Memorandum for the Bill.

3.3.2 How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal impact third sector organisations?

The major impacts of the Bill will be felt by letting agents, landlords and tenants. However, there are a number of advice bodies which provide support to tenants, such as Citizens Advice Bureau, Shelter and others, whose work will be impacted to the extent that the advice they give to tenants will need to change. These bodies, among others, have lobbied for the banning of fees, based on the experiences of their clients. It is unlikely that any issues which tenants experience in relation to the ban will impose any substantial

additional burden on these organisations.

3.3.3 Justice impact:

- ✚ Are you bringing forward new primary legislation?
- ✚ Are you creating, removing or amending an offence?
- ✚ Could your proposal result in any other impact on the justice system e.g. through increased litigation, need for legal aid, appeal against a decision of a public body?

Yes

A Justice impact assessment will be included as part of the Regulatory Impact Assessment for the Bill.

3.4 Environment

Under Section 9 of the Environment (Wales) Act Welsh Ministers are required to take all reasonable steps to implement the Natural Resources Policy, and to encourage others to take such steps.

You will need to complete the following assessments to ensure all reasonable steps have been taken:

All proposals:	<ul style="list-style-type: none"> • Natural Resources Policy national priorities, challenges and opportunities 	3.4.1
	<ul style="list-style-type: none"> • Biodiversity 	3.4.2
	<ul style="list-style-type: none"> • Climate Change 	3.4.3
Proposals with a spatial element:	<ul style="list-style-type: none"> • Strategic Environmental Assessment 	3.4.4
Proposals relating to change of land use:	<ul style="list-style-type: none"> • Environmental Impact Assessment 	3.4.5

Proposals which may affect a Special Area for Conservation or a Special Protected Area (SAC/SPA):	Habitats Regulations Assessment	3.4.6
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3.4.1 How will your proposal deliver one or more of the National Priorities in the National Resources Policy (NRP)?

This Bill is not considered to have any impact on National Priorities in the National Resources Policy.

The Bill will assist in tackling health and economic inequalities by removing a significant financial barrier to those wishing to enter or move within the PRS. In doing so tenants will be able to seek accommodation which is more suited to their health needs (discussed further in the health impact questions at 3.1.5) and to effectively budget for their accommodation, since the full ongoing cost of the accommodation will be more easily understood at the outset of the tenancy.

3.4.2 Biodiversity

See Annex 4.

3.4.3 Climate Change

3.4.3.1 How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will your proposal affect emissions in Wales?

It is not considered likely that this Bill will affect emissions in Wales.

3.4.3.2 If the impacts you have identified are significant then you should undertake an assessment using the HM Treasury Green Book.

A more thorough assessment of the effect on emissions is not required for this proposal.

3.4.3.2 How (either positively or negatively), and to what extent (significant/moderate/minimal impact), will the proposal affect ability to adapt to the effects of climate change?

This legislation is not considered to have any specific impact on the ability to adapt to the effects of climate change.

3.4.4 Environmental Impact Assessment (EIA)
3.4.4.1
 An Environmental Impact Assessment is not required for this proposal.

3.4.5 Strategic Environmental Assessment (SEA)
 A Strategic Environmental Assessment is not required for this proposal.

3.4.6 Habitats Regulations Assessment (HRA)
 A Habitats Regulations Assessment is not required for this proposal.

Consider the impact more thoroughly where necessary

You have now decided which aspects of impact need further consideration. Please list them below.

Impact Assessment	Yes/No
Children's rights	Yes
Equality	Yes
Rural Proofing	No
Health	No
Privacy	No
Welsh Language	Yes
Economic / RIA	Yes (in EM)
Justice	Yes
Biodiversity	Yes
Environmental Impact Assessment	No
Strategic Environmental Assessment	No
Habitat Regulations Assessment	No

After Assessing the Impact

4. What are the main impacts for people in Wales?

Fees charged to tenants in the Private Rented Sector currently impose a significant financial barrier to those wishing to enter the sector, or to move within it. There is evidence that fees are increasing, and since there can be a wide disparity in the fees charged for the same services, it is considered that they are often arbitrary and inflated. If the Government does not act to regulate this sector, the likelihood is that fees will continue to rise, and the difficulties encountered by those attempting to access the sector will increase.

This Bill will end the practice of charging for routine tasks associated with granting, renewing or continuing tenancies. This will remove a financial barrier many tenants face which will have a positive impact on all tenants.

Letting agent, and to a lesser extent landlord, fees currently form part of the business model for many businesses, and in order to recoup the revenue that will be lost when fees are banned, letting agents and landlords may change their business models in ways which could have a negative impact on tenants. Potential impacts could include:

- Rent increases
- Diminishing services offered by letting agents
- Reduction in staffing at letting agencies, potentially including letting agency businesses stopping trading
- Landlords choosing to self manage
- Landlords choosing to divest of their portfolios

5. In light of the impact identified, how will the proposal maximise contribution to the well-being objectives and the seven well-being goals and/or mitigate any negative impacts?

What action can the Welsh Government take to strengthen its contribution to a particular goal or to contribute to additional goals?

What action can the Welsh Government take to avoid or reduce a negative impact?

The Impact of the Bill will be monitored and evaluated on an ongoing basis, and formally, via the post implementation review set out in the Regulatory Impact Assessment for the Bill. At these review stages, the contribution of the Bill to the achievement of well-being goals will be assessed. Based on the review of this Bill it will be considered whether further reform is needed to assist in making the PRS a tenure of choice, able to contribute most successfully to the housing needs of Wales.

6. How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?

What plans are in place for post implementation review and evaluation?

The RIA for the Bill outlines plans to assess the impact of the ban in 2023-24. The post implementation review will use a variety of methods to assess the impact of the Bill and to consider the accuracy of the costs estimated in the RIA, including a review of data from national statistics and RSW. Measures may include average rent levels and the number of properties, landlords and agents registered and licensed with RSW. Post implementation review should also consider of the level of enforcement action taken against contravention of the ban. The review is also likely to include a qualitative assessment of the Bill's performance against its objectives, such as interviews to assess tenant, landlord and letting agent satisfaction, and experiences in the letting market following the implementation of the legislation.

In the interim, policy leads will closely monitor the impact of the ban, considering whether additional action is required at an earlier date than this review.

7. Declaration

I am satisfied that the impact of the proposed action have been adequately assessed and recorded.

Name of Senior Responsible Officer / Deputy Director: Emma Williams

Department: Education and Public Services Department

Date: 2 May 2018

Impact Assessment Annexes

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Annex 1: Children's rights impact assessment

1. Describe and explain the impact of the proposal on children and young people.

The Bill will impact all those who rent a home in the private rented sector (PRS), including tenants with children. It is intended that the Bill will make it easier for prospective tenants to secure accommodation since they will not need to raise as much money up-front, and to budget effectively since they will know the full regular costs of the tenancy before they commit, without being charged ad hoc fees throughout. This should have a positive impact on families with children, as with all tenants.

It is not known how many children live in the private rented sector. Census data demonstrates that in 2011 a higher proportion of lone parents lived in the PRS compared to the average across all sectors (17% in PRS, compared to 11% across all tenures). Considering households with dependent children, census data shows that there is a slightly higher proportion than in the general population (34% in PRS, compared to 28% across all tenures).

However, data on the whole population shows that the PRS is becoming a more popular tenure type, and this is likely to mean that a higher proportion of children are accommodated through the PRS than in the past.¹⁶

The Bill aims to make it easier for prospective tenants to enter and move in the PRS, and to make budgeting for accommodation easier. Therefore the Bill is likely to have a positive impact on the children of those prospective tenants who are either able to achieve a PRS tenancy for the first time, or those who find it easier to move to accommodation within the PRS to achieve accommodation more suited to their needs or wants, due to the lessened financial barriers to a new tenancy.

Fees are also currently charged throughout tenancies, for example for renewing a tenancy. The Bill will also ban these fees, which will mean that tenants are able to accurately predict the ongoing costs of their tenancy, without being subject to unexpected and financially onerous charges on top of the rent.

 *How will the proposal affect the lives of children, positively and negatively?*

The intention of legislating on this issue is to remove a financial barrier to the PRS and make it more accessible, both for those wishing to enter the sector, and for those wishing to move within it to a property more suitable to their needs. The Bill is likely to have a positive impact on children of tenants who are likely to face reduced barriers to accessing accommodation of their choice. This could mean moving to an area where there are better job prospects, educational opportunity, support structures, or simply to a property which is more suitable for the tenant's needs, all of which are likely to have a positive impact on the lives of the children of tenants.

One potential negative impact of a ban on fees would be if it resulted in a rent increase.


¹⁶ Between 2000/01 and 2014/15 the number of privately rented dwellings in Wales has more than doubled, and now accounts for around 15% of dwelling stock. (Dwelling stock data) Wales' population is projected to increase over the next 20 years, possibly by around 5% (Welsh Government Future Trends Report, 2017)

Those in receipt of Housing Benefit or the housing costs element of Universal Credit may be disproportionately adversely affected by rent increases, as the amounts payable by either of these benefits are governed by Local Housing Allowance rates, which are usually set at the 30th percentile of rents in the Broad Rental Market Area, but which have been frozen by UK Government from 2016 until 2020 at the 2015 rates. Therefore as rents increase, the chargeable rent in an area will increasingly not be reflected by the LHA rate which people can claim, and therefore those tenants will need to either find accommodation reflecting a much lower level in the rental market or will need to make up a shortfall in rent from other income sources, which are also being restricted by the benefit freeze and cumulative effects of welfare reform.¹⁷

Research and consultation responses have also identified the potential outcome that landlords may choose to divest themselves of their portfolios rather than to either stop charging fees (if applicable) or to deal with increased fees from letting agents as a result of the ban.

Both of these potential impacts could have an effect on the lives of the children of tenants, either in that families would be forced into the cheapest accommodation available (which may have issues around condition, suitability, or location), or that there could become a shortage of property available at the required price point. However, it is not considered likely that the ban will have any significant impact on the amount of property available within the PRS.

Letting agents currently charge fees most frequently, and the fees they charge tend to be higher, than those charged by landlords. Therefore the main impact of the Bill is likely to be felt by letting agents. The potential economic impact of this change will be examined in the Regulatory Impact Assessment. For the purposes of this assessment it should be noted that the children of those who own letting agency businesses, or who are employed as part of the sector, as well as landlords, may be affected by this Bill depending on the extent to which it affects their parents.

 *What evidence have you used to inform your assessment, including evidence from children or their representatives?*

The potential impacts of a fees ban has been examined in research commissioned for Welsh Government.¹⁸ The proposals were also subject to consultation between 19 July and 27 September 2017. A consultation response was published in February 2018.

2. Explain how the proposal is likely to impact on children's rights.

This section requires an assessment using informed judgement of the likely impact of the proposal on children's UNCRC rights. It is vital that you avoid the assumption that the intended outcomes identified above are the same as the predicted impact on children's

¹⁷ For an examination of how LHA rates reflect the current chargeable rents in BRMA's across Wales see Community Housing Cymru, *Postcode Lottery: The impact of applying the Local Housing Allowance rates to general needs social housing tenants in Wales*, October 2017, https://chcymru.org.uk/uploads/events_attachments/The_impact_of_applying_LHA_rates_to_the_social_rented_sector_-_October_2017.pdf

¹⁸ Clarke et al, *Research into letting agent fees to tenants*. Cardiff: Welsh Government, GSR report number 48/2017, p 27. <http://gov.wales/statistics-and-research/research-letting-agent-fees-tenants/?lang=en>

rights.

You will need to carefully consider how the intended outcomes relate to children's rights and what impact they will have. There may be predicted impacts which are not intended outcomes from the proposal.

Articles of particular relevance to this legislation:

Article 24 (Health and health services): Children have the right to good quality health care – the best health care possible – to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy. Rich countries should help poorer countries achieve this.

Article 27 (Adequate standard of living): Children have the right to a standard of living that is good enough to meet their physical and mental needs. Governments should help families and guardians who cannot afford to provide this, particularly with regard to food, clothing and housing.

This Bill will remove a significant financial barrier to achieving a tenancy, and to moving between properties, in the PRS. In being able to move more easily into and within the PRS, and to budget for the regular rental cost, free of the imposition of periodic and unexpected fees charged by letting agents and landlords, parents may be better able to locate and secure property which is adequate to their needs, and the needs of their family as a whole. Their considerations in moving will include access to a clean and safe environment, and ensuring the standard of living in their new property is good enough to meet the whole family's physical and mental needs.

Annex 2: Equality Impact Assessments

1. Describe and explain the impact of the proposal on people with protected characteristics as described in the Equality Act 2010.

✘ *Who will be affected by the policy/ decision/ activity?*

According to the 2011 census, of the 1.30m households in Wales at the time, 16% lived in the PRS.¹⁹ Dwelling stock estimates from 2015/16 put this figure at around 202,000.

- In the PRS 8% of Household Reference Persons (HRPs) identified as BME (compared to 4% of the whole population).
- The highest concentration of younger HRPs i.e. those aged under 35, tended to live in privately rented accommodation (44 per cent), and the lowest percentage of those aged 50 to 64 (15 per cent) and the lowest aged 65 and over (12 per cent)
- 44 per cent of all HRPs in the private rented sector were females
- Whilst less than half of HRPs (46 per cent) living in the private rented sector stated they were Christian it was still the most common religion reported. Of all the tenures the private rented sector had the highest percentage of HRPs recording a religion other than Christian (i.e. Buddhist, Hindu, Jewish, Muslim, Sikh or other), with Muslim being the most common of these accounting for 3 per cent of HRPs. This compares with 1 per cent of HRPs across all tenures and 1.5 per cent of the population who recorded themselves as Muslim.

The PRS then has a higher proportion of younger, BME and non Christian residents than other tenures, and therefore the Bill will consequentially have a proportionately greater impact on these groups. However, the PRS represents over 16% of accommodation in Wales, and the prevalence of the PRS is growing, and therefore any change to accessibility of the sector will have an impact on tenants of all protected characteristics.

✘ *What are the intended positive impacts?*

The legislation will remove a barrier for those who struggle to raise the funds required to pay fees in addition to the other financial requirements for taking on a tenancy.

The main aim of this is to make the PRS easier to access for those who are currently financially excluded, and to make it easier for current tenants to move property to achieve more suitable accommodation.

Particularly positive impacts are anticipated for groups which find it especially difficult, or impossible, to access the PRS at the moment.

The Housing (Wales) Act 2014 allowed Local Authorities to discharge their statutory

¹⁹ Census information: <http://gov.wales/docs/statistics/2014/140225-2011-census-characteristics-households-en.pdf>

duty for homeless persons by securing PRS accommodation for a tenancy of at least six months duration. Therefore, making the PRS more easily accessible to those without recourse to the large sums of money required by fees, deposit, rent in advance, etc. will assist in helping to discharge this duty more affordably.

Before being granted refugee status, Asylum Seekers are placed in temporary accommodation, and receive a small allowance towards living costs, which is not sufficient to save funds for use to secure a property. Refugees support generally stops 28 days after leave to remain is granted and therefore they need to be able to move quickly to secure accommodation, or will otherwise need to apply to the local authority for help with housing, via housing options services. For refugees, who often struggle to raise up front fees, but may be able to adequately pay the ongoing costs of accommodation via benefits claims or by getting a job, reducing initial fees will be beneficial.

Similarly for others who may have access to a regular income, but are not able to save up the funds required to pay up front fees, this change should be beneficial.

✘ *Can you foresee any unintended impacts?*

There are potential unintended impacts of the legislation, which may result from letting agents changing their business practices in response to the ban on fees:

- Reduction in property available in the PRS (as landlords divest in favour of paying higher letting agent fees)
- Increase in rent (as landlords deal with increase fees charged by letting agents, or in order to recoup funds they would have previously charged tenants themselves)

The Regulatory Impact Assessment examines these potential impacts in more detail.

✘ *What are the possible negative impacts on individuals, children and young people, protected groups and those living in low income households and how will you mitigate for these? Please be mindful that people who share protected characteristics are not one homogenous group for example experiences of disabled people in a wheelchair are different from people with hearing impairments.*

As discussed earlier in this document, should rents rise as a consequence of the decisions letting agents and landlords make following this legislation, those reliant on benefits to help pay their rent may find it harder to locate accommodation within the Local Housing Allowance rates which apply to their circumstances and location. This could have the effect of pricing tenants out of areas they wish to live in; forcing tenants into the lowest priced accommodation available, which may not be suitable to them in terms of location, facilities, etc.; or forcing tenants to take on properties which are above the LHA rate they are entitled to, meaning they need to pay more of their residual income towards their rent.

Tenants can apply for Discretionary Housing Payments to help cover a shortfall between rent and the Local Housing Allowance they can claim up to. However, there are many

criteria upon which these are assessed, so there is no guarantee of being awarded a payment, and the awards, if successful, are likely to be time limited.

If letting agents choose to absorb the fees and adapt their business practices to run on a lower income, they are likely to reduce the service they offer to tenants. Consultation responses and publications from letting agent representative bodies state that the result of this would be less assistance being given to those who require more help to establish a tenancy, for example because they claim help with the rent, or they have other reasons for finding the process challenging, for example being from another country, such as international students and recent immigrants. Their representations state that a consequence of this would be that some tenants might find it more difficult to achieve a tenancy.²⁰

✘ *Have you developed an outcomes framework to measure impact?*

The Regulatory impact assessment being prepared as part of the Explanatory Memorandum for the Bill will include plans for post-implementation review of the legislation, setting out what will be measured, how, and how often.

Record of Impacts by protected characteristic:

Please complete the next section to show how this policy / decision / practice could have an impact (positive or negative) on the protected groups under the Equality Act 2010. *(Please refer to the EIA guidance document for more information.)* It is important to note any opportunities you have identified that could advance or promote equality of opportunity. This includes identifying what we can do remove barriers and improve participation for people who are under-represented or suffer disproportionate disadvantage.

Lack of evidence is not a reason for *not assessing equality impacts*. Please highlight any gaps in evidence that you have identified and explain how/if you intend to fill these gaps.

Protected characteristic or group	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate Impacts?
Age (think about different age groups)	This Bill will have a positive impact on all those in the PRS, but a disproportionately high impact on younger people, since	Census data from 2011 shows that the PRS has a much higher percentage of household reference persons who are aged	na

²⁰ For example, in the research for Welsh Government, Clarke et al, *Research into letting agent fees to tenants*, 2017, p 31 quotes an agent: ‘The tenant benefits from our time. For instance, recently a tenant saw me three times to get her referencing sorted. I don’t begrudge her that time, but I do think I should be paid for it. There are lots of conversations, and texts, which I need to recover from the tenants.’

	there is a higher proportion of these in the PRS than other tenures.	under 35, than across other tenures. ²¹	
Disability (think about different types of disability)	The Bill aims to remove a financial barrier to moving into and within the PRS, which should assist tenants to locate and move to property which is more suited to their needs. This should assist disabled tenants to achieve a PRS tenancy in a property which suits their particular needs, whatever they may be.	Research by Citizen's Advice Bureau has found that fees cause financial distress, with 64% of survey respondents experiencing problems paying fees, 42% needing to borrow from family or friends, 21% having trouble paying other bills as a result and 19% going overdrawn in order to pay fees. ²² Research has also found that fees may also deter renters from moving at all. ²³	na
Gender Reassignment (the act of transitioning and Transgender people)	The proposed Bill is neutral on the grounds of gender, and it is not considered that it would have any differential impact on gender reassignment.		na
Pregnancy and maternity	The proposed Bill is neutral on the grounds of pregnancy and maternity, and it is not considered that it would have any differential impact on		na

²¹ Census information: <http://gov.wales/docs/statistics/2014/140225-2011-census-characteristics-households-en.pdf>

²² Citizens Advice Bureau, *Still let down: How letting agents are still exploiting private renters - and what this tells us about consumer protection*, March 2015, p25.

https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/still-let-down-final.pdf

²³ CBRE, *Banning letting agent fees to tenants, Impact of implementation*, March 2017, p6.

<https://www.cbreresidential.com/uk/sites/uk-residential/files/Agent%20Letting%20Fees%20final.pdf>

	this group.		
Race (include different ethnic minorities, Gypsies and Travellers and Migrants, Asylum seekers and Refugees)	The proposed Bill is neutral on the grounds of race, however it is likely to have a disproportionately positive impact on those from a BME background, since there is a higher proportion of BME householders in the PRS than among other tenures.	Information from the 2011 Census showed that both the largest proportion of BME householders, and the greatest ethnic diversity among household reference persons was found in the PRS. ²⁴	na
Religion, belief and non-belief	The proposed Bill is neutral on the grounds of religion, belief and non-belief, and it is not considered that it would have any differential based on this criteria.	Information from the 2011 Census showed that of all the tenures the PRS had the highest percentage of HRPs recording a religion other than Christian, although similarly to other tenures Christianity was the most common religion reported. 42 percent of those in the PRS reported having no religion or did not state a religion (compared to 37 percent of all tenures). ²⁵	na
Sex / Gender	The proposed Bill is neutral on the grounds of sex and gender, and it is not considered that it		na

²⁴ Census information: <http://gov.wales/docs/statistics/2014/140225-2011-census-characteristics-households-en.pdf>

²⁵ Ibid.

	would have any differential impact based upon sex or gender.		
Sexual orientation (Lesbian, Gay and Bisexual)	The proposed Bill is neutral on the grounds of sexual orientation, and it is not considered that it would have any differential impact based upon it.		na
Marriage and civil Partnership	The proposed Bill is neutral on the grounds of marriage and civil partnership, and it is not considered that it would have any differential impact based upon marital status.		na
Children and young people up to the age of 18	As discussed in the Children's Rights Impact Assessment, the Bill will have an impact on children and young people to the extent that their parents, renting in the PRS, are affected. Under-18s are not generally able to become a tenant in their own right.		na
Low-income households	The Bill should have a positive impact on low income households, since it intends to remove a significant financial barrier for those wishing to enter or move within the	Though these benefits will be felt by all those using the PRS they are likely to have a disproportionate impact on those with a low income who currently struggle, or	

	<p>PRS. Without these sometimes unpredictable and irregular fees, it should be easier to know the predictable costs of accommodation before entering an agreement, which should aid in effective budgeting.</p> <p>A potential negative impact would also be felt by this group if the ban on fees resulted in letting agents and landlords seeking to recoup lost income by increasing the rent charged to tenants, as described in question 1 of this annex.</p>	<p>find it impossible, to raise the funds required to secure a property.</p>	<p>Since the objective of the Bill is to make the PRS more accessible, by removing the financial barrier represented by fees, it is considered that should there be a rent increase, the benefits of having a predictable, regular cost for accommodation that tenants are able to budget for, and an end to fees will outweigh that negative impact.</p>
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Human Rights and UN Conventions

Do you think that this policy will have a positive or negative impact on people’s human rights? *(Please refer to point 1.4 of the EIA Guidance for further information about [Human Rights](#) and the [UN Conventions](#)).*

Human Rights	What are the positive or negative impacts of the proposal?	Reasons for your decision (including evidence)	How will you mitigate negative Impacts?
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Evidence underpinning the Bill has confirmed that it is a necessary and proportionate step in the public interest. Managing to meet the costs of a tenancy, especially for those on lower incomes, can be challenging and there is a risk that tenants may suffer hardship through tenancy costs that can affect their quality of life, or at worst that they become vulnerable to homelessness. A CAB survey²⁶ also reported that 64% of tenants considered fees a problem for their tenancy with 42% having to borrow from friends or relatives, 21% struggling to pay bills and 19% getting overdrawn (which in turn may cause them to seek pay day loans to pay the fees, which only exacerbates their difficulties, or seeking assistance from local authorities). It is the Welsh Government's policy aim to increase accessibility to housing by removing barriers such as tenant fees. Accordingly, the proposed Bill is not considered to have any significant impacts on Human Rights and the UN Conventions.

Engagement and Consultation

We have a legal duty to engage with people with protected characteristics under the Equality Act 2010.

The consultation captured a wide range of views from tenants, landlords, letting agents and representative groups. A consultation summary is included in the impact assessment gateway on pages 5-6. As mentioned in that section, a further engagement session was held with representative bodies in December 2017, including groups particularly representing tenants, such as citizens Advice Bureau, Shelter, Tai Pawb and TPAS.

Recommendations

It is recommended that the policy be enacted.

Strengthening the policy

If the policy is likely to have a negative effect ('adverse impact') on any of the protected groups or good relations between people who share protected characteristics and those who do not, what are the reasons for this?

What practical changes/actions could help reduce or remove any negative impacts identified above?

If no action is to be taken to remove or mitigate negative / adverse impact, please justify why.

(Please remember that if you have identified unlawful discrimination (immediate or potential) as a result of the policy, the policy must be changed or revised.)

Informing the Minister or Cabinet Secretary. Either summarise your identified impacts, mitigation and recommendations in the MA(P) or provide the completed EIA as part of your Ministerial advice.

²⁶ Citizens Advice Bureau, *Still let down: How letting agents are still exploiting private renters - and what this tells us about consumer protection*, March 2015, p25.

https://www.citizensadvice.org.uk/Global/Migrated_Documents/corporate/still-let-down-final.pdf

The banning of fees being charged to tenants and prospective tenants by letting agents and landlords, in connection with granting, renewing or continuing tenancies, is intended to ensure that the risks identified above are mitigated, and that the sector remains functional and affordable for those who wish to access it. The Bill has been developed in that context, with the aim of helping tenants access properties of high quality. Although there may be a knock-on impact to rents, good landlords and letting agents will recognise the aim of this Bill and we anticipate they will work collaboratively with the Welsh Government and other key partners to help the PRS flourish.

The prohibiting of tenant fees reflects a further step in improving the PRS, by increasing accessibility and transparency for tenants and prospective tenants. In future it will be possible to budget based on the predictable and stable monthly rental cost identified at the outset of the tenancy, avoiding the expected and high fees tenants often experience.

Overall the impact of the Bill is considered to be positive, and it is recommended that the Minister approve on this basis.

Annex 3: Welsh Language Impact Assessment

<p>1. Welsh Language Impact Assessment reference number (completed by the Welsh Language Standards Team): 06/03/2018</p>
<p>2. Does the programme demonstrate a clear link with the Welsh Government's strategy for the Welsh language? – <i>Cymraeg 2050 A million Welsh speakers</i></p> <p>Yes, <i>Cymraeg 2050 A million Welsh speakers</i>, acknowledges the need to create the conditions where Welsh speakers can stay in Welsh-speaking communities, or return to those communities. The Bill in simplifying rental arrangements and reducing the costs to tenants may make it easier to achieve this aim.</p>
<p>3. Describe and explain the impact of the proposal on the Welsh language, and explain how you will address these impacts in order to improve outcomes for the Welsh language:</p> <ul style="list-style-type: none"> ✚ <i>How will the proposal affect Welsh speakers of all ages (both positive and/or adverse effects), taking account of regional and other variations?</i> ✚ <i>How will the proposal affect the sustainability of Welsh speaking communities (both positive and/or adverse effects)?</i> ✚ <i>How will the proposal affect Welsh medium education and Welsh learners of all ages (both positive and/or adverse effects)?</i> ✚ <i>How will the proposal affect services available in Welsh (both positive and/or adverse effects)? (e.g. health and social services, transport, housing, digital, youth, infrastructure, environment, local government etc.)</i> ✚ <i>How will the proposal affect opportunities to promote and to use the language in everyday life (both positive and/or adverse effects)?</i> ✚ <i>What evidence have you used to inform your assessment, including evidence from Welsh speakers or Welsh language interest groups?</i> ✚ <i>What other evidence would inform the assessment?</i> ✚ <i>What data have you considered in developing your proposal?</i> ✚ <i>How will you know if your policy is a success?</i> <p>The banning of fees to tenants in the private rented sector could help to preserve Welsh speaking communities, by assisting tenants wishing to remain in, or move into, an area with a high density of Welsh speakers, to secure accommodation without the need to raise additional funds to cover fees, and to maintain a tenancy in such an area, since the ongoing costs of a tenancy will be consistent and predictable.</p> <p>The Bill has no direct impact on the on the Welsh language, the Bill bans fees being charged to tenants in the PRS, other than rent, a holding deposit and tenancy deposit. There will limited exceptions for actions which require remedial attention as a consequence of tenant action or inaction, or in situations where the charging of a fee would be beneficial to the tenant, for example where an exit fee is charged in preference for charging the rest of the rent due on a tenancy contract.</p> <p>The intention of the Bill is to enable potential and current tenants to more easily access and move within the PRS. It will also aid tenants to effectively budget for their accommodation, since the regular costs of the tenancy will be consistent.</p> <p>All advice and guidance issued to support this policy will be bilingual</p>

4. Engagement and consultation: describe and explain how you have engaged and consulted on your proposal, and how views collated have fed into your recommendations to Ministers.

As outlined in question 2 of the Impact Assessment Gateway, a consultation exercise was carried out between July and September 2017, seeking views on the concept of a ban on fees, as well as some of the potential impacts which such a ban could have.

5. Strengthening your policy: if your policy is likely to have any negative effects, what are the reasons for this, and what are the actions/changes in place to mitigate negative effects?

As outlined in the Equality Impact Assessment, above, there is the potential that banning fees may lead to a rise in rent. However, as explored elsewhere, since the objective of the Bill is to make the PRS more accessible, by removing the financial barrier represented by fees, it is considered that should there be a rent increase following the decisions made by letting agents and landlords in response to the change, the benefits of having a predictable, regular cost for accommodation that tenants are able to budget for, and an end to fees will outweigh that negative impact.

6. How will you monitor, evaluate and review the impact and effectiveness of the policy?

As outlined above, the policy will be continually reviewed and evaluated on an ongoing basis, and formally, via the post implementation review set out in the Regulatory Impact Assessment for the Bill.

Should any unexpected consequences emerge, mitigating actions will be considered.

Annex 4: Biodiversity

Section 6 under Part 1 of the Environment (Wales) Act 2016 introduced an enhanced Biodiversity and Resilience of Ecosystems Duty (the S6 duty) for public authorities, including Welsh Government, in the exercise of functions in relation to Wales²⁷.

The S6 duty requires that Welsh Government **must seek to maintain and enhance biodiversity** so far as consistent with the proper exercise of their functions and in so doing **promote the resilience of ecosystems**.

The Nature Recovery Action Plan for Wales contains six objectives to reverse the decline of biodiversity which should be used to assess the impacts on biodiversity. They can also help develop and guide actions to comply with the S6 duty. Potential impacts and opportunities for positive action for biodiversity from this proposal have been considered, and the following identified:

Landlords have legal obligations to consider protected species and habitats in carrying out work, for example, in roof spaces where bats may be present. A potential loss of income through fees could lead to cost cutting by landlords on environmental work.

Awareness of the importance of biodiversity and landlords' obligations to species and habitats should be raised through any guidance or communications. This also presents a positive opportunity for biodiversity.

This potential impact should be monitored through the evaluation of the proposal if implemented.

²⁷ The full text of the Duty and the Explanatory Notes can be found at:
<http://www.legislation.gov.uk/anaw/2016/3/contents>

Annex 5: Justice Impact Assessment

A summary of the Justice Impact Assessment is published as part of the Regulatory Impact Assessment in the Explanatory Memorandum laid alongside the Bill.

Bill overview

The proposed Bill seeks to address the cost and barrier of fees, required by letting agents, landlords and third parties, as a condition of the granting, continuing and renewing of standard occupation contracts under the 2016 Act, present to tenants (which are called contract-holders under the Renting Homes (Wales) Act 2016). There will be some exceptions to the ban where payments are permitted, such as for rent, security deposits, holding deposits and payments in default, but any other required payment will be banned. The Bill will create offences:

- Where a prohibited payments, etc. is required as a condition of the grant, renewal or continuance of a standard occupation contract (unless an exception applies).
- Where a person fails to comply with a notice requiring documents or information in connection with an offence.
- Where a person alters, etc. a document required to be produced by a notice.
- Where a person provides false or misleading information in relation to an offence.
- Where an offence is committed by a body corporate, they will be guilty of an offence.

Enforcement of the ban will be by the Local Housing Authority (LHA), who may take enforcement action against anyone who commits an offence. LHAs will be permitted to issue a fixed penalty notice (FPN) to the sum of £500 for a breach of the ban. The payment of an FPN will discharge a person's liability to conviction for the offence. If the FPN is not paid, a LHA may commence criminal proceedings which will be subject to a fine through the Magistrates Courts. The Welsh Ministers may amend the level of the fixed penalty. A FPN issued is treated as if it were given under section 29 of the Housing (Wales) Act 2014 ("2014 Act") for the purposes of section 29(2), (3) and (6)-(8).

It will be possible for a claimant to apply to the county court to recover the amount of any prohibited payment or holding deposit made by or on behalf of the claimant in respect of an occupation contract.

Estimated level of contravention and applications to the courts

The financial estimates accompanying the Bill include an estimation of the potential level of contravention, in order to estimate the cost of enforcement activity. A proxy offence of failure to register or apply for a license in accordance with Part 1 of the Housing Wales Act 2014 has been identified to assist in estimating level of contravention of the proposed legislation on fees, since the same population will be subject to the legislation.

For issuing FPNs: Working on a high estimate that there will be up to a 1% contravention of the ban in the first year, and there are up to 850 letting agents operating in Wales, there may be around 9 letting agents that contravene the ban. There are 90,000 landlords operating across Wales, but given that research has identified that only around 10% of landlords charge fees, a 1% contravention rate could imply that around 90 landlords fail to comply in the first year. (Only if the FPN is not complied with would any further

enforcement action be taken, which may lead to cases being taken to court).

For cases being taken to court: We cannot predict with confidence the number of prosecutions that will be commenced by local housing authorities, though we anticipate that fewer than five prosecutions will be commenced in the first year.

It will be assumed that the maximum number of cases will be identified in the first year of implementation of the ban, therefore 1% in 2019-20, and that rate of contravention will diminish substantially following this. Rates of contravention proposed here are estimates, based on the most appropriate proxy offence located. Consequently, there is a high level of uncertainty around these estimates.

The likelihood is that once a FPN is issued an agent or landlord will repay any prohibited payments, thereby eliminating the need for a contract-holder to make an application through the courts. We anticipate that very few landlords or agents will decide to risk the consequences of an application being made as they may lose their licence to operate. Contract-holders may decide to apply to the courts if a FPN is not issued by a local housing authority on the basis that they do not agree an offence has occurred, or a contract-holder chooses not to involve the local housing authority, but this is likely to be a rare occurrence.

For prohibited payments, we anticipate the number of applications to court will be the same as the contravention rate. Although few contract-holders will need to apply to court once a FPN is issued (most landlords repaying prohibited payment on receipt of an FPN), their numbers will be balanced by contract-holders taking a landlord to court when a FPN is not issued.

There is little evidence relating to non-repayment of holding deposits in Wales and a suitable proxy to estimate potential numbers of applications is not available. Although there is anecdotal evidence that some agents do not always refund these sums, the numbers are very low and do not reflect a clear trend or volume of incidences. On that basis, we estimate that the number of applications being taken to court for repayment of holding deposit is again likely to be very low, equivalent to the level of contravention.

Ministry of Justice assessment

An external assessment of the Bill proposals undertaken by the Ministry of Justice concluded that impacts on the justice system would be felt in the following ways:

Civil legal aid: No significant impact is predicted on civil legal aid through the Bill on the basis that most cases challenging a FPN will be made by businesses rather than individuals and would be unlikely to pass the interests of justice test.

Criminal legal aid: Based on the offences created by the Bill, the impacts for criminal legal aid would be minimal for the following reasons:

- There is no custodial sanction upon conviction; only a fine. It is, therefore, generally unlikely, though not impossible, for an applicant to pass the merits test.
- An unknown proportion of prosecutions would be brought against legal persons/corporate bodies where the eligibility criteria are generally tighter than for individuals.
- The likely financial profile of most private landlords is likely to be such that they may well not pass the financial eligibility test.

Income analysts were able to identify a proxy of offences from the Housing Act 1996 and Housing Act 2004 to assess the potential impact for criminal income impositions as follows:

Total	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
FPN						
Volume FPN	100	82	64	46	28	10
Income	50000	41000	32000	23000	14000	5000
Fines and VS						
Volume Fine	4	3	2	1	0	0
income VS	6200	4600	3100	1500	0	0
income	600	500	300	200	0	0

Criminal law: Impacts were estimated at low amounts, with costs of £1,100 in 2019/20 and 2020/21 and £1,200 in 2021/22 and 2022/23.

Civil Courts: The Bill is expected to have a small impact on the county courts in the form of applications being made in respect of payment of prohibited payments or holding deposit. As court fees are payable by the applicants there should be no additional cost associated with these. However, no assessment was made against IT systems, forms or Civil Procedure Rule (CPR) changes.

Criminal Courts IT: The Bill is expected to have a negligible impact on Criminal Courts IT. Cases prosecuted by local housing authorities for offences under sections 2 and 3 of the Bill through the Magistrates court will rely on the court to make an order for an inter parties order for repayment of any prohibited payment. This would permit the criminal court to order the defendant to pay the contract-holder a sum of money directly. The implementation timescale for this work would be short, between three to nine months and result in no cost. In circumstances where a contract-holder seeks repayment of a prohibited payment or holding deposit through the county court through a small claim or civil claim, there would be no cost and changes could be implemented immediately.

Consideration was given to recovering prohibited payments through a compensation order under powers available under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000. There would be no costs nor an implementation timescale for this option, but the process is not consistent with the provisions developed for the Bill and the option was discounted. A further option of creating a new court order, collectable and enforceable within the Magistrates' court arena was identified. However, the impact would be significant with costs estimated at a minimum of £1.5 million to accommodate the change.

Agenda Item 7

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