

EXPLANATORY MEMORANDUM TO THE DUTY OF LETTING AGENTS TO PUBLICISE FEES (EXCLUSION) (WALES) REGULATIONS 2016

This Explanatory Memorandum has been prepared by the Education & Public Services Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Duty of Letting Agents to Publicise Fees (Exclusion) (Wales) Regulations 2016.

Lesley Griffiths
Minister for Communities and Tackling Poverty
16 February 2016

Description

1. The Consumer Rights Act 2015 (“the 2015 Act”) requires letting agents to publicise their fees. The definition of a letting agent in the 2015 Act is someone who carries out letting agency work, which is defined as things done by a person in the course of a business in response to instructions received from either:
 - (a) a person (“a prospective landlord”) seeking to find another person wishing to rent a dwelling-house under an assured tenancy and, having found such a person, to grant such a tenancy, or
 - (b) a person (“a prospective tenant”) seeking to find a dwelling-house to rent under an assured tenancy and, having found such a dwelling-house, to obtain such a tenancy of it.
2. This definition therefore includes members of the legal profession acting in a professional legal capacity on lettings-related work, for example, if a landlord instructs a solicitor to draft a tenancy agreement. This statutory instrument excludes legal professionals from the requirement to publicise their fees when they engage only in legal activity within the meaning of section 12 of the Legal Services Act 2007.

Matters of special interest to the Constitutional and Legislative Affairs Committee

3. None.

Legislative Background

4. Chapter 3, Part 3 of the 2015 Act imposes a duty on letting agents in England and Wales to publicise a list of their relevant fees.
5. Subject to subsections 84(2) and (3), for the purposes of the Chapter, a letting agent is a person who engages in letting agency work (whether or not that person engages in other work) and letting agency work means things done in the course of a business in response to instructions received from a prospective landlord or a prospective tenant, as defined in section 86 (1).
6. Section 84(3) provides that a person is not a letting agent for the purposes of the Chapter if the person is, or engages in work of, a description specified in regulations made by the appropriate national authority.

7. These Regulations are made under subsection 84(3) and specify persons that are not letting agents for the purposes of the Chapter.
8. These Regulations follow the negative resolution procedure.

Purpose & Intended Effect of the Legislation

9. The private rented sector in Wales is a growing housing sector and is currently estimated to account for 16% of the overall housing market. Each year a number of households will move into the private rented sector and a significant number of these will involve a letting agent. Letting agent fees are often the subject of complaint and dissatisfaction amongst renters and landlords, including “hidden” fees which result in unexpected charges being incurred. As a result, the 2015 Act requires letting agents to publicise a full list of their fees in their office and on their website.
10. The intended effect of the new duty is to allow renters and landlords to have a clear indication of costs, thereby enabling them to make a more informed decision before selecting an agent or property.
11. These Regulations provide that for the purposes of Chapter 3, Part 3 of the 2015 Act, legal professionals acting in a legal capacity on lettings-related work are not letting agents, and therefore the provisions relating to the display of fees will not apply, unless they also carry out other aspects of letting agency work. In this case these Regulations would apply to the relevant legal professionals.
12. The intended effect of these Regulations is to exempt the legal profession from having to publicise a list of their fees when only carrying out lettings-related work in a legal capacity. This is because when they are acting in a legal capacity they are not engaged with the core letting agent functions of finding tenants for a landlord or finding property for tenants. It is considered to be a disproportionate cost on an already highly regulated industry to require lawyers to publicise their fees in relation to lettings and property management work.

Consultation

13. Relevant bodies (The Solicitor Regulation Authority and the Law Society) have been consulted on the proposed regulations. Wider consultation was not considered necessary as the changes are technical and the impact of them is considered to be of a relatively minor nature. The consultation ended on 29 January 2016 and no issues were raised regarding the proposed Regulations.

Regulatory Impact Assessment (RIA)

14. No separate RIA has been prepared as the Impact Assessment prepared for the 2015 Act is relevant and a copy may be obtained from the Housing Policy Division, Welsh Government, Rhydycar Business Park, Merthyr Tydfil, CF41 1UZ.