



Llywodraeth Cymru
Welsh Government

Renting Homes (Fees etc.) (Wales) Bill

Policy intent for subordinate legislation to
be made under the Bill

June 2018

Renting Homes (Fees etc.) (Wales) Bill

Statement of policy intent for subordinate legislation

This document provides an indication of the policy intention for the subordinate legislation that the Welsh Ministers may make under the Renting Homes (Fees etc.) (Wales) Bill (“the Bill”). The statement has been prepared to assist Committee during the scrutiny of the Bill and it should be read in conjunction with the Bill, the Explanatory Memorandum and the Explanatory Notes which accompany it.

The Bill’s purpose is to prohibit landlords and letting agents (or any other person) from requiring payments as a condition of the grant, renewal or continuance of a standard occupation contract (“the contract”).

- It is an offence for a landlord or letting agent (or any other person) to require a prohibited payment to be made to them or any other person, as a condition of the grant, renewal or continuance of the contract.
- It is an offence for a landlord to require a person to enter into a contract for services with them or any other person, as a condition of the grant, renewal or continuance of the contract (but not if the contract for services provides for services to be provided by a person upon whom the contract confers the right to occupy a dwelling).
- It is an offence for a letting agent to require a person to enter into a contact for services with the letting agent, or any other person as a condition of arranging the grant, etc of the contract.
- It is an offence for a landlord or letting agent to require the grant of a loan to the landlord, letting agent or any other person as a condition of the grant, etc of the contract.
- Any person guilty of an offence requiring a prohibited payment is liable on summary conviction to a fine.
- Any payment of money is prohibited unless it is payable by a landlord to a letting agent in respect of letting agency work or property management work carried out by the agent on behalf of the landlord or if it is permitted by virtue of Schedule 1. Schedule 1 contains those payments that are permitted i.e. rent, security deposits, holding deposits and payments in default.

For ease of reference, this Statement includes the subordinate legislation making powers in the Bill.

Where appropriate the Welsh Government will consult on draft regulations before they are made.

REGULATIONS RELATING TO:	Definition of permitted payments
Bill Part:	2
SECTION	7(1)
DESCRIPTION OF THE POWER	
Section 7(1) gives the Welsh Ministers power to add, modify or remove a reference in Schedule 1 to a category of permitted payment (but not the removal of the payment of rent from those categories).	
WHY THE REGULATION POWER IS REQUIRED	
There may be changes to policy or evidence may come to light that changes are required.	
POLICY INTENTION OF THE REGULATIONS	
The payments permitted reflect costs that can be reasonably charged to a contract-holder in connection with a contract. A number of the fees currently charged by letting agents act as barriers to many tenants wishing to move within or access the private rented sector. Changes in Welsh Government policy or practice within the private rented sector may result in the permitted payments needing to change in some way. The power means changes may be made to reflect changing circumstances.	

REGULATIONS RELATING TO:	Level of fixed penalty notice
Bill Part:	4
SECTION	13(3)
DESCRIPTION OF THE POWER	
Section 13(1) permits an officer authorised by a local housing authority to issue a fixed penalty notice if they have reason to believe a person has committed an offence under section 2 or 3. Section 13(3) permits the Welsh Ministers to substitute the amount of the penalty.	
WHY THE REGULATION POWER IS REQUIRED	
This is required in case evidence emerges that the level of fixed penalty is an ineffective deterrent.	
POLICY INTENTION OF THE REGULATIONS	
The level of penalty is considered reasonable and a deterrent against offences being committed. If evidence emerges that the penalty set is set too low or too high we wish to be able to act swiftly to replace the amount with a lower or higher fine. Changes in practices in the letting agency industry or changes in living factors might lead to the need to adjust the amount of the fixed penalty. The power would give the Welsh Ministers the flexibility to react to these situations.	

REGULATIONS RELATING TO:	Provisions within the Consumer Rights Act 2015 with regard to the publication of letting agents' fees on third party websites and imposing more than one penalty on the same letting agent in respect of the same breach
Bill Part:	6
SECTION	18(1)
DESCRIPTION OF THE POWER	

Regulations under section 18(1) may amend Chapter 3 of Part 3 of the Consumer Rights Act 2015 (duty to publicise fees, etc.) in order to ensure that letting agents publicise online fees through any third party website. This power would also ensure that more than one penalty may be imposed on the same letting agent in respect of the same breach under Chapter 3 of Part 3 of the 2015 Act.

WHY THE REGULATION POWER IS REQUIRED

Section 83 of the 2015 Act makes provision for publishing of letting agents' fees. These provisions ensure that anyone using the agents' services can understand the fees that are likely to be charged. However, whilst the power requires the letting agent to publish their fees in their premises or their website it does not extend to publication of those fees on third party websites. This is needed to ensure agents activities are fit for purpose, but increasingly prospective tenants are relying on property websites, the most popular being Rightmove and Zoopla, when searching online for properties. Often letting agents fees are not publicised on these third party property websites, undermining the requirement to publicise fees. To ensure that prospective tenants are aware of the potential costs if fees are published on third party websites, this power enables the Welsh Ministers to amend Chapter 3 of Part 3 of the 2015 Act to ensure that third party websites publish the letting agent's fees, consistent with what is already in Chapter 3 of Part 3 of the 2015 Act for letting agents.

In addition, section 87(6) of the 2015 Act states that:

Only one penalty under this section may be imposed on the same letting agent in respect of the same breach.

At times a breach may continue to occur following the failure of the letting agent to publish their fees and in such cases amendments may permit more than one penalty to be made against the same letting agent for the same breach.

POLICY INTENTION OF THE REGULATIONS

Such a provision would prevent the possibility that prospective contract-holders searching for properties for which letting agents fees are not advertised. This would extend transparency under the 2015 Act to those fees placed on third party websites. Regulations may also address concerns that letting agents might commit repeated offences against which no further penalty is currently able to be imposed.

REGULATIONS RELATING TO:	Application of the Bill to Assured Tenancies
Bill Part:	7
SECTION	19(1)
DESCRIPTION OF THE POWER	
This is a power to make transitional provision for the Bill to apply to assured tenancies as defined in the Housing Act 1988 should the Renting Homes (Wales) Act 2016 (2016 Act) not be fully in force by the time the Bill is commenced.	
WHY THE REGULATION POWER IS REQUIRED	
Assured tenancies predominate in the private rented sector but they will be replaced by standard occupation contracts once the 2016 Act comes into force. If	

standard occupation contracts were not being introduced, the Bill would have applied to assured tenancies. If the 2016 Act is not fully in force by the time the Bill comes into force, then the Bill's provisions would not apply to assured tenancies in the private rented sector. We need a power to apply the Bill to assured tenancies (rather than standard contracts) if the 2016 Act is not fully implemented by the time the Bill comes into force.

POLICY INTENTION OF THE REGULATIONS

Regulations under section 19(1) will enable the Bill to apply to assured tenancies if the 2016 Act is not fully in force by the time this Bill is passed. This will ensure that the type of tenancy to which the Welsh Government would otherwise wish the Bill to apply, if the 2016 Act did not exist, will be captured by its provisions. Ideally, the 2016 Act will be implemented before this Act is in force, in which case no regulations would be needed.

REGULATIONS RELATING TO:	Security deposits
Bill Part:	Schedule 1
SECTION	Paragraph 2(4)
DESCRIPTION OF THE POWER	
If the amount of a security deposit exceeds the prescribed limit, the amount of the excess is a prohibited payment. Paragraph 2(4) provides the Welsh Ministers with a power to prescribe the limit of security deposit that a contract-holder pays as security for the performance of any obligations under the contract or in the discharge of any liability arising under or in connection with the contract.	
WHY THE REGULATION POWER IS REQUIRED	
To permit the Welsh Ministers to set a cap on a security deposits to ensure landlords do not ask for amounts in excess of the cap.	
POLICY INTENTION OF THE REGULATIONS	
This power ensures flexibility should a cap need to be set limiting the amount of deposit a landlord or letting agent may request from a contract-holder in connection with the contract.	

REGULATIONS RELATING TO:	Changing the meaning of “permitted variation” in paragraph 1
Bill Part:	Schedule 1
SECTION	Paragraph 6
DESCRIPTION OF THE POWER	
Paragraph 6 provides that regulations may amend the meaning of “permitted variation” in paragraph 1 of Schedule 1. Regulations may define permitted variation for instance to define a permitted variation by reference to results in an increase or decrease of rent, or if the permitted variation concerns a term of the contract agreed between the parties, or a term of the contract subsequently changed by agreement. Regulations may also make consequential amendments to Chapter 3 of Part 3 and Chapter 4 of Part 7 of the Renting Homes (Wales) Act 2016 (variation of standard occupation contracts).	
WHY THE REGULATION POWER IS REQUIRED	
The power is required in case evidence emerges that landlords have found a way to subvert the aim of paragraph 1 by including payments within the rent of contract-	

holders.

POLICY INTENTION OF THE REGULATIONS

Paragraph 1 of Schedule 1 has been developed to restrict landlords from charging a higher initial rent, to reflect any costs landlords may incur from letting agents passing on the fees and charges agents would have required from tenants before the proposed Bill came into force. Changes in Welsh Government policy or practice within the private rented sector may result in the permitted variation of rent needing to change in some way if the policy intent is undermined in some way. The regulation power enables amendments to be made to the definition of the permitted variation of rent.

REGULATIONS RELATING TO:	Deadline for agreement of holding deposits
Bill Part:	Schedule 2
SECTION	Paragraph 2(3)
DESCRIPTION OF THE POWER	
Where a holding deposit is paid in respect of a standard occupation contract, it must be repaid if parties enter into the contract before the deadline for agreement or if parties fail to enter into the contract before the deadline, which is fifteen days from the day the deposit is paid, although parties may agree in writing a different deadline for agreement (“the deadline for agreement”). Paragraph 2(3) permits the Welsh Ministers to amend the deadline for agreement.	
WHY THE REGULATION POWER IS REQUIRED	
If evidence emerges that the time limit set is not working or parties cannot agree different dates this limit may be changed. This regulation making power will enable Welsh Ministers to change the deadline for agreement and provides flexibility for changes to be made quickly, if necessary.	
POLICY INTENTION OF THE REGULATIONS	
This power will be used if there is evidence that the timescale provided for is ineffective.	

REGULATIONS RELATING TO:	Supplemental, incidental, consequential, transitional, transitory or saving provision
Bill Part:	7
SECTION	21(2)
DESCRIPTION OF THE POWER	
There is power in section 21(2)(b) to make supplementary, incidental, consequential, transitory, transitional or saving provision if the Welsh Ministers consider it necessary to give full effect to the Act.	
WHY THE REGULATION POWER IS REQUIRED	
To be able to make ancillary provision in regulations under the Act.	
POLICY INTENTION OF THE REGULATIONS	

A power to make regulations under the Bill concerning supplemental, incidental, consequential, transitional, transitory or saving provisions. This provision is needed to ensure the Bill works alongside existing legislation, and so it comes into force as smoothly as possible.

REGULATIONS RELATING TO:	Coming into force
Bill Part:	7
SECTION	24
DESCRIPTION OF THE POWER	
The remaining provisions of the Act come into force on a day appointed by the Welsh Ministers' Order.	
WHY THE REGULATION POWER IS REQUIRED	
This power is needed to commence the remaining provisions of the Bill on a day appointed by the Welsh Ministers.	
POLICY INTENTION OF THE REGULATIONS	
A Commencement Order will specify the date when the remaining provisions of the Bill come into force.	