



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MAL/RE/0569/18

John Griffiths AM  
Chair  
Equality, Local Government and Communities Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

[SeneddCommunities@assembly.wales](mailto:SeneddCommunities@assembly.wales)

27 November 2018

Dear John,

I am writing further to the General Principles debate held in respect of the Renting Homes (Fees etc.) (Wales) Bill on 6 November. During the debate I confirmed that I would be writing to the Committee to outline my position on some of the matters raised by Assembly Members.

Throughout the scrutiny of the Bill, payments in default of a contract have been an issue of concern to Committee Members. I have confirmed my intention to develop guidance that will be used by agents and landlords dealing with the payments permitted by the Bill. I indicated that the guidance will be developed with the engagement and involvement of key stakeholders and arrangements are being developed to ensure this is the case. It is possible at this stage to give the Committee a broad indication of the scope of the guidance. I should highlight, however, that this represents current early thinking and a final version will be guided by contributions from stakeholders. I have attached an outline of the scope and content of guidance that I hope will assure the Committee of our intentions.

Recommendation 6 of the Committee's report called for an amendment to be made so that the Bill states that exit fees when terminating a standard occupation contract are prohibited. The Committee's report outlined some of the evidence I provided confirming that the Bill does prevent these fees from being charged. However, I recognise that there remains uncertainty and misunderstanding about this aspect of the Bill and my intention is to bring forward an amendment at Stage 3 to clarify this and to clarify which payments can be made at the end of a contract in line with the Committee's recommendation.

Recommendation 11 of the Committee's report called for the Welsh Government to give further consideration to taking a banded or tiered approach to the levels of penalty associated with a fixed penalty notice. Having carefully considered the implications of a banded fixed penalty notice, I do not consider a workable proposal is available that would improve the Bill. It is important to recognise that fixed penalty notices are only one part of the enforcement regime and that there are alternatives available to a local housing authority. This includes the option to bring proceedings immediately if an offence warranted this action. Any decision to do so is likely to be influenced by the actions and circumstances of an agent or landlord. This could mean that if a local housing authority deems that a fixed penalty notice is likely to be ineffective in relation to a specific case they could take the matter direct to court. If an offence is proven, there is no limit on the level of fine a court could choose to issue.


Developing a banded or tiered approach could pose a risk that a small number of agents or landlords, particularly those on the fringes of the sector, may attempt to undermine the approach through actions such as splitting a property portfolio, or claiming a lower income from properties so that a landlord or agent qualifies for a lesser penalty. Ultimately, Rent Smart Wales, on being made aware of a prosecution successfully brought, could decide to rescind or not renew the licence of an agent or landlord to operate in Wales, on the basis they are no longer fit to hold one.

I also wanted to confirm to the Committee that in line with recommendation 6 of the Constitutional and Legislative Affairs Committee's report that the Bill's privacy impact assessment has been published on the following webpage.

<https://gov.wales/topics/housing-and-regeneration/legislation/renting-homes-fees/?lang=en>

I trust that Committee Members will find this letter helpful in advance of the Committee session on 29 November.

Yours sincerely,



**Rebecca Evans AC/AM**  
Y Gweinidog Tai ac Adfywio  
Minister for Housing and Regeneration

## **Scope and structure of guidance in respect of permitted payments**

### **1. Payments between Landlord and Agent**

- A payment of money is permitted if it is payable by a landlord to a letting agent in respect of lettings work or property management work carried out by the agent on behalf of the landlord.

### **2. Rent and limits upon rent**

- What constitutes rent
- What can be charged
- When can rent be raised

### **3. Holding Deposit**

- Deadline for agreement and repayment
- Excess Holding Deposit
- Right to retention of Holding Deposit for providing false and misleading information

### **4. Security Deposit**

- Tenancy Deposit Protection legislation
- Excess Security Deposit (if a limit is prescribed by regulations)

### **5. Payments in Default**

- Definition of Payment in Default
  - Occurrences which may lead to a Payment in Default, such as:
    - *Late payment of rent*
    - *Missed appointments*
    - *Avoidable or purposeful damage to property*
    - *Replacement keys*
    - *Emergency call-out fees*
- How to write Payments in Default into a contract with a tenant
  - *Clarity about contract governing what can, and by default, can't be charged as a Payment in Default*
- How to charge Payments in Default when something goes wrong.
  - *When something goes wrong, how a landlord or agent should charge a Payment in Default*
  - *Landlords and agents should be mindful of personal circumstances of tenant before requiring a Payment in Default*
- Reasonable charges for Payments in Default.
  - *Payments in Default should be proportionate and take into consideration actual losses*