

Explanatory Memorandum to the Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Welsh Government's Education and Public Services Group 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 Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019.

Julie James
Minister for Housing and Local Government

6 December 2019

PART 1

1. Description

- 1.1. This Explanatory Memorandum relates to the Renting Homes (Fees etc.) (Holding Deposit) (Specified Information) (Wales) Regulations 2019 (“the Regulations”). The Regulations are made under paragraph 11 of Schedule 2 Renting Homes (Fees etc.) (Wales) Act 2019 which provides the Welsh Ministers with power to make regulations specifying information to be provided to a prospective contract-holder before the payment of a holding deposit.
- 1.2. Regulation 2 of the Regulations revokes the Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019 (S.I. 2019/1466 (W. 258)).

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

- 2.1. In accordance with section 11A(4) of the Statutory Instruments Act 1946 (as inserted by Schedule 10 paragraphs 1 and 3 of the Government of Wales Act 2006), Regulation 2 of the Regulations will come into force less than 21 days from the date of laying.

3. Legislative background

- 3.1. The Regulations are made under paragraph 11 of Schedule 2 to the Renting Homes (Fees etc.) (Wales) Act 2019 (the Act).

Regulation 2 comes into force on 10 December 2019. The remainder of the Regulations come into force on 28 February 2020.

- 3.2. The Regulations follow the Assembly’s negative procedure.

4. Purpose and intended effect

- 4.1. The intention of the Regulations is to ensure that a landlord (or where instructed, their letting agent) provides specified information to a prospective contract-holder before a holding deposit is paid to the landlord or letting agent in respect of a standard occupation contract. The regulations also specify the way in which that information must be provided.
- 4.2. The Regulations mean a contract-holder receives information before the grant of a standard occupation contract and so they can make an informed choice about whether a tenancy is suitable before making a financial commitment. In particular, it is considered that information relating to the contract (eg whether a guarantor is required) should be made clear prior to

a holding deposit being taken as this could have a significant bearing on a contract-holder's ability to take up the contract.

- 4.3. If the specified information is not provided (referred to in paragraph 11 of Schedule 2 as "the condition" which must be met) the exceptions to the requirement to repay a holding deposit set out in paragraphs 8, 9 and 10 of Schedule 2 to the Renting Homes (Fees etc.) (Wales) Act 2019 Act may not be relied upon. The risk of not being able to rely on these exceptions ensures compliance with the Regulations.
- 4.4. The Regulations provide that the following information must be provided to a prospective contract-holder:
 - amount of holding deposit,
 - address of the dwelling in respect of which the deposit is paid,
 - where a holding deposit is to be paid to a letting agent, the name and contact details of that letting agent,
 - Where a holding deposit is to be paid to a landlord, the name and contact details of that landlord,
 - duration of the contract,
 - proposed occupation date,
 - amount of rent or other consideration,
 - rental period,
 - any proposed additional contract terms or proposed modifications or proposed modifications to fundamental or supplementary terms or terms proposed to be omitted from the contract,
 - amount of any security deposit,
 - whether a guarantor is required and, if so, any relevant conditions,
 - reference checks the landlord (or letting agent) will undertake, and
 - information the landlord or letting agent requires from the prospective contract-holder.
- 4.5. The information must be provided to a prospective contract-holder in writing and may be given in person or provided electronically if the prospective contract-holder consents to receiving it in that form.
- 4.6. Regulation 2 of the Regulations revokes the Renting Homes (Fees etc.) (Specified Information) (Wales) Regulations 2019.

5. Consultation

- 5.1. An eight week consultation was undertaken between 24 May 2019 and 19 July 2019 with regards to making regulations in relation to Payments in Default and Holding Deposits.
- 5.2. In total 303 responses were received to the consultation. The majority of respondents were either landlords or letting agents. Questions 7 and 8 of the consultation related specifically to what information a prospective tenant

should be provided with before a holding deposit is taken and how this information should be provided.

5.3. Responses to the question of to what information should be provided to a prospective tenant before a landlord or agent takes a holding deposits were as follows:

- 84% thought that basic details of all parties to be included in the agreement, (prospective tenant, landlord and agent) including contact details should be provided.
- 88% thought that length and type of tenancy to be entered into, including moving in date should be provided.
- 93% thought that the amount of rent should be provided.
- 92% thought that the amount of security deposit should be provided.
- 75% thought that the requirements for a guarantor should be provided.
- 84% thought that the details of the circumstances under which the holding deposit is refundable should be provided.
- 82% thought that details of how the holding deposit will be used should the tenancy go ahead, including how it will be protected should be provided.
- 84% thought that details of what will happen following a deposit being paid, including what checks will be undertaken by the landlord / agent should be provided.

5.4. Responses in relation to how this information should be provided to the contract-holder was overwhelmingly that the information should be provided in written format.

5.5. A detailed analysis of the responses to the consultation is available on the Welsh Government's website <https://gov.wales/renting-homes-fees-etc-wales-act-2019-default-fees-and-prescribed-information>

6. Stakeholder engagement

6.1. Engagement with stakeholders was undertaken during the passage of the Renting Homes (Fees etc) Bill and during the consultation period for the draft regulations.

7. Regulatory Impact Assessment

7.1. The Welsh Ministers' Code of Practice on carrying out Regulatory Impact Assessments was considered in relation to the Regulations. As a result, it was not considered necessary to carry out an RIA as to the likely costs and benefits of complying with these Regulations. Costs associated with the primary legislation under which these Regulations are made have been accounted for under the RIA for The Renting Homes (Fees etc.) (Wales) Act 2019.