

Draft Regulations laid before the National Assembly for Wales under section 27(3) of the Renting Homes (Fees etc.) (Wales) Act 2019, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

HOUSING, WALES

**The Renting Homes (Fees etc.)
(Prescribed Limits of Default
Payments) (Wales) Regulations
2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify limits (prescribed limits) for certain types of payments required in the event of a default by a contract-holder of a standard occupation contract.

Part 2 of the Renting Homes (Fees etc.) (Wales) Act 2019 (“the Act”) makes it an offence for a landlord or letting agent to require any payment of money in consideration of granting, renewing or continuing a standard occupation contract, or pursuant to a term of a standard occupation contract, unless it falls within one of two categories. Any such payment which does not fall within those two categories is a ‘prohibited payment’. The first category covers payments by a landlord to a letting agent in respect of lettings work or property management work. The second category comprises ‘permitted payments’, which are those payments listed in Schedule 1 to the Act.

Default payments are included as permitted payments in Schedule 1 to the Act (paragraph 6). Default payments are payments required under a standard occupation contract, as a result of a contract-holder’s default. The Welsh Ministers may specify limits for those default payments. If those prescribed limits are exceeded, the excess is a prohibited payment.

Regulation 2 sets out the method of determining the prescribed limit which applies in the case of a failure

by the contract-holder to make a payment of rent to the landlord by the due date.

Regulation 3 specifies two descriptions of default payment in respect of which a prescribed limit is specified. The first description comprises default payments in respect of the cost of changing, adding or removing a lock, where this has been necessary as a result of a breach by the contract-holder of a term of the contract. The second description comprises default payments in respect of the cost of replacing a key or other security device used to access the dwelling, where the replacement has been necessary as a result of a breach by the contract-holder of a term of the contract.

In respect of both those descriptions, the prescribed limit is specified in regulation 4 as being the actual cost of the replacement, change, addition or removal.

By virtue of regulation 3 of the Renting Homes (Fees etc.) (Wales) Act 2019 (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019, the references in Parts 1 to 5 and 7 of the Act to a standard occupation contract are to be read as references to an assured shorthold tenancy under Part 1 of the Housing Act 1988 and the references in the Act to a contract-holder are to be read as references to a tenant under an assured shorthold tenancy. These Regulations therefore apply to assured shorthold tenancies until such time those tenancies convert to standard occupation contracts under section 240 of the Renting Homes (Wales) Act 2016 when they will apply to standard occupation contracts.

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 Department of Housing, Welsh Government, Rhydycar Business Park, Merthyr Tydfil, CF48 1UZ.

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Made

Coming into force

28 April 2020

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 27(2)(a) of, and paragraph 6 of Schedule 1 to, the Renting Homes (Fees etc.) (Wales) Act 2019⁽¹⁾.

In accordance with section 27(3) of that Act, a draft of these Regulations has been laid before and approved by a resolution of the National Assembly for Wales.

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Renting Homes (Fees etc.) (Prescribed Limits of Default Payments) (Wales) Regulations 2020 and they come into force on 28 April 2020.

(2) In these Regulations, a “contract-holder” has the same meaning as in the Renting Homes (Wales) Act 2016⁽²⁾.

(1) 2019 anaw 2. Schedule 1 is introduced by section 4 of the Act. *See* section 28 for the definition of “regulations”.
(2) 2016 anaw 1; *see* section 7(5) for the definition of “contract-holder”.

Prescribed limits for failure to pay rent

2.—(1) The prescribed limit in the case of a failure by a contract-holder⁽¹⁾ to make a payment of rent to a landlord by the due date is to be determined as follows.

(2) In the case of a failure to make a payment of rent before the end of the period of seven days beginning with the due date, the prescribed limit is zero.

(3) In the case of a failure to make a payment of rent after the end of the period of seven days beginning with the due date, the prescribed limit is the aggregate of the amounts found by applying, in relation to each day after the due date for which the rent remains unpaid, an annual percentage rate of three per cent above the Bank of England base rate to the amount of rent that remains unpaid at the end of that day.

(4) In this regulation, the “Bank of England base rate” means the percentage rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets.

(5) But where an order under section 19 of the Bank of England Act 1998⁽²⁾ is in force, any equivalent percentage rate determined by the Treasury under that section applies.

Additional descriptions of default payment

3. The additional descriptions of default in respect of which a prescribed limit is specified are—

- (a) a breach by a contract-holder of a term of the contract which leads to the requirement for a lock giving access to the dwelling to which the contract-holder’s contract relates to be changed, added to or removed, and
- (b) a breach by a contract-holder of a term of the contract which leads to the requirement for a key or other security device which gives access to the dwelling to which the contract relates to be replaced.

(1) By virtue of regulation 3 of the Renting Homes (Fees etc.) (Wales) Act (Transitional Provision for Assured Shorthold Tenancies) Regulations 2019 (S.I. 2019/1151) (W. 201), the references in the Renting Homes (Fees etc.) (Wales) Act 2019 to a standard occupation contract are to be read as references to an assured shorthold tenancy and the references in the Act to a contract-holder are to be read as references to a tenant under an assured shorthold tenancy. When commenced on the appointed day, section 240 of, and Schedule 12 to, the Renting Homes (Wales) Act 2016 (anaw 1) means existing assured shorthold tenancies will convert in accordance with these provisions.

(2) 1998 c. 11.

Prescribed limit for additional descriptions of default payment

4.—(1) The prescribed limit in respect of the descriptions of default payments specified in regulation 3 is the amount equal to the actual cost of the replacement, change, addition or removal.

(2) In this regulation, the “actual cost” means the cost of the key, security device or lock, as evidenced by an invoice or receipt.

(3) Where a third party contractor undertakes the replacement of a key or other security device or the change, addition or removal of a lock, as referred to in regulation 3 on behalf of the landlord, the “actual cost” includes the cost of that contractor’s labour, as evidenced by an invoice or a receipt.

Name

[Title of Minister], one of the Welsh Ministers

Date