

CYNGOR SIR POWYS COUNTY COUNCIL.

CABINET EXECUTIVE

21 July 2020

REPORT AUTHOR: County Councillor James Evans
Portfolio Holder for Economic Development, Housing
and Regulatory Services

REPORT TITLE: The Renting Homes (Fees etc.) (Wales) Act 2019;
implementation arrangements for Powys County
Council and Rent Smart Wales

REPORT FOR: Decision

1. Purpose

1.1 The Renting of Homes (Fees etc) (Wales) Act 2019 came into force on 5th May 2019. From 1st September 2019, it bans letting agents and landlords who manage their own properties from charging any fees before, during or after a tenancy unless specifically exempted by the Act. Such a banned payment is called a 'prohibited payment'.

1.2 Letting agents and self-managing landlords are also banned from requiring a tenant to take out a loan or enter into a contract for services.

1.3 Enforcement of these new requirements can be undertaken by the Council and Rent Smart Wales (as the Single Licencing Authority) if the authority adopts and delegates powers to Rent Smart Wales. This will contribute to a fairer and more transparent experience for tenants relying on the private rented sector. It is also anticipated it should contribute to more secure tenancies for private sector housing tenants.

1.4 The Act places a duty on Local Housing Authorities to make information publicly available, including details of how prohibited payments and holding deposits can be recovered. Housing will place the required information on the Council website and create links to the website to allow the Council to meet that duty.

2. Background

2.1 Welsh Government believe that any costs associated with renting in the private sector should be reasonable, affordable and transparent. The new Act was brought in to achieve this aim by enabling Local Authorities to regulate such costs through informal and formal means.

2.2 The Act defines permitted payments that can be required by letting agents and self-managing landlords as:

- rent
- holding deposits
- security deposits
- payments in respect of utilities (e.g. council tax, television, licence and communication services)
- payments in default (where tenant has done something wrong e.g. lost keys, late payment of rent)

2.3 Any payments other than those listed above are prohibited. Where any rent payment, in one period, is greater than the amount of rent payable in any other period during the contract, the difference (a 'rent fluctuation') is also considered a prohibited payment. There is an exception where there is a 'permitted variation' agreed between landlord and tenant.

2.4 'Holding deposits' are limited to one week's rent and must be re-paid within seven days of the contract being agreed. If the tenancy contract is not agreed, the deposit must, subject to limited exceptions, be repaid within 15 days.

2.5 There will be no change to existing legislation governing 'security deposits', but Welsh Ministers now have the power to cap them. There are no plans to legislate for a cap, but Welsh Government will be monitoring trends in deposits and will only regulate if necessary.

2.6 Failure to comply with the provisions in the Act, in the following ways, will restrict the landlord's ability to serve a valid notice of possession ("no fault", Section 21 possessions):

- A prohibited payment has been required and paid, but not re-paid by the letting agent/self-managing landlord
- A holding deposit has not been repaid

2.7 This change will protect tenants by reducing financial exploitation.

Enforcement

2.8 The Council is responsible for enforcing this legislation in partnership with Rent Smart Wales (RSW). The legislation places the duty for enforcement on each local authority, with a power to share responsibility with RSW. All 22 Welsh Councils have agreed to a memorandum of understanding with RSW in relation to regulation of the private rented sector. The Housing (Wales) Act 2014 made provision for the appointment of a Licensing Authority for the scheme where Cardiff City Council were appointed by WG as the Licensing Authority and Cardiff City Council subsequently established RSW for this purpose.

2.9 RSW will take enforcement action in place of Local Authorities in limited circumstances:

- where RSW is undertaking an audit of an agent and find evidence of noncompliance
- where RSW is taking enforcement action for Housing (Wales) Act 2014 offences (e.g. not registered with RSW) and tenant fee contraventions are found
- other exceptional circumstances to be agreed on a case by case basis with the relevant Local Authority

2.10 Local Authorities are primarily responsible for enforcing the requirements and have a duty to inform the Licensing Authority (Rent Smart Wales) if they take enforcement action. Rent Smart Wales will also inform Local Authorities if they serve a fixed penalty notice or prosecute.

2.11 There are two formal enforcement options:

- Issue of a fixed penalty notice (FPN) of £1,000, the payment of which would avoid prosecution proceedings. Fixed penalty payment receipts will be used to fund any additional enforcement activity by the Housing Service (in accordance with the Act). However, non-payment would lead to prosecution by the authority (and only appeal mechanism against the FPN).
- Prosecution for offences under the Act which could result in a fine not subject to a minimum on the standards scale of fines (except for failure to provide information required by statutory notice, in which case a fine up to level 4 on the standard scale could be imposed by a judge)

2.12 Sections 17(2) and (3) of the Renting Homes (Fees etc) (Wales) Act 2019, enable Rent Smart Wales to take the above-mentioned enforcement actions but it is a legal requirement for Powys County Council to provide written consent for Rent Smart Wales (Cardiff City Council) to do so. If Cabinet give such consent, both Powys County Council officers and RSW will be able to take enforcement action

2.13 Any enforcement action will be taken in accordance with the Local Authority Enforcement Concordat to ensure consistency, proportionality and fairness.

3. **Advice**

3.1 **Option 1** - It is recommended that Members delegate authority for enforcing provisions of the Renting of Homes (Fees etc) (Wales) Act 2019 to the Corporate Director of Economy and Environment, with appropriate powers of sub-delegation.

3.2 That Members authorise Cardiff City Council, as the Single Licensing Authority for Wales (Rent Smart Wales), to exercise any function of an enforcement authority, in relation to Powys County Council's area, for the purposes of the Renting Homes (Fees etc.) (Wales) Act 2019, including (but

without limitation) taking enforcement activity and bringing criminal proceedings pursuant to section 19 of that Act.

Advantages:

- To enable the new legislation to be implemented quickly and efficiently
- To ensure that enforcement powers are also delegated to Rent Smart Wales, with whom the department work in partnership, for the enforcement of this legislation
- To deliver consistency of enforcement activity across Wales

Disadvantages:

- No disadvantages identified

3.3 **Option 2** - Not to delegate authority to the Corporate Director of Economy and Environment or Rent Smart Wales respectively.

Advantages: None.

Disadvantages:

- Will not allow new legislation to be implemented quickly and efficiently
- Will not ensure enforcement powers are delegated to Rent Smart Wales, with whom the department work in partnership for enforcement of this legislation
- Will not ensure consistency across Wales

Preferred Choice and Reasons

3.4 **Option 1** is the preferred choice for reasons stated above. Enforcement of these new requirements will contribute to a fairer and more transparent experience for tenants relying on the private rented sector. It is also anticipated it should contribute to more secure tenancies for private sector housing tenants.

4. Resource Implications

4.1 Financial Implications - Adoption will result in the scheme being delivered at zero financial cost to the Council with enforcement activities undertaken by a dedicated team at Rent Smart Wales. Consequently, no negative financial implications are associated with adoption. However, should delegation not be granted, Powys would need to undertake its own investigation and enforcement, incurring additional cost for the authority. There will also be additional financial pressure associated with recovery of fixed penalty notices associated with non-compliance, to cover the Council's enforcement costs.

4.2 Workforce - Adoption may reduce any burden on Trading Standards. Non-adoption would place significant pressure on existing teams involved with investigation and enforcement activity. Legal Services would also come under pressure regarding recovery of fixed penalty notices and possible prosecution of offenders for non-payment.

4.3 Digital/Physical Implications - There will be no additional digital or physical implications associated with adoption. The process will be outsourced to Rent Smart Wales, specialists in regulation of the private rented sector. They will use their own specialist resources and infrastructure to regulate compliance on behalf of the Council under an agreed memorandum of understanding. Non-adoption will increase pressure on existing Council services and result in additional cost should the Council undertake this activity.

4.4 "The Head of Finance (Section 151 Officer) notes the content of section 4 and can support the recommendation on that basis."

5. Legal implications

5.1 Option one would be the most straight forward for the Council. Cardiff, acting for all other authorities have a dedicated team dealing with these issues. If delegation did not take place, Powys would need to carry out their own prosecutions and enforcement which would incur additional charges and put significant pressure on the relevant teams within the Council.

5.2 The Head of Legal and Democratic Services (Monitoring Officer) has commented as follows: "I note the legal comment and have nothing to add to the report".

6. Data Protection

6.1 The delegation of enforcement powers in Powys will involve the processing of personal data. Delivery will be implemented by Rent Smart Wales, who will be the data controller, in addition to Powys County Council. Accordingly, Rent Smart Wales will be required to comply with the General Data Protection Regulations 2018, under memorandum of understanding with the Council.

6.2 Personal data processed by Powys County Council under the agreement will be processed in line with data protection legislation.

7. Comment from local member(s)

7.1 No comment from local Members

8. Integrated Impact Assessment

8.1 Impact Assessment is attached at Appendix 1.

8.2 Introduction of The Renting Homes (Fees etc.) (Wales) Act 2019 and implementation arrangements for Powys County Council and Rent Smart Wales aim to remove the financial barrier of unreasonable fees, allowing easier access to the private rented sector, particularly for those on low incomes. It should contribute to a fairer and more transparent experience for tenants relying on the private rented sector. There should be a positive impact on communities from increased access to more long-term financially sustainable tenancies, reducing the incidence of homelessness & providing additional disposable income for private sector housing tenants. It should reduce likelihood of empty lets, contributing to stronger and more sustainable communities and positively impact the local economy through provision of more disposable income, delivering stronger, safer and more economically viable communities.

9. Recommendations

9.1 To delegate authority for enforcing provisions of the Renting of Homes (Fees etc) (Wales) Act 2019 to the Corporate Director of Economy and Environment, with appropriate powers of sub-delegation.

9.2 To authorise Cardiff City Council, as the Single Licensing Authority for Wales (Rent Smart Wales), to exercise any function of an enforcement authority, in relation to Powys County Council's area, for the purposes of the Renting Homes (Fees etc.) (Wales) Act 2019, including (but without limitation) taking enforcement activity and bringing criminal proceedings pursuant to section 19 of that Act.

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