



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNCIL

Regeneration and Sustainable Development Cabinet Board

30th July 2021

Report of the Head of Planning and Public Protection

Ceri Morris

Matter for Decision

Wards Affected: All

Tenant Fee Delegations

Purpose of the Report

To seek approval for delegated authority to be issued to the Director of Environment and Regeneration, the Head of Planning and Public Protection and the Environmental Health and Trading Standards Manager to undertake enforcement in respect of the Renting of Homes (Fees etc.) (Wales) Act 2019 and to provide a respective delegation to Cardiff City Council (as agents of Rent Smart Wales) to undertake such enforcement work on the part of this Council.

Background

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

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.

Enforcement of these new requirements, which is undertaken by the Council and Rent Smart Wales (as the Single Licencing Authority) will contribute to more secure tenancies for private tenants.

Prohibited Payments

Welsh Government (WG) advises that any costs associated with renting in the private sector should be reasonable, affordable and transparent. This new Act was brought in to achieve this aim by enabling Local Authorities to regulate such costs through informal and formal means, as outlined below.

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 communications services);
- Payments in default (i.e. where the tenant has done something wrong – lost keys, late payment of rent).

Any payments other than those listed above would be banned and 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 the landlord and tenant.

'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.

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 WG will be monitoring trends in deposits and will only regulate if necessary.

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;
- This change will protect tenants by reducing financial exploitation.

Enforcement

The Council is responsible for enforcing this legislation in partnership with Rent Smart Wales (RSW). All 22 Welsh Councils have agreed to a memorandum of understanding with RSW in relation to the regulation of the private rented housing sector.

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 non-compliance;
- 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.

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

There are two formal enforcement options available to the Council and RSW:

- Issue of a fixed penalty notice (FPN) of £1,000, the payment of which would avoid prosecution proceedings. The fixed penalty payment receipts will be used for this enforcement function by the Environmental Health and Trading Standards department (in accordance with the Act). However, non-payment would lead to prosecution (also the only appeal mechanism).
- 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).

Sections 17(2) and (3) of the Renting Homes (Fees etc.) (Wales) Act 2019 enable RSW to take the above mentioned enforcement actions but it will be necessary for this authority to authorise RSW (Cardiff City Council) to do so.

The above enforcement action will be taken in accordance with the departmental enforcement policy to ensure consistency, proportionality and fairness.

Financial Impacts

The necessary resources are currently available within the Environmental Health and Trading Standards service.

Integrated Impact Assessment

A first stage impact assessment (Appendix 1) has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.

Having had due regard to the first stage Integrated Impact Assessment, a more in-depth assessment is not required.

Valleys Communities Impacts

No implications.

Workforce Impacts

No implications.

Legal Impacts

The relevant authorised officers will be given powers to operate under the Act.

Risk Management Impacts

It is a statutory requirement to implement this legislation and failure to do so will result in a high risk of legal challenge as well as reputational damage to the Authority at a strategic and operational level.

Crime and Disorder Impacts

In undertaking the provisions of this Act, the actions of the Authority may have a positive impact upon crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment).

Consultation

There is no requirement for externally consultation on this matter.

Recommendations

That having considered the report and having due regard to the Integrated Impact Assessment, it is resolved to make the following recommendations for approval:

That the delegation arrangements in respect of the Environmental Health and Trading Standards Service which are set out in version 14.12.18 of the authority's Constitution [i.e. in Part 3 – Officer of the Council Delegation Arrangements: {c} Environmental Health and Trading Standards - Schedule 1] are amended to:

- a) Add the Renting of Homes (Fees etc.) (Wales) Act 2019 to the list of legislation [set out in the above referred to Schedule 1] delegated to the Director of Environment and Regeneration, the Head of Planning and Public Protection and the Environmental Health and Trading Standards Manager.
- b) Delegate to those officers in [a] above the authority to authorise individual competent and qualified officers to act under that legislation.
- c) Delegate to those officers in [a] above the authority to institute legal proceedings under the provisions contained in the the Renting of Homes (Fees etc.) (Wales) Act 2019 in conjunction with the Head of Legal Services [including the signing of any cautions in accordance with Home Office Guidelines] and, where an alleged offender is being held in custody in relation to an offence, to institute proceedings by way of charge.
- d) That the Head of Legal Services be authorised to seek amendment of the Constitution by the Council in due course: in order to reflect the above changes to the authority's delegation arrangements.

e) 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 Neath Port Talbot 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.

Reasons for Proposed Decision

To enable the new legislation to be implemented quickly and efficiently. The Environmental Health and Trading Standards service, located within Planning and Public Protection, has responsibility for the enforcement of Housing and Trading Standards legislation.

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.

Implementation of Decision

The decision is proposed for implementation after the three day call in period.

Appendices

Appendix 1– First Stage Integrated Impact Assessment.

List of Background Papers

Renting of Homes (Fees etc.) (Wales) Act 2019.

Officer Contact

Mark Thomas – Environmental Health and Trading Standards Manager
Tel: 01639 685612 or e-mail: m.thomas2@npt.gov.uk

Appendix 1 – Integrated Impact Assessment (IIA)

This Integrated Impact Assessment considers the duties and requirements of the following legislation in order to inform and ensure effective decision making and compliance:

- Equality Act 2010
- Welsh Language Standards (No.1) Regulations 2015
- Well-being of Future Generations (Wales) Act 2015
- Environment (Wales) Act 2016

Version Control

Version	Author	Job title	Date
Version 1	Mark Thomas	Environmental Health and Trading Standards Manager	4 th June 2021

1. Details of the initiative

	Title of the Initiative: Tenant Fee Delegations
1a	Service Area: Environmental Health
1b	Directorate: Environment and Regeneration
1c	Summary of the initiative: The Renting of Homes (Fees etc.) (Wales) Act 2019 came into force on 5 th May 2019. From 1 st 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 exempt in the Act. Such a banned payment is called a ‘prohibited payment’.
1d	Is this a ‘strategic decision’? No
1e	Who will be directly affected by this initiative? Landlords, tenants and Letting agents.
1f	When and how were people consulted? This is to implement Welsh Government legislation therefore none was considered necessary.
1g	What were the outcomes of the consultation? N/A

2. Evidence

What evidence was used in assessing the initiative?

N/A

3. Equalities

a) How does the initiative impact on people who share a **protected characteristic**?

Protected Characteristic	+	-	+/-	Why will it have this impact?
Age			+	It will have no direct impact on protected characteristics.
Disability			+	
Gender reassignment			+	
Marriage & civil partnership			+	
Pregnancy and maternity			+	
Race			+	
Religion or belief			+	
Sex			+	
Sexual orientation			+	

What action will be taken to improve positive or mitigate negative impacts?

NPTCBC will continue to work closely with Rent Smart Wales to regulate the private rented sector.

b) How will the initiative assist or inhibit the ability to meet the **Public Sector Equality Duty**?

Public Sector Equality Duty (PSED)	+	-	+/-	Why will it have this impact?
To eliminate discrimination, harassment and victimisation			+	Community activities proposed in the project are designed to be inclusive.
To advance equality of opportunity between different groups			+	
To foster good relations between different groups			+	

What action will be taken to improve positive or mitigate negative impacts?
NPTCBC will continue to work closely with Rent Smart Wales to regulate the private rented sector.

4. Socio Economic Duty

Impact	Details of the impact/advantage/disadvantage
Positive/Advantage	Positive
Negative/Disadvantage	
Neutral	

What action will be taken to reduce inequality of outcome

NPTCBC will continue to work closely with Rent Smart Wales to regulate the private rented sector.

5. Community Cohesion/Social Exclusion/Poverty

	+	-	+/-	Why will it have this impact?
Community Cohesion	+			Enforcement of these new requirements will contribute to more secure tenancies for private tenants.
Social Exclusion	+			Enforcement of these new requirements will contribute to more secure tenancies for private tenants.
Poverty	+			Enforcement of these new requirements will contribute to more secure tenancies for private tenants. Enforcing the requirements of the Act will ensure tenants in private rented sector properties do not have to pay banned payments to landlords and section 21 possessions cannot be pursued by landlord / letting agent in certain circumstances prescribed by the Act.

What action will be taken to improve positive or mitigate negative impacts?

NPTCBC will continue to work closely with Rent Smart Wales to regulate the private rented sector.

6. Welsh

	+	-	+/-	Why will it have this effect?
What effect does the initiative have on: - people's opportunities to use the Welsh language			+	No impact.

- treating the Welsh and English languages equally			+	No impact.
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What action will be taken to improve positive or mitigate negative impacts?

N/A – no impact.

7. Biodiversity

How will the initiative assist or inhibit the ability to meet the **Biodiversity Duty**?

Biodiversity Duty	+	-	+/-	Why will it have this impact?
To maintain and enhance biodiversity			+	It will have no effect on the biodiversity duty.
To promote the resilience of ecosystems, i.e. supporting protection of the wider environment, such as air quality, flood alleviation, etc.			+	It will have no effect on the biodiversity duty.

What action will be taken to improve positive or mitigate negative impacts?

N/A – no impact.

8. Well-being of Future Generations

How have the five ways of working been applied in the development of the initiative?

Ways of Working	Details
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i. Long term – looking at least 10 years (and up to 25 years) ahead	Enforcement of these new requirements will contribute to more secure tenancies for private tenants.
ii. Prevention – preventing problems occurring or getting worse	Enforcement of these new requirements will contribute to more secure tenancies for private tenants. Enforcing the requirements of the Act will ensure tenants in private rented sector properties do not have to pay banned payments to landlords and section 21 possessions cannot be pursued by landlord / letting agent in certain circumstances prescribed by the Act.
iii. Collaboration – working with other services internal or external	The Council is responsible for enforcing this legislation in partnership with Rent Smart Wales (RSW). All 22 Welsh Councils have agreed to a memorandum of understanding with RSW in relation to the regulation of the private rented Housing sector.
iv. Involvement – involving people, ensuring they reflect the diversity of the population	The legislation has been developed and implemented by Welsh Government.
v. Integration – making connections to maximise contribution to:	Enforcement of these new requirements, which is undertaken by the Council and Rent Smart Wales (as the Single Licencing Authority) will contribute to more secure tenancies for private tenants.
Council's well-being objectives	It is anticipated that the implementation of this legislation will lead to more secure tenancies for private tenants, support people to live active independent lives in their community and tackle poverty.
Other public bodies objectives	It is anticipated that the implementation of this legislation will lead to more secure tenancies for private tenants, support people to live active independent lives in their community and tackle poverty.

9. Monitoring Arrangements

Provide information on the monitoring arrangements to:

Monitor the impact of the initiative on Equalities, Community Cohesion, the Welsh Measure, Biodiversity Duty and the Wellbeing Objectives.

This legislation is implemented by Welsh Government, however the department will monitor compliance as it does with other such enforcement issues and will direct resources accordingly.
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10. Assessment Conclusions

Please provide details of the conclusions reached in relation to each element of the assessment:

	Conclusion
Equalities	Continue
Socio Economic Disadvantage	Continue
Community Cohesion/ Social Exclusion/Poverty	Continue
Welsh	Continue
Biodiversity	Continue
Well-being of Future Generations	Continue

Overall Conclusion

Please indicate the conclusion reached:

- Continue** - as planned as no problems and all opportunities have been maximised x
- Make adjustments** - as potential problems/missed opportunities/negative impacts have been identified along with mitigating actions
- Justification** - for continuing with the initiative even though there is a potential for negative impacts or missed opportunities
- STOP** - redraft the initiative as actual or potential unlawful discrimination has been identified

Please provide details of the overall conclusion reached in relation to the initiative

Continue – Welsh Government have implemented this legislation. The Environmental Health and Trading Standards service located within Planning and Public Protection, has responsibility for the enforcement of Housing and Trading Standards legislation; and 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.

11. Actions

What actions are required in relation to obtaining further data/information, to reduce or remove negative impacts or improve positive impacts?

Action	Who will be responsible for seeing it is done?	When will it be done by?	How will we know we have achieved our objective?
None			

12. Sign off

	Name	Position	Date
Completed by	Mark Thomas	Environmental Health and Trading Standards Manager	4 th June 2021
Signed off by	Ceri Morris	Head of Planning and Public Protection	7 th June 2021