

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

CABINET

23RD JANUARY 2020

**DELEGATE AUTHORITY TO ENFORCE THE PROVISIONS OF THE
RENTING OF HOMES (FEES ETC) (WALES) ACT 2019**

**REPORT OF DIRECTOR PUBLIC HEALTH, PROTECTION AND
COMMUNITY SERVICES IN DISCUSSION WITH THE CABINET MEMBER
FOR STRONGER COMMUNITIES, WELL-BEING AND CULTURAL
SERVICES, CLLR RHYS LEWIS**

**Author(s): Neil Pilliner, Environmental Protection & Housing Standards
Manager and Ian Lester, Senior Environmental Health Officer**

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to delegate authority to the Director of Public Health, Protection and Community Services and to the single Licensing Authority in Wales (Rent Smart Wales) to use the enforcement powers of the Renting of Homes (Fees etc) (Wales) Act 2019.

2. RECOMMENDATIONS

It is recommended that the Cabinet:

- 2.1 Give delegated authority to the Director of Public Health, Protection & Community Services for enforcing the provisions of the Renting of Homes (Fees etc.) (Wales) Act 2019 and note that the Monitoring Officer would make any consequential amendment(s) required to the Council's Constitution.
- 2.2 Give delegated authority to the Operational Manager for Rent Smart Wales for enforcing the provisions of the Renting Homes (Fees etc.) (Wales) Act 2019 on behalf of Cardiff City Council and note that the Monitoring Officer would make any consequential amendment(s) required to the Council's Constitution.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To enable enforcement of the new legislation to be implemented by Officers in the Public Health, Protection & Community Services Department.

- 3.2 To ensure that enforcement powers are also delegated to Rent Smart Wales, with whom the Council work in partnership, for the enforcement of this legislation.

4. BACKGROUND

- 4.1 The Renting Homes (Fees etc.) (Wales) Act 2019 came into force on 5th May 2019. Since 1st September 2019, letting agents and landlords who manage their own properties are prevented 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'.
- 4.2 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.
- 4.3 Enforcement of these new requirements can be undertaken by the Council and Rent Smart Wales (as the Single Licencing Authority) and will contribute to a fairer and more transparent experience for tenants relying on the private rented sector. Welsh Government (WG) advises that any costs associated with renting in the private sector should be reasonable, affordable and transparent.
- 4.4 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 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).

WG intends to introduce regulations to define such payments by the end of 2019.

- 4.5 Any payments other than those listed in 4.4 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 landlord and tenant.
- 4.6 'Holding deposits' are limited to one week's rent and must be repaid 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.

- 4.7 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.
- 4.8 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.
- 4.9 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.
- 4.10 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. no registered with RSW) and tenant fee contraventions are found;
 - Other exceptional circumstances to be agreed on a case by case basis with the Local Authority.
- 4.11 Local Authorities are primarily responsible for enforcing the requirements and have a duty to inform the Licensing Authority (Rent Smart Wales (RSW)) if they take enforcement action. Rent Smart Wales will also inform Local Authorities if they serve a fixed penalty notice or prosecute.
- 4.12 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. However, non-payment would lead to prosecution;
 - Prosecution for offences under the Act which could result in a fine not subject to a minimum on the standard 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).

- 4.13 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 will be necessary for the Council to authorise RSW (Cardiff City Council) to do so.
- 4.14 The above enforcement action will be taken in accordance with the Council's Enforcement Policy to ensure consistency, proportionality and fairness.

5. EQUALITY AND DIVERSITY IMPLICATIONS

- 5.1 This is not applicable as the Authority has a statutory duty to enforce the provisions of this Act. Any enforcement action will be undertaken in accordance with the Council's Corporate Enforcement Policy.

6. CONSULTATION

- 6.1 None was considered necessary as this is a new statutory requirement.

7. FINANCIAL IMPLICATION(S)

- 7.1 The necessary resources to enforce this legislation will be undertaken within the current allocated budget for Public Health, Protection & Community Services. The additional regulatory burden of this legislation has been the subject of the financial assessment by Welsh Government. It is considered that the fixed penalty (£1000 per offence) or Court cost awards will cover the financial impact incurred.

8. LEGAL IMPLICATIONS OR LEGISLATION CONSIDERED

- 8.1 Legal and probity issues have been considered. By virtue of the Regulation of Private Rented Housing (Designation of Licensing Authority)(Wales) Order 2015, Cardiff City Council is designated as the Licensing Authority for the whole of Wales. The service operates under the name Rent Smart Wales hosted by Cardiff Council and ensures compliance with the Housing (Wales) Act 2014 in partnership with all 22 Welsh Local Authorities. Formal authorisation is required in respect of the Renting Homes (Fees etc.)(Wales) Act 2019, in order to ensure that all relevant powers can be exercised from the 1st September 2019.

9. LINKS TO THE CORPORATE AND NATIONAL PRIORITIES AND THE WELL-BEING OF FUTURE GENERATIONS ACT

- 9.1 It links with the Economy and Place priorities of the Corporate Plan as the changes introduced by the new legislation will protect tenants by reducing financial exploitation.
- 9.2 Use of the enforcement powers are also consistent with the Well-being Goals under the Wellbeing of Future Generations (Wales) Act 2015 as protecting tenants against financial exploitation will contribute to:
- A healthier Wales – a society in which people’s physical and mental wellbeing is maximised and in which choices and behaviours that benefit future health are understood;
 - A Wales of cohesive communities – attractive, viable, safe and well connected communities;
 - A more equal Wales - A society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).

10. CONCLUSION

- 10.1 The provisions of the Renting Homes (Fees etc) (Wales) Act 2019 prevents 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. Delegating authority to the Director - Public Health, Protection and Community Services and Rent Smart Wales (as the Single Licencing Authority) to enforce these new requirements will contribute to a fairer and more transparent experience for tenants relying on the private rented sector.

Other Information:-

Relevant Scrutiny Committee
Health and Wellbeing Scrutiny



LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

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Background papers:

None

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