

# S A M P L E

## Guidance on the Renting Homes (Fees etc.) (Wales) Act 2019 for Residential Landlords and Letting Agents

The Renting Homes (Fees etc.) (Wales) Act 2019 and applies to occupation contracts entered into by a contract-holder can

Under the Act, landlords and letting agents in Wales are prohibited from charging certain fees to a contract-holder. These fees must be capped and must be fully refunded within strict time frames, except in certain circumstances.

It is a criminal offence for a landlord or letting agent to charge any prohibited payments, as defined in the Act, and a summary conviction or enforcement authority may issue a fixed penalty of £1,000 as an alternative.

Landlords, or letting agents, will not be able to serve a valid no-fault eviction notice (s173 notice) or a landlord's break notice) until they have repaid any prohibited payments to the contract-holder.

This Guidance summarises the key provisions of the Act; which payments can be charged to a contract-holder, which payments cannot, the treatment of holding deposits, which contracts are affected and the penalties for breach of the Act.

### 1. Which contracts does the Act apply to?

This Act applies to occupation contracts, including tenancies which were granted on or after 01 September 2019, which converted to occupation contracts on 01 December 2022, and to any agreement which was entered into prior to 01 September 2019 but which is not subject to the requirements of the Act.

### 2. What payments are prohibited by the Act?

a. Landlords can charge a fee for letting agent in respect of lettings work or property management work on the landlord's behalf; and

b. A contract-holder can charge a fee for letting agent in respect of lettings work or property management work on the landlord's behalf; and

1. Rent (although this is not permitted, save as explained below);
2. A refund of a holding deposit (there are currently no limits on the amount of the holding deposit, but it must be repaid at no more than one week's rent);
3. A refund of a holding deposit (there are currently no limits on the amount of the holding deposit, but it must be repaid at no more than one week's rent);
4. Payment of a holding deposit (there are currently no limits on the amount of the holding deposit, but it must be repaid at no more than one week's rent);
5. Council tax (there are currently no limits on the amount of the council tax, but it must be repaid at no more than one week's rent);

2019 ('the Act') came into force on 01 September 2019. The main purpose of the Act is to reduce the "hidden" costs that a contract-holder can incur when entering into an occupation contract.

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a. for the letting agent in respect of lettings work or property management work on the landlord's behalf; and  
as explained below;  
b. Interest on a holding deposit (if the rent is unpaid for more than 7 days). The rate of interest must not exceed the rate of 3% above the Bank of England base rate;

6. Utilities (including gas, electricity, fuel, water or sewerage), if the payments are required to be made by the contract-holder in relation to the dwelling subject to that contract;
7. Communications (including landline or mobile phone, internet/cable or satellite television), if the payments are required to be made by the contract-holder in relation to the dwelling subject to that contract;
8. TV Licence, if the payments are required under the occupation contract and relate to the dwelling subject to that contract.

### 3. What payments can landlords charge?

Landlords, or letting agents acting on their behalf, are prohibited from charging contract-holders any fees which are not permitted by the Regulations (described above).

1. Letting fees: Landlords or letting agents can charge a fee to a contract-holder and must be fronted entirely by the contract-holder. The fee must be:
  - A one-off fee;
  - Paid before the contract-holder moves into the dwelling;
  - Limited to a maximum of one month's rent;
  - Paid by the contract-holder to the landlord or letting agent;
  - Capable of being refunded to the contract-holder if the contract is terminated within 14 days of the contract-holder moving into the dwelling;
  - Paid by the contract-holder to the landlord or letting agent.
2. Landlord's fees: Landlords can charge a fee in consideration of a variation or assignment or termination of the contract.
3. Landlord's fees: Landlords can charge a fee for professional cleaning services;
4. The amount of the fee which exceeds the cap referred to above will be prohibited.
5. Renewal fees: Landlords can charge a fee for the renewal of the occupation contract; and
6. If more than one contract-holder is named in the contract, this additional rent is a prohibited fee (unless an exception applies). If the rental periods vary in length, the additional rent may be charged as long as the daily rate of rent for each contract-holder is the same. The exception may apply where: 1) the parties to the agreement have agreed a rent review provision; 2) the contract includes a rent review provision.

### 4. Holding Deposits

#### 4.1 Capped Holding Deposits

A holding deposit is a sum of money paid by a contract-holder to secure a dwelling prior to signing the occupation contract. Landlords or letting agents can charge a holding deposit to reserve a dwelling whilst they carry out a suitability check on prospective contract-holders, but you must not charge more than the cap published by the Welsh Government states. The cap is the monthly rent should be divided by 4.35.

#### 4.2 Specified Information

Under supplementary Regulations, landlords and/or agents in Wales must provide the following information to prospective contract-holders before collecting a holding deposit on or after the 28 February 2019. The information is as follows (as set out at Regulation 3(2) of The Renting Homes (Fees etc.) (Wales) Act 2019 for Residential Landlords and Letting Agents):

- a) amount of which the deposit is paid;
- b) address to which the deposit is paid; and, if the deposit is paid to a letting agent, the name and contact details of that agent;
- c) where a deposit is paid to a letting agent, the name and contact details of that agent;
- d) where a deposit is paid to a landlord, the name and contact details of that landlord;
- e) duration of the occupation contract;
- f) proposed terms of the occupation contract;
- g) amount of the holding deposit;
- h) rental period;
- i) any proposed terms or proposed modifications to fundamental terms of the occupation contract proposed to be omitted from the contract;
- j) amount of the holding deposit;
- k) whether the prospective contract-holder is a tenant or a licensee; and, if so, any relevant conditions;
- l) reference to the relevant provisions of the Act; and
- m) information that the letting agent requires from the prospective contract-holder.

The above 'Specified Information' must be provided in writing and may be given in person, by post or sent electronically. The prospective contract-holder consents to this.

If the holding deposit is not all the Specified Information is provided, the prospective contract-holder must provide the missing information.

#### 4.3 Repayment

There are strict rules about the repayment of the holding deposit. Under the Act, the holding deposit must be repaid within 15 days of the occupation contract being entered into (although the holding deposit may be applied to the first instalment of rent, or towards the security deposit). There is no requirement for the holding deposit being applied to the rent or security deposit.

If the landlord or letting agent fails to enter into an occupation contract within 15 days of receipt of the holding deposit, the contract-holder ('the Deadline for Agreement') must repay the holding deposit to the landlord or letting agent by the Deadline for Agreement.

A holding deposit must only be repaid in limited circumstances:

- i) where a letting agent provides misleading or false information; or
- ii) if the contract-holder has taken all reasonable steps to enter into the contract (even though the contract is not entered into); or

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- iii) the contract is not covered by the Agreement; or

If a landlord or letting agent is required to enter into an occupation contract (this exception does not apply to a landlord or letting agent having behaved reasonably).

## 5. Prohibited Arrangements

Neither a landlord nor a letting agent can require a contract-holder to make a prohibited payment to a third party (other than for the supply of utilities); or to make a loan in consideration of the grant, renewal or continuation of an occupation contract. For example, you cannot require a contract-holder to provide a service such as reference checks or credit checks.

There is an exception for services under which any of the services will be provided by a person who occupies the dwelling. This might include a caretaker or live-in nanny.

## 6. Consumer Rights

The Act gives the Consumer Rights Act 2015 to Wales, on third party websites.

## 7. What are the penalties for non-compliance?

7.1 It is a criminal offence for a landlord or letting agent to charge any prohibited payments, and letting agents can be:

- a. Found liable for a criminal offence;
- b. The enforcement authority may issue a fixed penalty (£1,000) instead. If a fixed penalty is not paid within 21 days to avoid criminal conviction;
- c. The court may order the prohibited payment be repaid.

7.2 Landlords or letting agents who do not comply with the Act, will not be able to serve a valid no-fault eviction notice or exercise a landlord's break notice) until the contract-holder has repaid the prohibited payment or returned an unlawfully retained holding deposit.

7.3 A term in an occupation contract which seeks to impose a prohibited payment on the contract-holder will not be required to pay this sum.

7.4 The enforcement authority has specific powers to require information from landlords and letting agents for the investigation of a potential breach of the Act. It is an offence to provide false or misleading information, and a person

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landlord/or letting agent before the Deadline for entering into an occupation contract (this exception does not apply to a landlord or letting agent having behaved reasonably).

on certain exceptions to repayment (for example, where the contract-holder has taken all reasonable steps to enter into the contract and the landlord or letting agent has behaved reasonably). If a landlord or letting agent does not wish to enter into the contract, the contract-holder must have been provided by the landlord (or letting agent) with a holding deposit was paid.

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can be liable for a breach.

7.5 A landlord or letting agent may have their Rent Smart Wales licence revoked if the licensing authority is not fit and proper to hold a licence under the Housing Wales Act 2011.

7.6 Where an offence is committed by a company, a senior officer of that company may be liable for the offence.

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