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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

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

A consultation on default fees and prescribed information for holding deposits in the private rented sector

Date of issue: 24 May 2019

Action required: Responses by 19 July month 2019

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This is a consultation on making two sets of regulations under paragraph 6 of Schedule 1, and paragraph 11 of Schedule 2, to the Renting Homes (Fees etc.) (Wales) Act 2019:

1. To prescribe the description and the limits of payments in default which are to be regarded as permitted payments.
2. To specify information a landlord (or their agent) should provide to a prospective tenant before a holding deposit is taken.

How to respond

You can respond by using the questionnaire at the back of this document, or by completing an online form.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

Address: Housing Policy Division
Welsh Government
2nd Floor
Cathays Park Office
Cardiff
CF10 3NQ

email: PrivateSectorHousingMailbox@Gov.Wales

telephone: 03000 628155

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

What are the main issues?

This is a consultation on making two sets of regulations under paragraph 6 of Schedule 1 and paragraph 11 of Schedule 2 to the Renting Homes (Fees etc.) (Wales) Act 2019:

1. Regulations to prescribe the description and the limits of payments in default which are to be regarded as permitted payments.

This will determine additional default payments which may be permitted if a tenant breaches a term of their tenancy agreement and the limits on such payments. If payment limits are exceeded, any excess becomes a prohibited payment.

The intended purpose is to establish an additional list of default payments which are permitted to be charged. This will ensure tenants are fully aware of any additional default fees which they may be liable for should they breach their tenancy agreement.

2. Regulations which prescribe what information a landlord (or agent) must provide to a prospective tenant before they take a holding deposit.

The proposal is to specify and, where necessary, set out the information a prospective tenant must be provided with before they pay a holding deposit to a landlord or agent.

It is important that a prospective tenant is provided with relevant information in order to make a fully informed decision prior to entering into a tenancy agreement. This will ensure that a tenant does not provide a holding deposit unless the prescribed information has been provided to them. It will also mean a landlord or agent will not be able to require a holding deposit unless all the prescribed information has been provided to the tenant.

Where are we now?

[The Renting Homes \(Fees etc.\) \(Wales\) Act 2019](#) received Royal Assent on 15 May 2019. The Minister for Housing and Local Government announced in April 2019 that she would commence the Act on 1 September 2019.

The Act provides the Welsh Ministers with powers to make regulations in respect of any additional descriptions of default payments and prescribing limits on default payments (Schedule 1, paragraph 6) and the information a prospective tenant must be provided with before they pay a holding deposit (Schedule 2, paragraph 11(3)).

Payments in default

The policy intention is to prescribe a limited number of further categories of default payment. This consultation provides a list of categories the government consider to be fairly common in the sector. In each case the additional default payment would be due owing to the default of a tenant that it would be reasonable to expect them to pay. The tenant making a payment in such circumstances is felt to be an important aspect of a responsible and reliable relationship between tenant and landlord. This consultation seeks views from the sector on which payments ought to be permitted.

However, in keeping with the intentions of the legislation overall, there is a need to avoid any default payment being excessive and having a negative impact on affordability and access to the private rented sector as a result. Regulations may therefore also limit the amount that can be charged for default payments. The preferred policy option for any limit is to require that a payment relate to the actual costs incurred by the landlord or agent. This is considered to be preferable to setting a specific financial limit for each category as to do so may result in that maximum being considered as the charge to be levied in every instance. Views from the sector on both options as well as landlords or agents setting the charges themselves are however being sought.

As the government argued during scrutiny of the legislation, it is considered fair that a tenant who is late with their rent, and perhaps sometimes consistently so, should be liable to a late payment charge. Views from the sector on how to place a limit on such charges which strikes a reasonable balance between all parties are also sought through this consultation.

In defining additional categories of default payments anything that isn't defined as such will be classed as a "prohibited payment". This will mean that any fee which is not permitted could potentially result in enforcement action, up to and including prosecution.

Information required before a holding deposit is taken

Specifying what information is required before a prospective tenant pays a holding deposit allows them to make an informed choice about whether a tenancy is suitable before making a financial commitment.

In keeping with the position taken during scrutiny of the legislation, it is recognised that there will be occasions where, having undertaken necessary checks, any agreement with the tenant will need to differ from that originally proposed. The intention behind prescribing the information to be provided upfront however, is to prevent a situation where the difference is not as a result of the circumstances of the tenant, but rather due to the agent or landlord not providing the relevant information at the outset.

In particular, it is considered that information relating to the costs associated with the tenancy and the need for a guarantor should be made clear prior to a holding deposit being taken as these have a significant bearing on a tenant's ability to take up the tenancy. Respondents to the consultation need not however limit their responses to these matters and views on what other information should be provided are sought.

If information specified in regulations is not provided (referred to in paragraph 11 of Schedule 2 as "the condition" which must be met) the exceptions to the requirement to repay a holding deposit may not be relied upon by a landlord or letting agent. These exceptions mean that a landlord or agent may not have to repay the deposit if the tenant notifies them that they have decided not to enter into the contract or if the landlord or agent takes all reasonable steps to enter into a contract or if a tenant fails to take such reasonable steps. The risk of not being able to apply these exceptions is considered to be a significant incentive to provide the required information any regulations may set out.

Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Question 1: Are you a:

Tenant	
Landlord	
Letting / Management Agent	
Representative Body	
Local Authority	
Other (please state)	

Default Payments

Question 2: If you are a **tenant**, which of the following breaches of contract **have you been charged for in the past** or are you aware could **currently** be charged under your tenancy agreement? Please also state how much you were/could be charged.

Please skip if not a tenant or tenant representative

Default reason	Have been charged / could be charged	Amount £
Lost / replacement keys (including key cards etc.)		
Late rent		
Emergency / out-of-hours call-out		
Repairs arising from damage by the tenant		
Missed appointment		
Bounced cheque		
Other (please specify)		

Question 3: If you are a **landlord or agent** please state which of the following fees you **currently charge, or reserve the right to charge for**, when a tenant breaches under your tenancy agreement. Please also state your charge in each instance.

Please skip this question if not a landlord, agent or representative body.

Default reason	Currently charge / reserve right to charge	Amount £
Lost / replacement keys (including key cards etc.)		
Late rent		
Emergency / out-of-hours call-out		
Repairs arising from damage by the tenant		
Missed appointment		
Bounced cheque		

Other (please specify)		
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Question 4: What additional payments, if any, do you think tenants **should make** if they breach their tenancy agreement in the future? (Choose all that apply)

Default reason	
Lost / replacement keys (including key cards etc.)	
Late rent	
Emergency / out-of-hours call-out	
Repairs arising from damage by the tenant	
Missed appointment	
Bounced cheque	
Other (please specify)	
Comments	

Question 5: Where payments are required in the future, on what basis do you think it would be most reasonable to calculate the payments?

Actual losses for the landlord / agent	
If you think actual losses would be reasonable please provide your views on what information should be provided as evidence of the costs incurred.	
Landlords agents should be able to set the charge	
Set limits for all payments (please state suggested charges)	
Set limits for certain payments (please list fees and charge)	
Other (please state)	
Comments	

Question 6a: With regards to late rent specifically, if you are a **tenant**, please tell us how much you can or have been charged when rent is late and how many times you can or have been required to pay for a single instance of late rent in the period the rent was due.

Question 6b: If you are an **agent or landlord**, please tell us how much you charge for late rent, how this is calculated and how many times in a period the rent was due the charge can be made.

Question 6c: What in your opinion would be a fair and reasonable way to calculate and charge for late rent?

Information to be provided before taking a holding deposit

Question 7: What information should a prospective tenant be provided with before a landlord or agent takes a holding deposit?
(Choose all that apply)

Basic details of all parties to be included in the agreement, (prospective tenant, landlord and agent) including contact details	
Length and type of tenancy to be entered into, including moving in date.	
Amount of rent	
Amount of security deposit	
Requirements for a guarantor	
Details of the circumstances under which the holding deposit is refundable	
Details of how the holding deposit will be used should the tenancy go ahead, including how it will be protected.	
Details of what will happen following a deposit being paid, including what checks will be undertaken by the landlord / agent.	
Other (please state):	

Question 8: How do you think this information should be provided (e.g. hard copy, electronic link, made available to review at agent's office)?

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General Questions

Question 9: We would like to know your views on the effects that either setting default payments, or the information that must be provided before taking a holding deposit would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How positive effects could be increased, or negative effects be mitigated?

Question 10: Please also explain how you believe the proposed policy in either setting default payments, or the information that must be provided before taking a holding deposit, could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 11: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: