

Committee: **Special Council**

Date of Meeting: **6th March, 2024**

Report Subject: **The Renting Homes (Fees etc.) (Wales) Act 2019; authorisation of Rent Smart Wales to undertake enforcement action In Blaenau Gwent**

Portfolio Holder: **Councillor Helen Cunningham – Deputy Leader/Cabinet Member for Place & Environment**

Report Submitted by: **David Thompson – Service Manager – Public Protection.**

Reporting Pathway								
Directorate Management Team	Corporate Leadership Team	Portfolio Holder / Chair	Governance Audit Committee	Democratic Services Committee	Scrutiny Committee	Cabinet	Council	Other (please state)
23/1/2024	25/1/2024				N/A	N/A	6/3/24	

1. Purpose of the Report

To seek approval for delegated authority to be issued to the single licensing authority in Wales (Rent Smart Wales) in respect of enforcing the provisions of the Renting Homes (fees etc) Wales Act 2019.

2. Scope and Background

2.1 Welsh Government (WG) Policy is that costs associated with renting in the private sector should be reasonable, affordable and transparent. The Renting Homes (Fees etc) (Wales) Act 2019 (“the Act”) banned 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.

2.2 The Renting of Homes (Fees etc) (Wales) Act 2019 defined permitted payments that can be required by letting agents and self-managing landlords as:

- rent
- security deposits (if required)
- holding deposits to reserve a property (if required). This is refundable and you should not pay more than one week's rent.
- late payment of rent or breach of a tenancy agreement (known as default payments)
- council tax (if this is part of tenancy agreement)
- utilities, for example water, electricity (if this is part of tenancy agreement)

- TV licence (if this is part of tenancy agreement)
- communication services, for example internet, telephone (if part of tenancy agreement)

2.3 All other payments are banned and prohibited, including:

- signing a contract tenancy agreement
- renewing a tenancy agreement
- requesting a check list about the condition of the property and items within it before you move in (known as an inventory fee)
- accompanied viewings.
- fees when you move in (known as check in fees)
- fees when you move out (known as check out fees)
- administration fees
- inspection fees when moving out

2.4 In a recent letter (Oct 2023), Welsh Government indicated that the 2019 Act has been a success since its introduction, with landlords and agents not charging the fees that they did previously. As such, in the main, tenants are no longer hit by additional fees on top of rent and deposit when trying to rent a home. Despite this, WG states there is some evidence that prohibited fees are still being required by some landlords and agents, especially in city and higher education student areas. To date, this Authority has not received any complaints relating to non-compliance with this legislation nor have any been investigated by Rent Smart Wales.

2.5 Local authorities are responsible for enforcing this legislation however there is a power to share responsibility for enforcement with Rent Smart Wales (RSW), which is hosted by Cardiff Council. Sections 17(2) and (3) of the Renting Homes (Fees etc.) (Wales) Act 2019 enable Rent Smart Wales to take the necessary enforcement actions and, to date, authorisation would have been possible on request on a case-by-case basis, if needed. However Welsh Councils, in accordance with their own constitutional arrangements, can decide to authorise Rent Smart Wales to enforce the provisions of the Act on a general basis and Welsh Government, in their Oct 2023 letter, is requesting all LAs to put this arrangement in place.

2.6 There are benefits to authorising RSW, not least as they find out about potential breaches of the Act either by direct complaints from tenants, or as a result of a mandatory agent audit. If breaches are found, RSW can take enforcement action, up to and including prosecution, on our behalf. This means that the administrative burden is lifted from this authority. RSW have a duty to inform Local Authorities if they serve a fixed penalty notice or prosecute for these offences (and vice versa).

2.7 As such, it is proposed that RSW should be authorised more generally to take enforcement action in place of BGCBC in relation to the following functions:

- where RSW is undertaking an audit of a letting and managing 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

2.8 There are two formal enforcement options:

- 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 and be retained by the Authority taking the enforcement action.
- 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 (£2,500) on the standard scale could be imposed).

2.9 Blaenau Gwent Constitution (Nov 2023). Under the Constitution (p.171/2) implementation and enforcement of this legislation is delegated to the Director of Regeneration & Community services who is empowered to authorise Officers accordingly to undertake the relevant enforcement action. However, the Director only has the authority to nominate or authorise another officer to exercise that power, duty or function, provided that officer reports to or is responsible to the delegator (Director) (p.147). In this case, RSW will not be reporting to, or responsible to, the Director and, as such, this is deemed to fall outside the scope of the Director's delegated power. As such, the Head of Legal & Corporate Compliance has advised that authorisation of RSW, as outlined in this report, is a matter for Council.

3. **Options for Recommendation**

3.1 **Option 1 – Recommended** - That Cardiff Council, as the Single Licensing Authority for Wales (Rent Smart Wales), is authorised to exercise the functions of an enforcement authority, in relation to Blaenau Gwent County Borough Council's area, for the purposes of the Renting Homes (Fees etc.) (Wales) Act 2019, including, without limitation taking enforcement activity and bringing criminal proceedings pursuant to section 19 of that Act.

3.2 **Option 2** – Rejection of Option 1, thus complaints that would have been investigated by Rent Smart Wales (in accordance with paragraph 2.7, above) will need to be referred to this Authority.

4. **Evidence of how this topic supports the achievement of the Corporate Plan / Statutory Responsibilities / Blaenau Gwent Well-being Plan**

4.1 **Corporate Plan** – The proposals in this report will contribute to more secure tenancies for private tenants, support people to live active, independent lives within their community and help tackle poverty. This, they will contribute to the following key priorities in the Plan:

An ambitious and innovative council delivering quality services at the right time and in the right place - Blaenau Gwent Council works in partnership to provide high quality services to meet local need and improve the quality of life and well-being within the community.

Empowering and supporting communities to be safe, independent and resilient - An increase in the resilience of Communities, where everyone is welcome and safe and which minimises dependency and maximises independence.

4.2 Well-Being Plan/ Marmot Principles - Ensure a healthy standard of living for all; Create and develop healthy and sustainable places and communities; Strengthen the role and impact of ill-health prevention; 'Pursue environmental sustainability and health equity together.

4.3 The following primary statutory powers:
[Renting Homes \(Fees etc.\) \(Wales\) Act 2019 \(legislation.gov.uk\)](#)

4.4 WG Priority. Welsh Government's (WG) policy is that any costs associated with renting in the private sector should be reasonable, affordable and transparent. This legislation was brought in to achieve this aim by enabling Local Authorities/Rent Smart Wales to regulate such costs through informal and formal means.

5. Implications Against Each Option

5.1 *Impact on Budget (short and long term impact)*

5.1.1 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. To date, no complaints have been received in Blaenau Gwent.

5.2 *Risk including Mitigating Actions*

All relevant risks have been considered and addressed.

5.3 *Legal*

5.3.1 Legal and probity issues have been considered. By virtue of the Regulation of Private Rented Housing (Designation of Licensing Authority)(Wales) Order 2015, Cardiff Council is designated as the Licensing Authority for the whole of Wales under the name Rent Smart Wales and ensures compliance with the Housing (Wales) Act 2014 in partnership with all 22 Welsh local authorities.

5.3.2 Sections 17(2) and (3) of the Renting Homes (Fees etc.) (Wales) Act 2019 enable Rent Smart Wales to take the above enforcement actions but it is necessary for this Authority to authorise Rent Smart Wales (Cardiff Council) to do so.

5.4 **Human Resources**

5.4.1 There are no HR implications for this report. No additional staff resources are anticipated at this stage. The legislation will be enforced on a reactive basis following complaint and prioritised accordingly or as part of an ongoing case investigation. Adoption of the recommended Option (1) will help to minimise the impact on Council resources.

5.5 **Health and Safety**

Staff health and safety is not relevant to this report.

6. **Supporting Evidence**

6.1 **Performance Information and Data**

To date, this Authority has not received any complaints relating to non-compliance with this legislation nor are any being investigated by Rent Smart Wales.

6.2 **Expected outcome for the public**

The proposals in this report will contribute to more secure tenancies for private tenants, support people to live active, independent lives within their community and help tackle poverty.

6.3 **Involvement (consultation, engagement, participation)**

Officers have engaged with Rent Smart Wales, other local authorities and internal colleagues in drafting this report. No other engagement was considered necessary.

6.4 **Thinking for the Long term (forward planning)**

See 6.2, above

6.5 **Preventative focus**

See 6.2, above

6.6 **Collaboration / partnership working**

Partnership Working with Rent Smart Wales, as outlined above.

6.7 **Integration (across service areas)**

This work will require continued good interdepartmental working. In particular, direct dialogue and co-operation between Public Protection, and Legal Services, as necessary.

6.8 **Decarbonisation and Reducing Carbon Emissions**

Not relevant to this report.

6.9 **Integrated Impact Assessment**

No negative impacts

7. **Monitoring Arrangements**

7.1 Established DLT, CLT & Scrutiny reports, as necessary.

Background Documents /Electronic Links

- [Renting Homes \(Fees etc.\) \(Wales\) Act 2019 \(legislation.gov.uk\)](#)
- [Letting fees: guidance for tenants | GOV.WALES](#)

End