

Meeting of:	Cabinet
Date of Meeting:	Monday, 16 December 2019
Relevant Scrutiny Committee:	Corporate Performance and Resources
Report Title:	The Renting Homes (Fees etc.) (Wales) Act 2019; implementation arrangements for the Vale of Glamorgan Council and Rent Smart Wales
Purpose of Report:	The purpose of this report is to delegate authority to the Shared Regulatory Service (SRS) and Rent Smart Wales in respect of new legislation, namely Renting Homes (Fees etc.) (Wales) Act 2019.
Report Owner:	Cabinet Member for Legal, Regulatory and Planning Services
Responsible Officer:	Miles Punter - Director of Environment and Housing Services
Elected Member and Officer Consultation:	<p>Claire James - SRS Accountant</p> <p>Carolyn Michael - Operational Manager - Finance</p> <p>Committee Report - Legal Services</p> <p>Head of Regeneration and Planning</p> <p>Mike Ingram - Head of Housing and Building Services</p>
Policy Framework:	This report is a matter for Executive decision by Cabinet.
<p>Executive Summary:</p> <p>The Renting Homes (Fees etc.) (Wales) Act will make it an offence to require a tenant, or contract-holder to make any payment that is not specified as a 'permitted payment' in the legislation. This includes the administration involved in creating or renewing an occupation-contract, check out fees, conducting property viewings and reference checks.</p> <p>An enforcement authority will have the power to issue Fixed Penalty Notices. Local authorities will have the ability to enforce the requirements of the Act, along with Rent Smart Wales. This legislation is currently outside the scope of the existing delegation from the Vale of Glamorgan Council to the Shared Regulatory Service Joint Committee. Cabinet is asked to note the implementation of the new legislation, namely the Renting Homes (Fees etc.) (Wales) Act 2019 and to amend the Scheme of Delegation and allocate these functions to the SRS and also, to authorise Rent Smart Wales to enforce the provisions of the Act.</p>	

Recommendations

1. That the Head of the Shared Regulatory Service be given delegated authority so as to authorise relevant officers to exercise as and when required, the carrying out of those statutory enforcement powers under the Renting Homes (Fees etc.) (Wales) Act 2019 ('the Act').
2. That Cabinet approve an amendment to the Shared Regulatory ('SRS') Scheme of Delegation of Functions as set out in the Joint Working Agreement (JWA).
3. That Rent Smart Wales be given permission to take appropriate action on behalf of the Vale of Glamorgan Council for enforcing the provisions of the Renting Homes (Fees etc.) (Wales) Act 2019 on its behalf.
4. That the Monitoring Officer/Head of Legal and Democratic Services be given delegated authority to approve, finalise and execute the terms of the Deed of Variation to the Joint Working Agreement referred to in Recommendation 2 above.
5. That the report be referred to Council to make any necessary amendments to the scheme of delegation within the Council's Constitution in respect of the JWA dated between the Vale of Glamorgan (24th April, 2017), Bridgend (29th March, 2017) and Cardiff (20th July, 2017). .

Reasons for Recommendations

1 and 2 To ensure that the relevant statutory enforcement powers under the Act are used appropriately;

3. To ensure that the necessary permissions exist to permit Rent Smart Wales to take any appropriate enforcement action on behalf of the local authority.

4. To approve, finalise and execute the terms of the Deed of Variation in accordance with the requirements of the Joint Working Agreement ('JWA').

1. Background

- 1.1 The Renting Homes (Fees etc) (Wales) Act 2019 came into force on 5 May 2019. Since the 1 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'. 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.
- 1.2 Enforcement of these new requirements can be undertaken by the Council and Rent Smart Wales (as the Single Licencing Authority). They will contribute to a fairer and more transparent experience for tenants relying on the private rented sector. The Act places a duty on Local Housing Authorities to make information

publicly available, including details of how prohibited payments and holding deposits can be recovered. The SRS will place the required information on the SRS website and create links to the Council website to ensure that the Council meets that duty.

- 1.3** Welsh Government (WG) believes that any costs associated with renting in the private sector should be reasonable, affordable and transparent. This new Act was implemented to achieve this aim by enabling Local Authorities to regulate such costs through informal and formal means.
- 1.4** 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)
- 1.5** Any payments other than those listed above are 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.
- 1.6** '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'.

2. Key Issues for Consideration

- 2.1** Offences are committed where landlords and/or agents fail to comply with the Act. Local authorities are responsible for enforcing this legislation in partnership with Rent Smart Wales (RSW). The legislation places the duty for enforcement on each local authority, with a power to share the responsibility with Rent Smart Wales. This is a new piece of legislation that makes provision to protect tenants and is currently outside the scope of the existing delegation from the Vale of Glamorgan Council to the Shared Regulatory Service Joint Committee (SRS). Cabinet is asked to delegate these functions to the SRS The Scheme of Delegation

of Functions to be updated accordingly to ensure that the relevant statutory powers under the Act are delegated to the SRS. The Joint Working Agreement (JWA) for the SRS will also need to be varied to take account of the extension of delegations to the Service. In accordance with the JWA the Participants will need to agree to make the changes and enter into a Deed of Variation to be appended to the JWA. Additionally, the other local authorities in Wales are now in the process of planning, in accordance with their own constitutional arrangements, to authorise Rent Smart Wales to enforce the provisions of the Act.

2.2 RSW will take enforcement action in place of Local Authorities in limited circumstances:

- 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

2.3 Local Authorities are primarily responsible for enforcing the requirements and have a duty to inform Rent Smart Wales if they take enforcement action. Rent Smart Wales will also have a duty to inform Local Authorities if they serve a fixed penalty notice or prosecute under the new Act. There are two formal enforcement options:

2.4 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.

2.5 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).

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1** The Private Rented Sector (PRS) has increased substantially over the last decade and is set to continue to play an important part in the Welsh housing market in future, particularly considering both the projected increase in population, and the trend towards an even larger increase in number of households over time. Research has identified that letting agent fees have been increasing substantially over time, and thus are likely in future to present an even greater barrier to potential tenants than at present. Making the PRS an attractive and affordable tenure of choice will assist in dealing with the increasing housing demands we expect in the next 20 years.
- 3.2** Recent research has shown that those who are homeless or at risk of homelessness find it particularly difficult to bring together the funds necessary to secure accommodation in the PRS. The legislation will also support work on homelessness, by making it easier for those without access to large lump sums to access the PRS.
- 3.3** With regard to the five ways of working, the Council has strong established links with Rentsmart Wales who can work collaboratively to ensure a more effective enforcement regime to protect consumers and the proposals in this report represent an integrated approach toward dealing with the increasing housing demands we expect in the next 20 years.

4. Resources and Legal Considerations

Financial

- 4.1** 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.

Employment

- 4.2** 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.

Legal (Including Equalities)

- 4.3** The local housing authority and the licensing authority for the area is for the purposes of the relevant provision contained within 'the Act' the enforcement authority in relation to the area of a local housing authority.

- 4.4** A licensing authority which, by virtue of the relevant provision contained within 'the Act' is the enforcement authority for the area of a local housing authority, may not exercise any function of an enforcement authority in relation to that area, nor bring proceedings under section 19 of 'the Act' in relation to that area, without the prior written consent of the local housing authority for the area.
- 4.5** Consent under the relevant provision of 'the Act' may be given generally or in relation to specific cases or functions.

5. Background Papers

None.