

<b>Isle of Anglesey County Council</b>	
Report to:	<b>Strategic Executive Committee; Business Meeting of the Executive; Executive and Full Council</b>
Date:	<b>24.01.2022. (Standards Committee); 31.01.22 - (Business Meeting of the Executive) 14.02.22 – (Executive) 10.03.22 – (Full Council)</b>
Subject:	<b>The Renting Homes (Fees etc.) (Wales) Act 2019; implementation arrangements for Isle of Anglesey County Council and Rent Smart Wales</b>
Portfolio Holder(s):	<b>Cllr Richard Dew</b>
Head of Service / Director:	<b>Christian Branch Head of Regulatory and Economic Development</b>
Report Author: Tel: E-mail:	<b>Trystan Owen Environmental Health Manager 2835 <a href="mailto:Trystanowen@ynysmon.gov.uk">Trystanowen@ynysmon.gov.uk</a></b>
Local Members:	<b>Applies to all Members</b>

#### A –Recommendation/s and reason/s

##### **It is recommended:**

- 1. That the Head of the Regulatory and Economic Development 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 on behalf of this Council.**
  
- 2. That the Head of Regulatory and Economic Development be given the right to delegate to officers of the County Council of the City and County of Cardiff to take appropriate action on behalf of this Council for enforcing the provisions of the Renting Homes (Fees etc.) (Wales) Act 2019, through its service known as Rent Smart Wales.**

##### Executive Summary:

The Renting Homes (Fees etc.) (Wales) Act 2019 ('the Act') makes 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.

The Act defines permitted payments that can be required by letting agents and self-managing landlords as:

## A –Recommendation/s and reason/s

- rent
- holding deposits
- security deposits
- payments in respect of 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)

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 - a service hosted by County Council of the City and County of Cardiff (Cardiff Council) as the licensing authority for the area – the legislation authorises the licensing authority for the area to undertake enforcement work.

The Welsh Minister designated Cardiff Council as the licensing authority for the whole of Wales in 2015, under the Regulation of Private Rented Housing (Designation of Licensing Authority) (Wales) Order 2015.

However, before Cardiff Council can take any enforcement action they must receive written confirmation from the local authority.

This legislation is currently outside the scope of the existing delegation. The full Council 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 to officers by delegating to the Head of Regulatory and Economic Development the Act's functions as exercisable by the Isle of Anglesey County Council.

It is also asked to delegate to the Head of Regulatory and Economic Development the right to delegate further to officers of the County Council of the City and County of Cardiff (Cardiff Council) through its service known as Rent Smart Wales (RSW) this Council's enforcement provisions in the Act. This is to ensure that the relevant statutory enforcement powers under the Act are used appropriately.

RSW will take enforcement action in place of Local Authority only 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

This is a new legislation which requires new arrangements in place to respond to the requirements.

**B – What other options did you consider and why did you reject them and/or opt for this option?**

We considered the option of enforcing the provisions of the Act ourselves rather than using Cardiff Council.

However, sharing the enforcing duty with Rent Smart Wales enables us to work collaboratively and more efficiently. Rent Smart Wales have received delegated powers on behalf of other local authorities in Wales – such as Wrexham County Borough Council and Vale of Glamorgan Council.

**C – Why is this a decision for the Executive and full Council?**

As the recommendation is to amend the Scheme of delegation in the Constitution then that is a function that is reserved to the full Council, but subject to a prior recommendation from the Executive.

Reasons for decisions (1&2 box A), to ensure that the relevant statutory enforcement powers under the Act are used appropriately.

**Ch – Is this decision consistent with policy approved by the full Council?**

Yes – 3.2.3.1 of the Constitution

**D – Is this decision within the budget approved by the Council?**

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.

**Dd – Assessing the potential impact (if relevant):**

1	How does this decision impact on our long term needs as an Island?	NA
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Dd – Assessing the potential impact (if relevant):		
2	Is this a decision which it is envisaged will prevent future costs / dependencies on the Authority? If so, how?	NA
3	Have we been working collaboratively with other organisations to come to this decision? If so, please advise whom.	Yes – discussed the matter with Rent Smart Wales. Rent Smart Wales is a service hosted by Cardiff Council as the licensing authority for the whole of Wales. Welsh Ministers designated Cardiff Council as the licensing authority for the whole of Wales in 2015.
4	Have Anglesey citizens played a part in drafting this way forward, including those directly affected by the decision? Please explain how.	NA
5	Note any potential impact that this decision would have on the groups protected under the Equality Act 2010.	NA
6	If this is a strategic decision, note any potential impact that the decision would have on those experiencing socio-economic disadvantage.	NA
7	Note any potential impact that this decision would have on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.	<p>Rent Smart Wales is subject to the standards imposed upon Cardiff Council under the provisions of the Welsh Language Standards (No.1) Regulations 2015. Thus ensuring that the Welsh language is treated no less favourably than English in enforcing this legislation.</p> <p>The cause of action linked to this legislation specifically targets landlords of private rented housing and estate agents. Therefore, the effect on the wider population of Anglesey is less significant.</p>

E – Who did you consult?		What did they say?
1	Chief Executive / Senior Leadership Team (SLT) (mandatory)	Accept the recommendation

E – Who did you consult?		What did they say?
2	Finance / Section 151 (mandatory)	Accept the recommendation
3	Legal / Monitoring Officer (mandatory)	No comments
4	Human Resources (HR)	NA
5	Property	NA
6	Information Communication Technology (ICT)	NA
7	Procurement	NA
8	Scrutiny	NA
9	Local Members	NA

F - Appendices:
None

Ff - Background papers (please contact the author of the Report for any further information):
<p><b>1. Background</b></p> <p>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.</p> <p>1.2 Enforcement of these new requirements can be undertaken by the Isle of Anglesey County Council and Rent Smart Wales (Cardiff Council, as the Single Licencing Authority). They will contribute to a fairer and more transparent experience for tenants relying on the private rented sector.</p> <p>1.3 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.</p> <p>1.4 ‘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’.</p>

## **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. Full Council is asked to delegate these functions to the Head of Regulatory and Economic development to ensure that the relevant statutory powers under the Act are delegated to the relevant officers and the Executive is asked to agree this recommendation. 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 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:

2.3 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.

2.4 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 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 Rent Smart 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. Resource and Legal consideration**

##### **Employment**

4.1 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)**

4.2 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.

4.3 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.

4.4 Consent under the relevant provision of 'the Act' may be given generally or in relation to specific cases or functions.