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Welsh Government

Consultation – summary of responses

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

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

November 2019

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

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Contents

1. Introduction

This consultation was on the 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. 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.

The full text of the consultation is available at:

https://gov.wales/sites/default/files/consultations/2019-05/default-fees-and-prescribed-information-consultation.pdf

The questions in the consultation were targeted at a range of stakeholders, including tenants, landlords, representative bodies and local authorities to achieve the wide range of evidence necessary to consider the impact of such regulations.

All responses have been published in line with Welsh Government policy. In view of the nature of some of the comments made, and the potential vulnerability of some of the respondents, all responses from individuals have been anonymised, and some comments have been redacted for legal reasons, or in places where they might unintentionally identify someone who has not given their permission to be identified.

Responses received from representative organisations have been published without being anonymised, but where they might unintentionally identify someone who has not given their permission to be identified, these comments have been redacted.

2. Methodology

The consultation document asked 13 questions on holding deposits and default payments. It was intended to gain views from a range of stakeholders in order to help inform default payments which may be additionally described and the limits on such payments; and what

information a landlord (or agent) must provide to a prospective tenant before they take a holding deposit.

The consultation was published on the Welsh Government website and information about it and how to respond was widely distributed and shared via social media and via e-mail.

3. Overview of responses

The majority of responses received were from individual landlords (77%) or agents (13%) This is not unexpected as Rent Smart Wales hold contact details for all registered landlords and licenced agents in Wales and those records were used to inform the sector of the consultation.

Whilst no such mechanism exists for contacting tenant, representative groups including Shelter Cymru, Diverse Cymru, the National Union of Students (NUS) and Tai Pawb provided responses on behalf of tenants, whilst a total of 3% of the overall responses were from individual tenants.

Landlord and Agent responses

From the landlord or agents perspective, the broad picture arising from the consultation was that while landlords did not as a matter of course charge for the payments in default set out in the consultation, or indeed for others they mentioned, they did feel that there was a need to be able to charge where the tenant had been at fault and breached the tenancy agreement. Where charges were made these were considered on a case by case basis, depending on the circumstances of the tenant. In keeping with this, a number of respondents emphasised that they had never had to charge default fees to the tenant due to the good relations. Some respondents felt that charging tenants onerously led to tenant debt, and this could diminish the chances of receiving the actual costs back.

When asked what payments a tenant should in the future, there was support from landlord and agent respondents for the ability to charge in all the areas listed in the consultation with other matters which should attract a change also being suggested.

With regards to the basis on which future payments should be calculated, amongst landlords and letting agents, the strongest support was for actual cost (with some 70% suggesting this). A further 12% thought set limits should be used, whilst there was support from a further 9% of landlord or agent respondents that actual costs should be supplemented by an additional administration charge.

Respondents who felt that late rent should be chargeable caveated this with the need to take into account the specific circumstances of the tenant, and how beneficial such a claim would actually be. The basis on which late rent was charged received a wide variety of responses, although there was more often than not a suggested formula for working this out, however, this formula was rarely consistent across the responses. There was some consensus for using the Bank of England base rate, either with or without an add-on. It was argued that the penalty for paying rent late was needed as a deterrent. If this penalty was too low, including the current penalty in England, then tenants might find late payment of rent to incur lower charges than taking out credit to enable them to make rent.

With regards to charges for damages, a balance of risk seemed to be the preferred approach. If it was not the tenant's fault, then there should be a negotiation with the landlord, and the responsibility shared or shouldered by the landlord. In cases where the tenant or their visitor caused the loss then the tenant should take the full responsibility.

Other charges that landlords or agents suggested included: waste removal (including where fines had been levied by the local authority), garden maintenance, fines or charges arising from leasehold properties, change of sharer in a tenancy agreement, variation of a tenancy agreement, surrender of tenancy and a contractual damages provision to cover matters not expressly considered as a default reason.

With regards to the information that should be provided ahead of a **holding deposit** being taken, there was strong support, from landlords and letting agents, for all of the suggested information in the consultation being provided to the tenant, and a feeling from respondents that this would provide a clear basis of understanding for the relationship between the landlord and tenant. There was almost universal approval for this to be provided in a written form as routine.

There was mixed support for providing the materials bilingually. However, there was more consistent approval for this being provided bilingually on an ad hoc basis and according to the needs and ability of the tenant and landlord.

Tenant and tenant representative responses

Although it was recognised that payments in default were in the main chargeable only where a tenant was at fault, representative groups cited concerns that default fees could be used to penalise tenants for events beyond their control, with some also citing the potential for this to become a route to recoup fees that had been banned by the Act itself. There was support for the restriction of default payments to a defined list to help reduce this risk.

Diverse Cymru were clear in their view that lost keys, late rent, bounced cheques and damages should be permitted but all other representative groups were more restrictive with only late rent and lost keys from the items listed in the consultation being supported.

There was also a consensus that default charges should be set out clearly in the agreement and should be reasonable in terms of the charge. The NUS felt that such charges should be set centrally following advice from, Crisis and the Citizens Advice Bureau. This approach included that to be taken for late rent, where it was suggested that other interventions should be pursued before late fees ‘kick in’, including referral to the organisation mentioned above. Others pointed to the impact such charges could have on further reducing the ability for tenants to afford the rent and the importance of charges not being made where the delay is as a result of benefit payment being made a few days late. Here there was a feeling that the addition of late rent fees made little difference to the tenant paying as non-payment was due to a lack of ability to do so.

For other potential default payments, the majority of tenant or tenant representatives felt that actual costs were the most appropriate way to ensure fair charges, although unlike responses from landlords and agents, there was no support for administration fees or landlord’s time being added. Receipts and invoices were felt to be the most appropriate way of showing actual costs and value for money.

Payments for damages and missed appointments drew a number of comments with respondents citing a number of concerns. It was felt that a route to resolving claims for damages already exists through the taking and required registration of a security deposit which would provide a guarantee for the landlord and a right of redress for the tenant. Outside of this there was also a suggestion that this should be treated as a private despite and taken through the county court. The additional burden on low income tenants of paying for such damage during the tenancy was raised as was the need to clearly describe what constitutes damage and its difference from ‘wear and tear’.

In terms of missed appointments, the majority view was that these should not be considered a default payment due to there also being an impact on the tenant from such events, which they are not recompensed for. In addition, it was felt that there was potential for this to be misused by some agents by their making it a requirement for a tenant to attend offices for discussions about the tenancy and then charging should the tenant not keep the appointment. Diverse Cymru did however cite that fact that such appointments could result in a loss for the landlord and that there may be merit in their being a charge where appointments are missed repeatedly.

On the subject of **information that should be provided before a holding deposit** is taken, there was a consensus that all of the information listed in the consultation document should be provided. It was felt that this should be made available in a format that suited the tenants' needs, where reasonable and in compliance with legislation and that there should be choice for the tenant. Here written form was considered to include both hard copy and electronic information. The use of plain language and ensuring the information is understood by the tenant was also felt to be important.

4. Summary of responses to specific questions

Question 1: Are you a: Tenant; Landlord; Letting/Management Agent/ Representative Body/Local Authority/Other

In total, 303 responses were received.

- 281 of these were received as online consultation responses, 18 were received via e-mail, and 4 were received in hard copy.
- 232 responses were identified as being from landlords, 7 responses were identified as being from tenants, 38 responses were from letting/management agencies, and 25 responses were from 'other' organisations, including local authorities, representative bodies, third sector organisations, and universities.
- Annex 1 provides a list of all the organisations who responded to the consultation and who agree for their details to be published.

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.

In total, 14 respondents answered this question.

- 4 noted they had been charged for lost / replacement keys (including key cards etc.).
- 7 noted they had been charged for late rent
- 3 noted they had been charged for emergency / out-of-hours call-out
- 6 noted they had been charged for repairs arising from damage by the tenant
- 4 noted they had been charged for a missed appointment
- 3 noted they had been charged for a bounced cheque
- 10 noted they had been charged for something not specified here

Comments in relation to this question were limited due to the small number of individual tenants who responded (representative organisations not being well placed to cite individual instances / experiences).

Even within the small response sample, the amount that had been charged varied considerably, although most respondents noted a fixed fee for their charge. The amounts cited ran from £15 plus VAT as the lowest and £60 as the highest single charge.

The other items that tenants had been charged for included 'breach of tenancy' and repairs **not** arising from damage caused by the tenant. One such instance regarded a tap that had been damaged prior to the tenant moving in even though the agent had been informed of this prior to letting the property.

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.

In total, 236 answered this question

- 153 noted that they charged for lost / replacement keys (including key cards Etc.)
- 100 noted that they charged for late rent
- 54 noted that they charged for emergency / out-of-hours call-out
- 201 noted that they charged for repairs arising from damage by the tenant
- 29 noted that they charged for a missed appointment
- 64 noted that they charged for a bounced cheque
- 84 noted that they also charged for something not specified here

Responses to this question were from individual landlords or agents rather than representative organisations. It should be noted that some 9% of respondents stated that they do not charge any of the fees listed in the consultation, routinely or at all. This was due to having good relations with the tenant and using dialogue to work through any issues or reach resolution in a way that meant the landlord or agent did not feel the need to charge. A small number of respondents also stated that the landlord would cover the cost, all of these responses stated that this was in consequence of the good behaviour/conduct of the tenant.

Respondents were also asked how much they charged in each instance. Here, most respondents said they would charge something, but the amount and approach varied, often based on the type of charge being made e.g. rent at amount plus percentage; repairs at cost; keys at a fixed rate. The highest cost for an item was £700 for an unspecified charge and the lowest was £6 for the replacement of a key.

The range in costs is also underpinned by a variance in the ways that they are calculated. A number of respondents said they would charge a fixed rate which would include some added amount to take account of the landlord's (or other's) time. A similar number of respondents did not specify an amount other than the total cost or said they did not charge more than this currently. With regards to missed rent, a number of comments raised being able to charge an additional percentage on top of the outstanding rent, a matter landlord and agent representatives returned to under later questions.

Examples of some of the more common 'other charges' (i.e. those not listed in the consultation document) suggested by respondents included cleaning the property, disposing of rubbish, abandonment of the property, storage of unwanted furniture, credit checks and references, and capped agency fees.

Question 4: What additional payments, if any, do you think tenants should make if they breach their tenancy agreement in the future?

In total, 271 answered this question.

- 220 noted that they charged for Lost / replacement keys (including key cards etc.)
- 198 noted that they charged for Late rent
- 109 noted that they charged for Emergency / out-of-hours call-out
- 247 noted that they charged for Repairs arising from damage by the tenant
- 88 noted that they charged for a Missed appointment
- 148 noted that they charged for a Bounced cheque
- 86 noted that other charges should be included

More individual agent and landlord respondents answered this question than question 3 and each category of payment received more support for it to be charged in the future. The three highest were damages, followed by lost keys and then late rent.

The majority of the respondents (separate from the comments on which other charges should be included) outlined some element of balanced risk for the above. If it was not the tenant's fault, then there should be a negotiation with the landlord, and the responsibility shared or shouldered by the landlord. In cases where the tenant or their visitor caused the loss then a number of comments stated the tenant should take the full responsibility. A minority of respondents suggested that the proposed arrangements were too much in tenants' favour. There was a general sense from these responses that tenants should take responsibility for their actions and the proposals were unduly detrimental to landlords.

A small number of comments under this question made a case for fixed costs for each of the above, or fixed costs plus an add-on, or fixed costs providing the landlord wasn't satisfied with the tenant's justification. This matter is dealt with further under question 5.

Where other charges not listed in the consultation were raised, the majority related to additional payments to be chargeable for breach of the tenancy agreement (including where damage had been caused to the property).Respondents also wanted to be able to charge for early exit from the contract (this included, in some cases, being able to claim court fees). Others thought that cleaning and/or maintenance of the property should be chargeable with some respondents wanting to charge for deep-cleaning of the property at the end of the tenancy. Additionally, paying for a gardener or external maintenance more generally was noted in a small number of comments.

Responses tenants' groups

Tenants' groups who provided responses to this question included Shelter Cymru, the NUS, Tai Pawb, and Diverse Cymru. All groups were concerned with the possibility that landlords and/or letting agents would take advantage of default fees so that tenants were penalised for events beyond their control.

Repairs arising from damage caused by the tenant was seen as something that should be taken out of default fees and instead dealt with as a private matter. Shelter noted that the "potential for abuse and the inevitable requirement for evidence of such damage/repairs should preclude this from being a matter that attracts a default fee." The uncertainty over what might comprise 'damage' was noted by some groups, including the NUS where the need to avoid charges for wear and tear or goods which had come to the end of their life was

noted. A number of the groups argued that the deposit scheme provide a better recourse for addressing disputes over damages.

There were strong opinions regarding missed appointments. There was an argument that these should not form a part of default payments as reasons for missed appointments often adversely affected tenants, who were unable to charge for their lost time. The other argument was that this could be a default payment, but only in certain circumstances, such as when there were repeated missed appointments. There was however a wide interpretation of missed appointments in the responses, which included both those between the tenant and a contractor as well as between the tenant and the landlord or agent.

With regards to emergency call out fees there were some concerns that the continued ability to charge for this without further clarity of what constitutes 'out of hours' may result in some agents considering changing hours to be able to charge fees. It was also suggested that there would be an obligation for agents or landlords to respond where there is an issue of health and safety anyway, that this can arise without any faulty on the part of the tenant and that as a result this should not be charged for. Emergency call-out fees were felt to be particularly open to abuse.

Responses from tenants groups did not include much information on late rent or lost keys although there was some support for their inclusion so long as the charges were reasonable and focused on avoiding a landlord or agent from suffering a financial disadvantage as a result of the tenant's actions or inaction. IN respect of bounced cheques Shelter Cymru pointed out that this is part of late rent and that a tenant would also be charged by a bank for having issued a cheque which could not be paid.

A message that came through all of the tenants' groups' responses was the importance that should be set on making the tenants aware before signing the contract of what they could be charged for. As Diverse Cymru stated "It is essential that tenants are made aware of these potential charges, when they may be applied and the amounts before they enter into a tenancy agreement."

Comments from letting agent representatives

ARLA were in support of all the examples included within the consultation. This is because they were all instances where costs were incurred by the tenant's actions – such as lost keys, late payment of rent, bounced transactions, and repairs caused by damage by the tenant – and therefore must be included as a default payment. Additionally, they were concerned that should emergency/out of hours' call-outs not be included then this service might not be offered to tenants as attendance at unsociable hours incurs costs arising from the agent's time.

With respect to lost keys, it was felt that any charge should also encompass the replacement of multiple keys or locks where this is necessary to ensure the security of the tenant or other tenants, including in HMOs, and that other access devices, also need to be covered.

Fees for late payment of rent and bounced transactions (including cheques and standing orders) were considered as breaches of the contract between the tenant and either the landlord or agent and should therefore incur a charge. It was suggested that as agents and landlords will have to dedicate time to chase late and failed payments, charges for bounced transactions should be set at a static fee plus an administration fee.

ARLA support the ability to charge for repairs arising from damage by the tenant must be an allowable fee due to the damage arising as a result of the tenant's actions and could in some cases also be a breach of contractual agreement. The need to address issues during the tenancy rather than waiting until the end was also highlighted if a landlord is to comply with

their requirements in respect of the standard of the property and the amenities it must provide. It was suggested that these situations cost agents significant amounts of time to rectify and as a result agents should be able to charge a reasonable administration fee for their work.

Missed contractual appointments were felt to be a valid charge which would need to be included in regulations. The example cited was of a contractual appointment where a Gas Safe Engineer is required to conduct the annual gas safety check, but the tenant misses the appointment with the result that the letting agent or landlord is likely to be charged a fee for the contractor's attendance. It was felt that for this reason the agent or landlord should be able to charge the tenant the actual fees that arose as a result.

ARLA also cited a number of further charges not included in the consultation which they feel would be valid. These included changes to the contract, including a surrender of tenancy, a change of sharer, and a variation to the contract at the tenant's request. The reasons for including these being the amount of time and resources involved in these processes.

Lastly, ARLA call for the inclusion of a 'contractual damages' provision to cover all matters not expressly considered as a default reason and which would relate to the costs of the landlord being back in the position that they would have been had the tenant not breached the terms of their tenancy agreement. Here, claims for damages would need to be evidence based and charged at a rate / level which reflects the reasonable cost incurred by the landlord in order to remedy the issue.

Comments from landlord representatives

Similar to ARLA's response, both the National Landlords Association (NLA) the Residential Landlords Association (RLA) were in support of all of the proposed items in the consultation as they constitute instances where costs were incurred by the tenant's actions and that these result in resource and time costs for the landlord. They agree that costs should be reasonable but that they should also take account of the time and inconvenience for the landlord and other tenants of the household.

The RLA noted that amongst their members, the most commonplace example was lost keys and that most calls for such a replacement take place late at night when the tenant has returned home unaware they no longer had their key. On this basis they call for a late night call out fee to be added as a default payment. They suggest the result of not allowing this would be a reduction in this service being provided. T. In keeping with the response provided by ARLA, the RLA identify the need for provision in this area to cover the replacement of the lock and subsequent keys for fellow tenants to ensure the security of the property and other tenants. Costs should include the need for a contractor to attend to undertake the work necessary to provide the tenant with access and make the property secure.

In relation to damages, the RLA note that security deposits allow for the cost of repairs to be covered at the end of the tenancy but that there are times where damage caused by the tenant requires immediate repair. These include instances of where a delay in repair could lead to the damage becoming worse, to the detriment of the property and the tenant. There are also occasions, suggest the RLA, where unrectified damage could raise health and safety risks for the tenant and lead to the landlord being in breach of their legal requirements (for example damage to fire alarms, or smoke detectors).

The RLA support the ability to charge for missed appointments in instances where a landlord has arranged for an appointment for a tenant to repair or inspect the property and it is missed several times. It is felt that in such instances any costs, including form the delay to the repair or an increased cost for a further appointment should attract a charge. The costs would be made known to the tenant when arranging a mutually convenient time for the appointment.

A number of other actions of inaction by tenants were cited in the response as warranting a payment in default including, fines levied on a landlord but arising through the action of a tenant in a leasehold property and which would constitute a breach of the leasehold conditions (such as noise complaints), waste collection charges levied on a landlord by a local authority where a tenant has not met their requirement to dispose of rubbish correctly and the costs associated with gardens not being maintained during the tenancy where the agreement includes this as a requirement.

Finally, the RLA raised charges for early termination of the tenancy and that landlords should retain the ability to allow a tenant to leave a tenancy early by offering them a permissible charge instead of having to honour the tenancy time. They propose that the charge could be a month's rent for the time that the property would be empty or to cover costs of replacing the tenant in a contract. The result of not doing so, it is suggested, would be that contracts might be detrimentally inflexible for both landlords and tenants.

Comments from other bodies

The Royal Institution of Chartered Surveyors (RICS) supports the default fees outlined within the English Act together with the default payments identified within the Welsh consultation:

- Repairs arising from damage by the tenant; and

- Bounced cheques (though it should not be charged if a late payment fee is also charged due to the cheque resulting in a late payment, and only if the agent or landlord incurred a fee as a result of the bounced cheque from their financial institution).

Call outs to a property should not be charged if they are part of the duties or responsibilities of the landlord or agent. If there is an urgent property issue, then tenants have the right to have it fixed within a responsible time period without penalty due to the time of day.

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

In total, 278 answered this question.

- 190 thought that it should be calculated on actual losses for the landlord / agent
- 20 thought that landlord's agents should be able to set the charge
- 16 thought that there should be set limits for all payments.
- 19 thought that there should be set limits for certain payments
- 27 thought that another method should be used for calculating losses

The majority support of all respondents (68%) felt that charges should be based on actual costs to the landlord or agent, and although it could be argued that tenant representatives were always likely to err towards this, it was also the landlord / agent view.

However, it should be noted that amongst the 'other' comments there was also support for the calculation being based on actual losses plus a top-up to cover things such as an administration fee or time spent by the landlord. There was a mixed approach to how this would apply to each default payment, i.e. a set rate for lost keys and actual losses for repairs, or actual losses plus landlord time for repairs as well as little consistency regarding how the landlord's time itself would be evaluated with some wanting this to be valued at a set rate and others simply suggesting it needed to be taken into account. A small number of comments suggested that there should also be a set formula for working out travel expenses in addition

to the above. There was little support for setting limits on all or some payments and for landlords or agents setting the fees themselves.

In addition to what should be the basis for charging, the consultation asked what information should be provided as evidence of the costs incurred if actual costs are to be used. The majority of respondents cited invoices and receipts as the easiest and most effective way of providing evidence of losses, and bank statements providing the evidence for lost rent. Within those replies, and reflective of the point above, a number of respondents made an argument for some addition/top-up to the income and receipts to cover an administrative fee or inconvenience. Additionally, a small number of respondents made reference to some form of photographic evidence as providing further suitable evidence.

Comments from tenant's groups

Shelter Cymru expressed concern that a similar situation to that which has arisen in Scotland might occur where "some letting agents have sought to maximise income wherever possible by finding ways to work around the fees ban." They argued that this could be avoided by ensuring there was clarity on what default charges could be charged. The risk they cited was vulnerable tenants, including those on low incomes and/or receipt of Universal Credit could be adversely affected by such charges.

The NUS argued that if charges for late rent, missed appointments, etc. are to be brought in then these should "be set centrally, with advice taken from experts such as Crisis, Citizens Advice and ourselves". They argued that landlords or agents must not set these payments and that there should be an appeal system if tenants feel charges are unfair or disproportionate.

Comments from landlord representatives

Landlord representatives who responded to this question included the RLA and the NLA. The RLA expressed concern that Welsh Government were trying to find a 'one size fits all solution' and that "costs and losses which have reasonably been incurred should be recoupable." Their response noted that one of the unique aspects of housing was the amount of time that landlords spend on repairs and other matters concerning the tenancy and that this time should be claimable. The NLA were of the view that there should be guidance which contains "a clear breakdown of what constitutes a 'reasonable fee', using examples of various disputes."

Comments from Agents representatives

ARLA recommended that the Welsh Government considers the set limits used in similar legislation that affects England (Tenant Fees Act 2019) for default fees with a capped charge. In those situations where costs exceed the capped limit, provided evidence can be provided, reasonable costs above the cap should be allowed.

With regards to evidence, ARLA suggest that to evidence actual losses incurred, agents would need to provide receipts of cost, contractor invoices and timestamped correspondence.

Comments from other bodies

RICS would like to see default fees charged at near cost or financial burden of the agent or landlord, with a cap and limit of chargeable time costs. They would also support a set cost/fee bracket for time charged for repairs done by agent or landlord themselves to repair tenant caused damage.

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.

There was little consistency amongst the 17 respondents to this question. The majority of these felt that there should be some consistent mechanism for calculating charges when rent was late. A small number of comments noted that there was no charge for late rent under their current tenancy agreement.

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?

In total, 201 respondents answered question 6b, and 230 answered question 6c. These questions have been considered together to provide a clearer understanding of the overall position.

The majority of respondents stated that they did not charge for late payments. When a reason was given this fell into two camps: firstly, that there had never been a problem with tenants paying on time and if there was the landlord or agent would discuss this with the tenant first. Often, a successful tenant vetting process was cited as the reason for this success. Some of the respondents added that they could charge a rate, but, because of the above, had not done so.

Secondly, respondents argued that there was no point charging for late rent because once the tenant had gone into arrears they were probably not going to come out of arrears, especially if late fees were added on to what they owe. One recurring theme from the respondents was that the confidence that housing benefit supplied regarding guaranteed payment of rent would be diminished upon the introduction of universal credit.

Some respondents made mention of the importance of negotiation and discussion to try and ensure that the arrears were made up and both parties were kept happy.

A majority of respondents argued that there should be a fixed fee, either a percentage or set amount for late rent. These were split by when such a fee should be required. The majority felt that they would charge the tenant as soon as the rent became due and not paid. A smaller number would allow a grace period before then instigating a fixed fee or percentage and this ranged from seven to fourteen days after the rent's due date.

Almost all of the respondents who said there should be a fixed fee explained their formula for calculating the amount of rent that a tenant would owe for late rent. Within these responses, approximately half stated that this should be either a percentage of the rent, or a set base rate (e.g. bank of England base rate, LIBOR) plus a percentage. Some comments viewed the additional amount as a penalty payment included to dissuade the tenant from paying late. A smaller number of respondents argued that there should simply be a set base rate without any penalty payment.

Of the other comments relating to calculating and charging for late rent, a smaller number of respondents named a fixed sum that should be charged for each late payment rather than as

a percentage of the rent. A small number of respondents made specific reference to tenants covering landlords' actual losses, and a few respondents argued that the charge should be agreed in the contract prior to it being signed.

Some respondents argued that there should be a more collaborative approach to charges as landlords should open communications with their tenant prior to any late payments and, as long as it was agreed in advance, that there shouldn't be a charge for late payment. A few comments stated that it shouldn't be chargeable at all.

Comments from tenant's groups

The NUS provided the majority of the response to this question from tenants' groups. Their view was that landlords should consider more productive interventions before late fees are charged and that this could include referrals to advice services or services provided by a student's university/students' union. The NUS' fear is that late fees can compound financial difficulties for those already struggling. They believe that this is an area where charges should be set by Welsh Government or local authorities, and provision must be made for tenants to seek financial support and advice including signposting whereby landlords and agents provide contact details for relevant local authority staff and Citizens Advice.

Comments from letting agent representatives

ARLA took a clear position that agents should be able to charge interest on late rent payments at three per cent above the Bank of England Base Rate plus an administration fee. The interest should be charged daily from the date the rent was due and was not paid. The administration fee should be reasonable and reflect the actual cost incurred as a result of monitoring and actioning the tenancy arrears.

Comments from landlord representatives

The RLA did not take the same position. Noting the 3% of rent plus Bank of England Base rate, which is the current default payment in England, the RLA have concerns that were Wales to mirror this it would not be enough of a deterrent to create certainty in receiving rent for landlords in Wales. The RLA argue that "the reasonable interest rate currently attached to most credit cards and overdrafts should be charged to reduce the chances of such a credit line becoming a possibility."

They expressed particular concern over the actual costs to their members of late payments and the implications this has for their members' mortgage payments and consequently credit rating. However, "most mortgages allow a grace period before there is a charge and the RLA would recommend reflecting such grace with late payment of rent."

Question 7: What information should a prospective tenant be provided with before a landlord or agent takes a holding deposit?

In total, 292 answered this question.

- 245 thought that basic details of all parties to be included in the agreement, (prospective tenant, landlord and agent) including contact details should be provided
- 258 thought that length and type of tenancy to be entered into, including moving in date should be provided
- 271 thought that the amount of rent should be provided
- 269 thought that the amount of security deposit should be provided

- 218 thought that the requirements for a guarantor should be provided
- 245 thought that the details of the circumstances under which the holding deposit is refundable should be provided
- 239 thought that details of how the holding deposit will be used should the tenancy go ahead, including how it will be protected should be provided
- 246 thought that details of what will happen following a deposit being paid, including what checks will be undertaken by the landlord / agent should be provided.

There was little consistency across the comments to this question some suggestions were:

- There should be a means of penalising the tenant if they misrepresent themselves in their application form
- This information should not be provided at all prior to the deposit being taken
- There should be standard terms and conditions
- Tenants should be provided with a copy of the proposed tenancy agreement together with the Rent Smart Wales tenant guide.
- There should be a draft copy of the Assured Shorthold Tenancy or contract.
- The condition of the property should be outlined.
- There should be a list of charges given to the tenant that could be deducted against the holding deposit.

Comments from tenant's groups

Shelter Cymru provided the majority of the response to this question from tenants' groups. They felt the information provided should include situations where a holding deposit is not refundable, details relating to the information that will be required for a credit check/reference to be completed (and the criteria for a successful application), specifics relating to the landlord's criteria for an applicant (e.g. no pets, no children, no benefits) and minimum income requirements for the property. They also noted that in appropriate circumstances, a guarantor's details should be provided along with any additional requirements that guarantor might have to provide.

Comments from letting agent representatives

ARLA were of the view that tenants should also be provided with a draft tenancy agreement before the agent takes a Holding Deposit. This agreement should be clearly watermarked as draft. As a result any prospective tenant would have the necessary information to make an informed decision on the contract and able to liaise and negotiate with the landlord.

Comments from landlord representatives

The RLA provided the majority of the response to this question from landlord representatives and agreed that the tenant should be made aware of the arrangements post-deposit. They also highlighted that checks such as tenant referencing and credit checks will most likely be requested to be made by the tenant themselves and details of such provided to the landlord during the holding deposit period. The RLA has concerns that not charging for credit checks or tenant references might mean they are not conducted which might end up to the detriment of the landlord.

Additionally, the RLA also considered 'reasonable information' to be preferable to 'prescribed information' as this would avoid their members falling foul of any penalties for not supplying 'prescribed information' if the information is not reasonably relevant to the tenant.

Comments from other bodies

RICS supported providing full information within a tenancy agreement of the fees that will be charged and the amount to be charged where known. They supported all the information, including around any break clauses, being made available to the tenant prior to the holding deposit. They would also encourage clear guidance on the responsibilities of tenants and landlords in regard to repairs and maintaining the residence within the tenancy agreement. As there is no, one, comprehensive way to convey the information they believe it should be provided in a way that makes it easiest for the tenant, taking into account learning difficulties, technical difficulties (such as not being able to access the internet), and language issues.

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)?

In total, 266 answered this question.

The majority of respondents suggested that there should be an electronic copy and/or hard copy provided to the tenant. There were a small number of respondents who suggested that it should be available to review at the agent's office but the overwhelming suggestion from these responses was that there should be something in written form for the tenant.

Some of the other suggestions included:

- Making the information available through a Rent Smart Wales app
- Making the information available in accessible formats too, including braille, large print and audio.
- All parties to the contract agreeing what form suited them best
- Including some sort of verbal provision to support the written content.

Comments from tenant's groups

Tenants' groups who responded to this question included Shelter Cymru, NUS, Tai Pawb, and Diverse Cymru. All of the responses reflected the importance of making sure that everyone was able to access the information in a way that was suitable for all. The respondents noted a multitude of ways that should be considered for their suitability, including hard copy, electronically, via a website, and in accessible forms. Additionally, most of the groups cited the importance of using clear English that is easily understood to prevent miscommunication or misunderstanding. The NUS specified that information also needs to be presented clearly with the financial obligation on the tenant(s) stated in a way that is easy to understand. Shelter Cymru added that information relating to any guarantor requirements should be available somewhere easily accessible.

Comments from landlord representatives

Landlord representatives who responded to this question included the RLA and the NLA. The RLA stated that they believe such information should be provided electronically by default in the first instance to mitigate carbon footprints and that if the prospective tenant wishes to the print the information in hardcopy then they can do so at their own cost and time. The NLA noted the importance of providing prospective tenants with clear information and, at a minimum, they should be given the information either in hard copy or electronically.

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?

In total, there were 224 responses to this question.

While there were a number of responses to this question, there were quite a lot of don't know/none answers and also quite a few comments that didn't address the question. Of those that did answer the question, the majority of respondents felt that there was no need to have a Welsh language version, either because Welsh was not used in the area or because it would be too expensive to provide both. From other comments there was support for adopting a balanced approach and striking agreement between the tenant and the landlord on which language documents should be provided and although documents should generally be produced in English they should be provided in Welsh upon request.

There were a few comments arguing that Welsh Government should pay the translation cost and all documents should be bilingual. Additionally, some argued that if the documents used simple language not only would the translation burden be limited but it would more actively promote the Welsh language.

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.

In total, there were 180 responses to this question.

Similarly to the responses to question 9, there were a large number of responses that either stated don't know/none or didn't address the question. The comments that were pertinent to the question painted a very similar picture to the responses for question 9, namely that in the respondents view, there was no need to have a Welsh language version, either because Welsh was not used in the area or because it would be too expensive to provide both.

There was some support for standard documents in both languages that could be downloaded and then adapted as the parties saw fit. Otherwise, comments noted that they would need some sort of financial incentive to produce bilingual documents.

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.

In total, there were 109 responses to this question.

Comments from landlords, agents and representative groups

A significant number of comments in response to this question raised matters not covered by the regulations being proposed, focussing instead on the impact of the Renting Homes (Fees Etc.) (Wales) Act 2019 which has now been implemented.

A number of respondents noted their concerns that the Act and associated changes would unfairly hurt the good landlords and be passed on to the tenant by the bad landlord.

There were also concerns raised that the Welsh Government must consider the time letting agents spend when dealing with tenancy set up costs, management and administrative tasks when setting default fees in regulations. This was reflective of a views expressed about the act overall insomuch as it was suggested that its impact would be to require agents to reduce their staffing due to the costs of employing them no longer being affordable. It was also suggested that there would be a negative the impact on tenant behaviour when honouring their contract if there are limited fees that can be charged as disincentives.

Comments from tenants' groups

Tenants' groups who responded to this question included Shelter, the NUS, Tai Pawb, and Diverse Cymru. Similarly to the individual responses, there were divergent answers to this question.

Shelter were concerned that the "consultation does not address payments by third parties in respect of defaults."

Tai Pawb expressed a similar concern to Shelter's and wanted there to be communications making the arrangements clear. "In addition to that, there is also another concern that due to the changes in way letting agents obtain their income, vulnerable and diverse tenants will face further marginalisation when trying to access PRS accommodation."

Diverse Cymru wanted the impacts upon people with one or more protected characteristic to be recognised and addressed. Their concerns focused on the possible disadvantage and harm that could result in such people not being taken into account.

Next Steps

Following consideration of the responses provided to this consultation the Welsh Government intends to bring forward regulations to:

- Further describe the default payments which will be considered as permitted payments under the Renting Homes (Fees etc.) (Wales) Act 2019. The intention is to provide clarity on what can be charged in respect of certain payments in default and the limits on any such charge. The Welsh Government intends to make these regulations early in the New Year.

- Prescribe through a clear list, the information a landlord or agent must provide to a tenant before a holding deposit can be taken. This will mean a tenant has the information necessary to make an informed choice before entering into a tenancy agreement and a landlord or agent will be able to make clear where they require action by the tenant. The Welsh government intends to make these regulations before the end of 2019.

Draft regulations will be laid before the Assembly and will be shared with stakeholders at that time.

Should regulations be agreed by the Assembly, the existing guidance for the Renting Homes (Fees Etc.) (Wales) Act 2019 will be updated to take account of the changes.

Annex 1 - List of organisations who responded to the consultation[1]

- ARLA
- Bob Parry Estate Agents
- Cardiff Council
- Country Land and Business Association
- Diverse Cymru
- Front Row Properties Management
- FlatHomes Property Services
- Homelet North Wales Limited
- Housemartins
- Isle of Anglesey Council
- John Harding Estates Ltd
- MS Properties
- Nicholas Michael Estate Agents
- National Landlords Association
- National Union of Students Wales
- Oakfield Property
- Pathway Lettings (Pembrokeshire Care Society)
- PB Property Sales & Lettings Ltd
- Powys county council - housing service
- Royal Institute of Chartered Surveyors
- Residential Landlords Association
- SA Property
- Shelter Cymru
- Swansea Council
- Tai Pawb
- Torfaen Homes
- Training for Professionals
- Watts and Morgan

[1] We have excluded those organisations who asked for their responses to be kept anonymous