

Privacy Impact Assessment Report Template

1. Background

Renting Homes (Fees etc.) (Wales) Bill

The purpose of the Bill is to make the private rented sector a more affordable and accessible tenure, by banning certain payments made in connection with the granting, renewal or continuance of standard occupation contracts. It also makes provision in respect of the treatment of holding deposits.

The Bill:

- Bans the charging of fees other than for specified exceptions.
- Makes it an offence for a landlord or letting agent to require a person to make a payment which is prohibited, or to enter into a contract for services, or to require the grant of a loan, as a condition of the grant, renewal or continuance of a standard occupation contract¹.
- Provides for certain exceptions, these being rent, security deposits, holding deposits and payments in default (a payment required under the contract where the contract-holder breaches the contract).
- Provides for investigation powers, enabling an authorised officer of a local housing authority, to give a notice requiring information or documents from a current or former landlord, current or former contract-holder or a person who is or has been a letting agent as part of its investigation. Failure to comply with a notice is an offence liable on summary conviction to a fine not exceeding level 4 (£2,500) on the standard scale.
- Provides for enforcement arrangements. A local housing authority will have the power to issue a fixed penalty notice where it has reason to believe a person has committed an offence of requiring a prohibited payment as a condition the standard occupation contract. Liability to conviction for an offence may be discharged by a person paying the fixed penalty notice, which is set at £500. A person found guilty of an offence by the Magistrates court is liable to a fine, which is not subject to any maximum on the standard scale.
- Permits an application to be made to the county court to recover prohibited payments or holding deposits, but not if criminal proceedings have been commenced for an offence of a landlord or letting agent requiring a prohibited payment to be made, unless those proceedings

¹ Under the Renting Homes (Wales) Act 2016, standard occupation contracts will replace the current assured shorthold tenancy as the default tenancy in the PRS. Furthermore, tenants and licensees are termed 'contract-holders' under Renting Homes.

have been discontinued in the Magistrates court.

- If a person is convicted of an offence under the Bill, then the local housing authority will also have a duty to inform the licensing authority of such offences. As licensing of letting agents and landlords depends upon the applicant passing a 'fit and proper person test', any contravention could therefore be relevant to them being licensed and preventing the landlord from renting their properties or putting a letting agent out of business. This provision has been developed to act as a deterrent against breaching the ban.
- Provides for offences committed by a body corporate to be within the scope of the Bill.

A local housing authority will be able to require the production of any documents or information as part of their investigation as to whether an offence has been committed. This is likely to relate to personal information relating to the property or properties to which the offence relates as well as details of any relevant parties involved with the offence. Sensitive data may be required in respect of prior criminal offences including possible offences that were alleged to have occurred. Personal financial information, tax, benefits or pensions records as well as those relating to employment as part of an investigation may also be needed to confirm the nature of any alleged offences.

In respect of the duty on a local housing authority to notify the licensing authority of offences committed under the Bill, this would relate solely to criminal judgments that will have been made publicly available.

In order for LHAs to enforce the Bill they will need conduct investigations into whether any offences have occurred. Part of that work is likely to involve the obtaining of information or documents as outlined above. Without provision within the Bill permitting the issuing of notice so such information or documents can be obtained any investigation would be undermined. Notices issued by LHAs would be specific to the investigation itself, thereby limiting potential over-extension of these powers by LHAs. These provisions are similar to those available to the licensing authority designated under section 3 of Part 1 of the Housing (Wales) Act 2014. Those powers are set out in sections 37-39 of the 2014 Act.

The requirement of the LHA to inform the licensing authority of convictions arising out of the Bill is designed to eliminate further breaches of the law. Notification will not involve the collection of data other than what will be in the public domain once a conviction is confirmed by the Magistrates Court.

2. PIA Methodology

The screening assessment was undertaken by the Bill team prior to its introduction. Given the nature of the Bill's provisions this work has been

limited to officials within the Bill team and colleagues specialising in privacy matters based in KAS.

The limited scale of the proposals as well as its consistency with existing arrangements under the 2014 Act led to a small-scale PIA being undertaken.

Consultation on proposals to legislate on letting agents fees was undertaken between July and September 2017. Analysis of this work was published in February 2018. Almost 700 stakeholders responded to the consultation, but it should be noted that proposals dealing with the information and enforcement powers contained within the Bill were not identified or commented upon by stakeholders.

3. Privacy Impacts of Proposal

The Welsh Government is working to achieve a vision of a vibrant, transparent and accessible Private Rented Sector (PRS). Having already legislated to improve management standards and simplify tenancy agreements in the PRS, the Welsh Government believes that now is the time to act on expensive up front fees and charges. Such fees present a significant barrier to entering the PRS, and this legislation is intended to remove that barrier.

The PRS has become increasingly important in recent years, and is set to continue to grow as the population increases in future. Between 2000/01 and 2014/15 the number of privately rented dwellings in Wales has more than doubled, and now accounts for around 15% of dwelling stock.² Wales' population is projected to increase over the next 20 years, possibly by around 5%. The number of households in Wales is projected to grow faster than the overall population, led by an expected increase in single person households of over 30% over the same period.³

The Welsh Government commissioned research into fees charged to tenants from the Cambridge Centre for Housing and Planning Research, published in August 2017⁴, which found:

- There is evidence that upfront fees to tenants exacerbate difficulties in accessing the PRS. There is a wide disparity between fees charged by agents for nominally similar activities.
- There is no compelling evidence as to why tenants should pay fees rather than the landlord. The majority of the work undertaken by agents

² Census data: <http://gov.wales/docs/statistics/2014/140225-2011-census-characteristics-households-en.pdf>. Dwelling stock estimates: <http://gov.wales/docs/statistics/2017/170427-dwelling-stock-estimates-2015-16-en.pdf>

³ Future Trends Report 2017, Welsh Government: <http://gov.wales/docs/statistics/2017/170505-future-trends-report-2017-en.pdf>

⁴ Clarke et al, *Research into letting agent fees to tenants*. Cardiff: Welsh Government, GSR report number 48/2017. <http://gov.wales/statistics-and-research/research-letting-agent-fees-tenants/?lang=en>

is work that the landlord would otherwise be doing themselves, and is therefore a service provided for a landlord.

- The landlord chooses the agent and can negotiate on fees, or choose a different agent if unhappy with the offer. Tenants are rarely able to choose an agent independently of a property.
- There appears little justification for renewal fees in any circumstances, or for exit fees except in a situation where a tenant leaves early.
- There is a strong case for allowing agents or landlords to charge a small holding deposit, and for allowing agents to charge tenants who damage things, or who want to leave part-way through a fixed term contract.
- If fees to tenants were banned, agents could recoup the costs of setting up new tenancies in the fees they charge to landlords. Even if these were then passed on to tenants via higher rents, this is perceived as being preferable to charging fees as it improves transparency and facilitates comparability between options for tenants.
- There would be an increased incentive for landlords to self-manage if their fees increased. However, this research suggests that most landlords, if otherwise happy with the service their agent provides, would be unlikely to do so.
- Increased fees to landlords, in conjunction with other recent tax reform, may cause some landlords to sell up and overall this is likely to exert a small downward pressure on the speed of growth of the PRS in Wales.

Additionally, evidence from the Citizen's Advice Bureau suggests that fees have increased in recent years at an above-inflationary rate.⁵ The same research revealed that fees caused significant financial difficulty to renters, meaning 64% of survey respondents had to borrow from friends and family, had difficulty paying other bills, went overdrawn or took out a loan to cover the charges. It has also been suggested that the rate of deposit charged has increased over time.⁶

The Bill intends to remove or reduce the financial barriers which potential tenants face in trying to access accommodation of their choice, which is likely to have wide ranging positive impacts on well being goals.

The main provisions of the Bill:

⁵ Citizen's Advice Bureau, *Still Let Down: How letting agents are still exploiting private renters – and what this tells us about consumer protection*, 2015.

<https://www.citizensadvice.org.uk/cymraeg/about-us/policy/policy-research-topics/housing-policy-research/still-let-down/>

⁶ Department for Communities and Local Government (UK Government), *Banning letting agent fees paid by tenants: a consultation paper*, April 2017, p20.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607479/Banning_letting_agent_fees_paid_by_tenants_consultation.pdf

Centre for Economics and Business Research 'Protecting Generation Rent. A Report for money.co.uk', January 2016. Shows the average UK increase is 16% between 2010-2015.

For Wales this is between 5-6%. [http://1c48262defeb1866bc52-](http://1c48262defeb1866bc52-67e2d31b8004cbc50ed34ec085b9754f.r83.cf3.rackcdn.com/Protecting-Generation-Rent.pdf)

[67e2d31b8004cbc50ed34ec085b9754f.r83.cf3.rackcdn.com/Protecting-Generation-Rent.pdf](http://1c48262defeb1866bc52-67e2d31b8004cbc50ed34ec085b9754f.r83.cf3.rackcdn.com/Protecting-Generation-Rent.pdf)

- Ban fees payable by tenants in connection with the granting, continuing and renewing of tenancies (by letting agents, landlords and third parties).
- Give Welsh Ministers powers to regulate the amount of deposit that can be taken.
- Provide exceptions to the ban to allow for:
 - Rent
 - A returnable holding deposit capped at the equivalent of one week's rent
 - A security deposit
 - Payments in default of the standard occupation contract
- A person guilty of an offence will, on conviction, be liable to a fine. Local Housing Authorities will have powers to issue Fixed Penalty Notices to discharge the liability of a person who has committed an offence, and will also have information powers to assist with their enforcement action.

The proposals permitting LHAs obtain documents or information are reasonable and proportionate in ensuring that offences can be investigated thoroughly. The power to obtain information is focused on potential offences and does not extend into other housing related matters. Without the power to obtain information relating to offences enforcement of the Bill would be undermined and LHAs would have difficulty confirming whether agents or landlords had complied with the Bill.

The requirement for the LHA to notify the licensing authority of any offences is considered an effective tool to discourage landlords and agents from breaching the provisions of the Bill. Conviction of an offence is likely to be an indicator of potential bad practice by an agent or landlord and their fitness to maintain a licence to carry out letting and property management work in Wales. Notice of any convictions will be in the public domain and sharing of this information will not be an intrusive act.

Details of Issue/Risk	Requirements by LHAs to obtain documents or information through the issuing of notice Notification of convictions for offences under the Bill
Who will be affected?	This will affect a person who is or had been a landlord under a standard occupation contract, a person who is or has been a contract-holder under a standard occupation contract; a person who is or has been a letting agent
What effect will it have?	Personal or sensitive information may be required as part an investigation which individuals might find intrusive. Information will be shared with the licensing body of conviction for offences under sections 2 and 3 of the Bill.
Proposed Mitigation	The Bill mitigates the risk of the issuing of notices by limiting them to investigations into offences resulting from the Bill.

	The notification of convictions to the licensing authority is a reasonable safeguard for those operating within the private rented sector. Anyone who is provided with a licence must demonstrate their fitness to operate. Notice of a conviction will be in public domain and sharing it with the licensing authority will be relevant to determine whether a license should be issued or renewed.
Justification for no action	Justification is set out within the proposed mitigation section.

5. Findings and Recommendations

The proposed power to require documents and information and duty of local housing authority to notify the licensing authority of conviction under the Bill have a limited aim. Any data will be specific to investigations or offences that have occurred at a set period of time rather than relate to ongoing collection of personal and sensitive information. The nature of the power and duty present limited intrusion into an individual's privacy.

6. Review and Audit

The policy team will maintain oversight of the effectiveness of the Bill subject to it being passed by the Assembly. This will include consideration of privacy matters.

Annexes

- Annex 1: PIA screening questions and answers

Annex 1

Please use the PIA Screening Tool to identify whether your proposal is likely to have an impact on privacy and require further assessment.

When complete, a copy of this document must be forwarded to the Information Rights Unit (IRU): DataProtectionOfficer@wales.gsi.gov.uk and copied to your Information Asset Owner

IRU will endeavour to respond within 5 working days.

Title of Proposal:	Renting Homes (Fees etc.) (Wales) Bill
Department:	EPS

1. Please describe your proposal:

- (i) *If this is a change to an existing system/ project/ process/ policy then please outline the present arrangements and how personal data is currently processed.*
- (ii) *Detail how the new system/ project/ process/ policy will work, including how the personal data will be processed and whether the personal data will be shared with 3rd parties.*

Details:

The Renting Homes (Fees etc.) (Wales) Bill two key proposals which may have implications on matters of privacy and the sharing of information.

1. It provides for investigation powers, enabling an authorised officer of a local housing authority, to give a notice requiring information or documents from a current or former landlord, current or former contract-holder or a person who is or has been a letting agent as part of its investigation. Failure to comply with a notice is an offence liable on summary conviction to a fine not exceeding level 4 on the standard scale. These provisions are similar to those available to the licensing authority designated under section 3 of Part 1 of the Housing (Wales) Act 2014. Those powers are set out in sections 37-39 of the 2014 Act.
2. If a person is convicted of an offence under the Bill, then the local housing authority will also have a duty to inform the licensing authority of such offences. As licensing of letting agents and landlords depends upon the applicant passing a 'fit and proper person test', any contravention could therefore be relevant to them being licensed and preventing the landlord from renting their properties or putting a letting agent out of business. This provision has been developed to act as a deterrent against breaching the ban.

2. Will the proposal involve the processing⁷ of information that could be used to identify individuals (personal data)?

- ☐ No – There is no need to complete the remainder of this form. Please forward your answers to IRU at DataProtectionOfficer@wales.gsi.gov.uk
- ☒ Yes – Please complete the remainder of the form.

3. Has privacy impact screening or assessment already been carried out?

- ☐ Yes – Please provide details below. ☒ No

<i>Details of completed PIA (date; outcomes)</i>
--

4. Please tick the personal data items that will be processed:

Personal	<input checked="" type="checkbox"/> Name	<input checked="" type="checkbox"/> Telephone Numbers
	<input checked="" type="checkbox"/> Home Address	<input checked="" type="checkbox"/> Date of Birth
	<input checked="" type="checkbox"/> Business Address	<input checked="" type="checkbox"/> Driving Licence Number
	<input checked="" type="checkbox"/> Postcode	<input checked="" type="checkbox"/> Passport / ID Card Number
	<input checked="" type="checkbox"/> Email Addresses	<input checked="" type="checkbox"/> Photographs / images (which could be used to identify an individual)
	<input type="checkbox"/> Unique identifying number e.g. store loyalty card, library card etc	<input type="checkbox"/> Other (please specify)
Sensitive*	<input type="checkbox"/> Racial / Ethnic Origins	<input type="checkbox"/> Biometric data e.g. DNA, finger-prints
	<input type="checkbox"/> Political opinions	<input checked="" type="checkbox"/> Personal financial information (e.g. bank or credit card details)
	<input type="checkbox"/> Religious beliefs	<input type="checkbox"/> Mother's maiden name
	<input type="checkbox"/> Trade Union membership	<input type="checkbox"/> NI Number (or equivalent)
	<input type="checkbox"/> Physical / mental health or condition	<input checked="" type="checkbox"/> Tax, benefits or pensions records
	<input type="checkbox"/> Sexual life	<input type="checkbox"/> Health or social service records e.g. Housing or Child Protection
	<input checked="" type="checkbox"/> Criminal & court records (inc. alleged offences)	<input checked="" type="checkbox"/> Employment records (inc. self-employment and voluntary

⁷ The term 'processing' includes a wide range of activities such as collection, use, disclosure, retention or disposal of information.

work)

☐ Educational records

☐ Other (please specify)

Details:

A local housing authority will be able to require the production of any documents or information as part of their investigation as to whether an offence has been committed. This is likely to relate to personal information relating to the property or properties to which the offence relates as well as details of any relevant parties involved with the offence. Sensitive data may be required in respect of prior criminal offences including possible offences that were alleged to have occurred. Personal financial information, tax, benefits or pensions records as well as those relating to employment as part of an investigation may also be needed to confirm the nature of any alleged offences.

In respect of the duty on a local housing authority to notify the licensing authority of offences committed under the Bill, this would relate solely to criminal judgments that will have been made publicly available.

***If sensitive personal data is being processed, is this data being collected mandatorily (i.e. without the data subjects having an option to not provide it)?**

☒ Yes

☐ No

5. For the personal data being processed, please indicate:

Who the Data Controller is: (see notes section for the definition of a Data Controller)	<i>Details: In the case of joint data controllers, please indicate the personal data each has responsibility for.</i>
The Local Housing Authority	
Any Data Processors: (see notes section for the definition of a Data Processor).	<i>Details: In the case of data processors, please indicate the personal data each has responsibility for.</i>
Authorised Officer of any local housing authority	
Will the data be shared? (if your proposal involves sharing personal data with third parties, then the Wales Accord on Sharing Personal Information (WASPI) should be made use of to help ensure compliance with the DPA. Further advice and guidance on WASPI can be obtained by emailing christopher.stevens@wales.gsi.gov.uk).	<i>Details: Please specify if the data will be shared internally with other parts of the Welsh Government or externally with third parties. Also indicate if the personal data being shared is non-identifiable / anonymised.</i>
Publicly available data of individual convictions under the Bill will be shared by a local housing authority with the licensing authority.	

6. (a) What is the legal basis for processing the data?

Details:

All of the Welsh Government's powers are derived from statute. Please identify the legal power the Welsh Government is exercising to carry out this proposal.

The legal basis for processing the data are set out under sections 10 (powers to require documents or information) and 14 (duty of local housing authority to notify licensing authority of conviction) of the Bill.

(b) Have Legal Services confirmed that the basis outlined in (a) provides the necessary gateway for processing (including any proposed sharing)?

☒ Yes – Please attach a copy of that advice ☐ No

Agreement to the enforcement arrangements, since reflected in sections 10 and 14 of the Bill, are set out under MAL/RE/0845/18

<https://documents.hf.wales.gov.uk/id:A21530505/document/versions/published>

7. Will the proposal involve new or significantly changed processing of personal data about each individual?

☐ Yes – Please provide details below. ☒ No – Go to Q8.

Details:

For example, have you been collecting personal information from individuals for a particular purpose and would now like to use that information for a different purpose?

Data Handling

8. Will the personal data be consolidated, linked or matched with data from other sources?

☐ Yes – Please provide details below. ☒ No – Go to Q9.

Details:

For example, are you planning to compare or link the data that you collect with data held in another database?

9. Does the proposal involve new or changed data collection, retention or sharing policies / practices for personal data?

☐ Yes – Please provide details below. ☒ No – Go to Q10.

Details:

Technology

10. Will the proposal involve the introduction of privacy-intrusive technologies such as:

☐ Yes – Please provide details below.

☒ No – Go to Q11.

☐ Smart cards

☐ RFID tags

(radio-frequency identification)

☐ Biometrics

☐ Visual surveillance (e.g. CCTV)

☐ Digital image and video recording

☐ Profiling, data mining or logging of electronic traffic

(process to identify patterns in large data sets)

☐ Locator technologies (e.g. GPS, mobile phone tracking)

☐ Other (please specify Details below)

Details:

Identity

11. Will the proposal involve new or changed identity management or authentication processes?

☐ Yes – Please provide details below.

☒ No – Go to Q12.

Details:

12. Will the proposal have the effect of enabling identification of individuals who were previously anonymous?

☒ Yes – Please provide details below.

☐ No

Details:

The proposals permitting investigations to be carried out into offences under the Bill may identify and confirm the role of an individual who might not otherwise have been registered, or had any known connection with the property. This could be in respect of a landlord, letting agent or contract-holder (tenant).

When complete, a copy of this document must be forwarded to the Information Rights Unit (IRU): DataProtectionOfficer@wales.gsi.gov.uk and copied to your Information Asset Owner

Notes

Data controller means a person who (either alone or jointly in common with other persons) determines the purpose(s) for which and the manner in which any personal data are, or are to be, processed.

A data controller must be a “person” recognised in law i.e.:

- individuals;
- organisations; and
- other corporate and unincorporated bodies of persons.

Data controllers will usually be organisations, but can individuals e.g. the self employed / sole traders. Even if an individual is given responsibility for data protection in an organisation, they will be acting on behalf of the organisation, which will be the data controller.

In relation to data controllers, the term ‘jointly’ is used where two or more data controllers act together to decide the purpose and manner of any data processing. The term ‘in common’ applies where two or more data controllers share a pool of personal data that they process independently of each other.

Data controllers must ensure that any processing of personal data for which they are responsible complies with the DPA. Failure to do so risks enforcement action, even prosecution, and compensation claims from individuals.

Data processor means any person (other than an employee of the data controller) who processes the data on behalf of the data controller.

Data processors are not directly subject to the DPA (although most will also be a data controller in their own right for the processing they do for their own administrative purposes). Data controllers remain responsible for ensuring their processing complies with the DPA, whether they do the processing in-house or by engaging a data processor. Where roles and responsibilities are unclear, they will need to be clarified to ensure that personal data is processed in accordance with the data protection principles.

For completion by IRU:

Is a formal DPIA assessment required for this proposal?

☒ Yes ☐ No

The GDPR puts the onus of compliance on the data controller and this extends to the consideration of whether a DPIA is required in order to comply with Article 35 (which sets out the instances when a data controller should undertake a DPIA). This proposal falls into a grey area when considering whether a DPIA should be carried out because the Welsh Government will not ultimately be the data controller for any personal data processed (this will be The Local Housing Authority). However, Welsh Government is introducing legislation to create a criminal offence that requires personal data to be processed.

IRU's recommendation is that a DPIA is undertaken to show that an individual's privacy and human rights have been considered in the formulation of this legislation. This would provide protection for the Welsh Government should this legislation be challenged by judicial review.

The Privacy considerations to be addressed by the DPIA are:

1. The necessity of this legislation. What is the issue that this legislation is looking to address and why this is the best option?
2. That the personal data processed via this legislation is proportional to the objective being addressed. EPS need to be able to demonstrate that the objective can not be met by less privacy intrusive means.

The Human Rights angle is covered by its own impact assessment (Equality Impact Assessment), which falls outside IRU's remit. Further information is available on the Equality, diversity, inclusion and human rights Impact assessment [intranet page](#).

Has advice on GDPR compliance been provided?

☐ Yes ☒ No

The Welsh Government will not be processing any personal data.