



propertymark

# All-Wales Agent Forum

Panel Q&A 20<sup>th</sup> November 2024

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## Welsh Government

How can I provide input into the White Paper consultation on securing a path towards Adequate Housing, including Fair Rents and Affordability?

You can [respond to the White Paper on the Welsh Government website](#).

The deadline for comments is 31/01/25.

Would an annual property condition record be required for each property that an agent manages? We are concerned that this would generate a considerable administrative burden.

As proposed in the White Paper - yes, each rental property would be required to have a property condition record uploaded. As we have identified in the White Paper, we are keen to work with agents to develop an approach which will keep the administrative burden to a minimum.

Are there any penalties planned for failure to do the annual condition report?

We need to consider responses to the White Paper to help inform our approach around enforcement and penalties. However, if it forms part of the Code of Practice, or a licence condition then failure to provide an annual condition record could result in licenced landlords or agents potentially facing sanctions.

With regards to the Renters Rights Bill, what if my rental property is unsuitable for pets or children to live in?

There will be legitimate circumstances where it would be unsuitable for a pet or a child to live in a certain property. Welsh Government will issue guidance to assist with these decisions.

If the refund for the higher rate land Transaction Tax comes where houses are passed to the Local Authority to manage, will it take away the need for agents if the houses are being managed by the LA?

Leasing Scheme Wales will not be suitable for all landlords and there is a finite budget available to local authorities to support the project.

[Read more about Leasing Scheme Wales](#).

Why are tax incentives being offered for using the Council as the agent and not also offered if a commercial agent is used?

We are currently experiencing a housing crisis with individuals and households finding it hard to find homes. The local authority has a duty to house homeless and

vulnerable people. This leasing scheme is part of a package of measures to increase the supply of affordable housing. Therefore the Land Transaction Tax proposal is about encouraging those landlords who are looking to increase their portfolio to sign up to the scheme with new properties to provide a greater supply of affordable rental properties.

Why should people who are buying additional houses to let out not get the return of the additional second home LTT if they let it out privately? The Welsh Government could reimburse after it has been let for 36 months.

As identified in the White Paper the Welsh Government believes in a social partnership of “something for something”. In our proposal through Leasing Scheme Wales there is certainty that the rental costs of the property will be affordable for the duration of the letting period, and the condition of the property will meet certain standards. This would not be the same if it were to be let at market rent with no restrictions on what rent would be charged over the period, or control for maintenance and repairs.

Once the lease term of a property on Leasing Scheme Wales comes to an end (if not renewed) then the property is returned to the landlord who can let it out privately.

Wales has different Building Regulations to England. The cost of installing sprinkler systems is great and is reducing the number of people who are prepared to convert properties to residential, so reducing potential supply. This makes a lot of difference for towns along the border with England. Why do we need fire sprinkler systems in new bungalow and 2-storey houses?

From 1 January 2016 in Wales, Part B (Fire Safety) - New Building Regulation 37A(1)(c) means that sprinklers are required to all new houses and flats, including those formed by a material change of use. [Read the building regulations guidance.](#)

Sprinkler systems save lives. Whilst the cost burden is understood, the benefit of added safety, based on advice from the fire services and building regulations, was considered appropriate. With all legislation introduced in Wales, risk assessments are undertaken and published which include impact and cost assessments.

The current legal case where EICRs/PITs were done but not issued by Housing Associations seems overly punitive albeit I don't think an outcome has occurred. Yes, not providing the EICR/PIT is a breach and there should be a consequence but the notion that the contract-holder should not have to pay any rent for the period without the EICR/PIT and the dwelling was habitable seems morally wrong.

We will have to wait for the outcome of the appeal case to have clarity on this matter. In the meantime, landlords and agents should ensure the certificates are always given to the tenant and that you have a method of recording this, just in case a challenge is ever lodged.

### Can I still refer to Contract Holders as tenants? What is the difference?

The Renting Homes (Wales) Act 2016 (The Act) introduced a new type of tenancy called an occupation contract and describes tenants as 'contract-holders'.

Within legal documentation/contracts tenants need to be referred to as 'contract-holders'.

However, in other circumstances, the words tenant/contract-holder can be used interchangeably as the word tenant is well recognised by the sector and the public.

### It would be beneficial to put resource into finding unregistered and unlicensed landlords who don't have the minimum standards in place.

Rent Smart Wales works with local Councils and many other stakeholders to search and find non-compliant operators. The enforcement team is now well established and has 9 enforcement officer positions. You can see enforcement activities on the [Enforcement Dashboard](#).

### Can the data published by Rent Smart Wales be relied upon?

The data on the Rent Smart Wales website correctly reflects rental properties registered as it is an extract from the database. This is the rental position in Wales as reported by landlords and agents. Any change made by a landlord today is reflected by the next day.

If the data does not accurately reflect the position in the sector it is because landlords do not de-register rental property they sell or vacate, within the legally required 28 days.

Rent Smart Wales makes landlords aware of this legal obligation through letters and general marketing. Note that the total number of registered properties is now very close to the number prior to the renewal date in Nov 2020/21.

## Rent Smart Wales

The Rent Smart Wales website is very clunky, slow and not user friendly.

It is acknowledged by Rent Smart Wales that improvements are required. A contract to achieve this and other developments has been awarded and a detailed specification written to secure changes. We are keen to hear of any specific problems, please contact us using our [Contact Us Form](#).

Rent Smart Wales have emailed me to notify me that they have received intelligence suggesting we are in breach of our licence which came across in an intimidating manner.

As the licensing authority we have a duty to investigate all matters and concerns that are reported to us. To do this, we inform you of the issue and ask for your representations. We also must inform you of the potential outcomes of an investigation. We receive a significant number of reports, and it is difficult to make a telephone call in all circumstances. However, we do take into consideration any representations you provide, and they are recorded on file.

Why can't Rent Smart Wales accept agent confirmation that a landlord no longer owns a property rather than need the old landlord to remove their name/proof of completion from a solicitor?

The registration is a legal document/record and therefore we need evidence before a change can be made. In the past we have had issues where changes made without the consent of a landlord have been disputed. We have amended this process over time, so it is quicker now, once we have the documentation to confirm the change.

The advice we give is that if you are trying to register a property that is registered to someone else you will need to provide us with documentary evidence that you are the landlord of the property so that we are able to release the property for you to add to your landlord registration.

Examples of the types of evidence that you can send us to prove that you are the landlord of a property are listed below:

- Land Registry documentation
- Letter from a solicitor confirming ownership
- Leasehold agreement
- Property Deeds
- Mortgage Documents

You can send this evidence via our [Contact Us Form](#) or via post to Rent Smart Wales, PO Box 1106, Cardiff, CF11 1UA

Once we have received the evidence, we will contact you to advise that the property is available to register.

## Why is it that when I ask Rent Smart Wales for advice on regulations, I am told you are unable to assist?

Rent Smart Wales's role is to register landlords and issue licences to those who let and manage. Part of this is to provide training. However, our contact centre staff are not experts in property management or legal advisors and therefore they are trained to direct you to the correct resources to assist you with your query.

## How can a landlord or tenant find out if the person they are dealing with is licensed - not just the company?

The best way would be to check is by using the [public register](#) on the Rent Smart Wales website. You can search by property address.

## What documents do I have to provide to tenants at the start of a contract?

There are several documents that currently need to be provided to a tenant at the start of a contract, they include:

- Contact details for the licensee
- Energy Performance Certificate
- Gas Safety Record
- Electrical Installation Condition Report
- Security deposit information
- Written complaints procedure
- [The Tenant Guide](#) - A Home in the Private Rented Sector: A Guide for Tenants in Wales
- Details of local waste collection services and waste receptacles
- Any user manuals for any provided appliances

Things to consider:

- Are you providing all the required documentation to tenants at contract commencement and can you evidence that you have provided them?

Rent Smart Wales has produced a [checklist](#) to help, it can be found on the resources page of the Rent Smart Wales website.

## How can I find out more about the Rent Smart Wales agent audit process?

Commercial agents continue to be audited by Rent Smart Wales. The audit process has been amended over time, so it has less of an impact on agents, whilst still being robust enough to make sure that an agent's working practices are understood and that the correct audit grade is awarded.

More information on the audit process can be found on our [Agent Audit webpage](#).

## You have audited 55% of agents (326 of 586). How long will it take to complete the programme?

We have amended the process to make it less onerous for agents and timelier. We hope this will make audits quicker but still worthwhile. The team is almost fully staffed and has good knowledge and experience. We have already seen an increase in throughput. We feel positive about the progress over the next year.

## How long does it take for the initial feedback from an audit?

This depends on the size of the agency and the volume of information/documentation provided. Once audit documentation is provided, initial checks of the documentation commence. If we find there is missing information/documentation, then the agent should receive an email within 2-3 weeks.

## How can I prepare for an audit?

During an audit, information is collected and analysed to identify areas where agents struggle to meet required standards. This allows Rent Smart Wales to create targeted training and resources to assist you.

Some common areas of failure include:

- Authorisation to appoint a sub-agent
- Publicising fees chargeable to landlords and tenants
- Providing tenant with documents at contract commencement
- Completing Fire Risk Assessments
- Charging Prohibited payments: over prescribed limits
- Obtaining and maintaining Business safeguards
- Energy Performance Certificates

## Are self-managing landlords audited?

There are no official audits for self-managing landlords, however if we receive intelligence about non-compliance, we do an investigation to see if a breach has taken place.

## Is it a legal requirement to inspect properties every 12 months?

Take a look at the conditions attached to your licence. There is a requirement every 12 months for single occupancy and every 6 months for HMOs.

## Can I appoint a sub-agent?

The Code of Practice for landlords and agents and The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, place a responsibility upon agents to ensure that should an agent want to appoint a sub-agent to complete letting and management activities on the agent's behalf, that the agent obtains the landlord's authorisation to do so.

Things to consider:

- Do you instruct a sub-agent to complete any letting and management activities, such as completing inventories, that a landlord has instructed you to complete?
- Can you evidence that you have sought the landlord's agreement to instruct a sub-agent to complete the letting and /or management activities?
- If you instruct a new sub-agent, do you have a process in place to obtain authorisation from the landlords who you already complete letting and management activities for?

**BEST PRACTICE POINT** – when obtaining authorisation from the landlord to appoint a sub-agent, it is best practice to provide details to the landlord as to who is responsible for specific tasks i.e. the name of sub-agent.

### Do I have to publish a list of payable fees to landlords or tenants?

The Code of Practice for landlords and agents and the Consumer Rights Act 2015 place a responsibility upon agents to publish lists of fees that a landlord or tenant could be liable for. The lists must be:

- Displayed at each of the agent's premises at which the agent deals face-to-face with persons using or proposing to use the agent's services,
- Displayed at a place in those premises at which the list is likely to be seen,
- Displayed on the agent's website,
- Fees chargeable to tenants must also be displayed on any online advertising platforms the agent uses.

Things to consider:

- Are you publishing all the fees a landlord or tenant could be liable for?  
*Auditors often find fees in the terms of business or occupation contract that are not on an agent's published list of fees.*
- Is the description of the fee sufficient to enable a person who is liable to pay it to understand the service or cost that is covered by the fee?
- Does the fee detail the amount of the fee or where the amount cannot be determined in advance, detail a description of how the fee will be calculated?
- If you are charging VAT, is the fee displayed as inclusive of VAT?

### Which fees are prohibited?

All fees charged to tenants could be deemed prohibited unless they are one of the permitted payments specified under the Renting Homes (fees etc.) (Wales) Act 2019. The permitted payments are:

- Rent

- Security Deposits
- Holding Deposits
- Payments in default
- Payments in respect of Council Tax
- Payment in respect of utilities
- Payments in respect of a television licence
- Payments in respect of communication services
- Service charges
- Payments in respect of further copies of a written statement

For each of these permitted payments, the Act specified rules, for example:

The Renting Homes (Fees etc.) (Prescribed Limits of Default Payments) (Wales) Regulations 2020 placed limits on the amount of fees that could be charged to tenants in respect of late rent and replacement keys and locks.

Things to consider:

- Are you charging or does your documentation suggest you are charging fees over the prescribed limits?

Auditors find that sometimes agents are:

- charging fees for late rent before the expiry of 7 days.
- charging fees for late rent over the prescribed limit of 3% over the bank of England's base rate.
- Not considering that the rate for late rent is an annual percentage rate
- Charging fees over the actual costs incurred for replacement keys and locks.

Charging over the prescribed limits is an offence which can attract a fixed penalty notice of £1,000 and can result in a possession notice being deemed invalid.

### Where agents provide services for both individual landlords and businesses, they can display without VAT too?

Section 83 of the CRA 2015 states the amount of each fee inclusive of any applicable tax. If no VAT is chargeable this needs to be made clear in the list of fees. The requirements are not different if the fee is to be charged to a landlord.

### Is it permitted to charge 5% over base rate for late rent when the clause is carried over from a converted AST?

The Renting Homes (Fees etc.) (Prescribed Limits of Default Payments) (Wales) Regulations 2020 ('the Act') came into force on 28 April 2020 and applies to converted contracts too.

Landlords or letting agents in Wales can only charge tenants interest at a rate of 3% above the Bank of England base rate for the late payment of rent which is more than 7 days overdue.

## I understand that rent can only be increased once a year, but can this be done at any time for the first rent increase?

For a periodic standard occupation contract it can be done at any time, subject to the minimum 2 months' notice period, and then could not be raised again for at least 12 months.

## When should I complete a fire risk assessment?

The Regulatory Reform (Fire Safety) Order 2005 places a duty upon the responsible person to complete a risk assessment on properties with common parts. The Fire Safety Act 2021 extended the definition of common parts to include external walls and doors onto common parts and structures attached to common parts like balconies. Please note: this duty does not just apply to houses in multiple occupation but to all properties with common parts.

Things to consider:

- Do you manage any properties which contain common parts, this includes walk up flats with shared external walls?
- If you manage properties which contain common parts, have you completed a risk assessment or obtained a copy of the risk assessment from the responsible person?
- In the risk assessment, have the fire doors between the domestic parts of the property and the communal areas been considered?

Find out more: Welsh Government have published this [guide](#) and [checklist](#) to help with compliance.

## Is it a legal requirement for letting agents to do a fire risk assessment of the common parts when they don't manage that area, or is it just best practice?

It would depend on who the responsible person was, and what is in the terms of business with the landlord. Fire risk assessments cover flat entrance doors and communal walls too, so there may be some responsibility on the landlord (transferred to the agent) even if there is management company in place. It is worth making sure that there is a fire risk assessment in place and that you keep records as to the steps you have taken to ensure compliance.

## Does my business require safeguards?

All commercial agents licensed with Rent Smart Wales are required to have the following safeguards in place:

- Client Money Protection,
- Professional Indemnity Insurance, and
- Membership to a Redress Scheme.

Auditors find that agents are not able to:

- Evidence that the legal entity that has been granted the licence has the required safeguards in place,
- Evidence that the professional indemnity insurance covers the letting and management activities the agent is completing and provides a sufficient level of cover,
- Evidence that their redress membership covers the letting and management activities of the agent and all of the branches that the agent completes letting and management activities out of.

These could result in the provider not paying out in respect of a claim or the redress scheme not providing an independent dispute resolution service when it is required.

Things to consider:

- Does your client money protection cover the licensee?
- Does your professional indemnity insurance cover the licensee, specify that the activities of both letting and management are covered and provide the correct level of cover for your portfolio size?
- Does your membership to a redress scheme cover the letting and management activities you complete and for all branches?

## What EPC (Energy Performance Certificate) requirements do I have to follow?

There are requirements placed upon landlords and their agents, if appointed, in respect of energy performance certificates, including:

- Making available, free of charge a valid energy performance certificate to any prospective tenant.
- Including the energy performance rating (A-G) in any rental advertisement, and
- Ensuring that any property rented out has an energy efficiency rating of E or above or that there is a valid exemption registered.

Things to consider:

- Upon let of a property, do you ensure that a valid energy performance certificate is made available to prospective tenants? *Auditors sometimes find that energy performance certificates have expired on let of a property.*
- Do you ensure that the energy performance rating is included in all property advertisements? *Auditors often find that property adverts state 'ask the agent' instead of providing the EPC rating, even when there is a valid energy performance certificate in place.*
- Are there any properties within your portfolio that have an energy performance rating of F or G without having a valid exemption registered? *Auditors sometimes find that a valid energy performance certificate for a*

*property has a rating of F or G but there is no registered exemption in place. You can check if there is a valid exemption registered on property on the [exemption register](#).*

## Does the EPC exception for listed properties still apply or not?

The Energy Performance of Buildings (England and Wales) Regulations 2012 states that an EPC is generally not required where the seller or landlord can demonstrate that the building is **protected as part of a designated environment or because of their special architectural or historical merit**.

**These buildings** are exempt from the requirements to have an energy performance certificate insofar as compliance with minimum energy performance requirements would unacceptably alter their character or appearance.

To comply with minimum energy performance requirements, many of the recommendations in an EPC report e.g. double glazing, new doors and windows, external wall insulation, and external boiler flues would likely result in unacceptable alterations in most historic buildings. These can include buildings protected as part of a designated environment or because of their special architectural or historical merit (e.g. listed buildings or buildings within a conservation area). In these cases, an EPC would not be required.

Building owners need to take a view as to whether this will be the case for their buildings. If there is any doubt as to whether works would unacceptably alter the character or appearance of a building, building owners may wish to seek the advice of their local authority's conservation officer

## If the property is managed should the Agent or the landlord register the EPC exemption?

The legislation indicates that enforcement can be taken where it is believed that 'a person' has committed a breach of any duty. It would depend on what the contract between the landlord and agent stated. At a minimum, the agent should be informing the landlord of the need to register the exemption and keeping records of the steps they have taken to secure compliance.

## A EIC for a new build lasts 10 years. Will a new EIC still be required after 5 years?

The FFHH guidance is clear on this. It states because an EIC is only provided where the electrical service installation on inspection and testing meets the electrical safety standards, it is a form of electrical condition report and will meet the requirements of regulation 6 for a period of five years from the date of issue of the EIC. In other words, an EICR will be required after 5 years.

Just to be clear the EIC is only acceptable for a new build, not a re-wire. Welsh Government have provided us with recent confirmation of this.

I have certificates from an electrician confirming that the works highlighted from a EICR have been completed. Will this suffice or do I need an updated EICR from the electrician which states it is satisfactory?

Ultimately it would be for the Courts to decide. The regulations state that written confirmation is required so for audit purposes Rent Smart Wales would accept written confirmation from the electrician. Don't forget that the written confirmation needs to go to the tenants too.

### What is Rent Smart Wales's stance on PAT testing?

PAT testing is one way to ensure the supplied electrical appliances are safe. But this is not the only way to achieve this e.g. visual checks at routine inspections could also be appropriate if evidenced properly.

### What's Rent Smart Wales stance on Radon testing?

[Section 91 of the Renting Homes \(Wales\) Act 2016](#) places an obligation on a landlord to ensure that a dwelling is fit for human habitation.

Checks can be done on [UKradon's website](#).

We included an article on how to manage Radon in our January 2024 newsletter. To make sure that you and your tenants are protected, follow these simple steps:

1. Check – Is your property in a radon affected area? Use UK Radon's interactive map.
2. Measure – If you are in an affected area, test to determine the actual radon level. You can hire a professional radon testing service or purchase a DIY radon testing kit.
3. Act – If the radon level is in excess you should take steps to reduce it

## Propertymark

The Rent Smart Wales audit highlighted issues with the Propertymark Written statement template. Agents are waiting for a new version to be issued by Propertymark. When is this likely?

We have engaged with our new legal partners, and we are pleased that our fixed term occupation contracts have been amended to address issues raised by Rent Smart Wales. We will be sending the revised contracts, statement of variation and guidance imminently. We would like to thank members in Wales for their patience.