

RENTING HOMES (FEES ETC.) (WALES) ACT 2019

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Recovery of Amount by Contract-Holder

Section 22 - Recovery of a prohibited payment or holding deposit

101. This section provides that a person may apply to the county court to recover a prohibited payment or holding deposit which has been paid by or on behalf of the person in relation to a standard occupation contract. The person making such a claim is referred to in the section as “the claimant”.
102. In the case of recovery of a prohibited payment, for the claim to succeed, the court must be satisfied beyond reasonable doubt that a prohibited payment has been made and that all or part of the amount of the payment has not been repaid. If it is so satisfied, the court may order repayment of the whole payment or (if part of it has already been repaid) of that part of it that remains unpaid. An order could only be made, if the court was satisfied that a prohibited payment had been required from a contract-holder, which is itself an offence. Additionally, the fact that repayment had been ordered could be a matter taken into account by a licensing authority in determining whether a landlord or agent, as the case may be, was a fit and proper person to hold a licence for the purposes of Part 1 of the 2014 Act.
103. In the case of recovery of a holding deposit, for the claim to succeed, the court must be satisfied on the balance of probabilities that a holding deposit has been paid and there has been failure to repay all or part of that to the claimant in accordance with Schedule 2. (The different test that is applied in this case reflects the fact that failure to repay a holding deposit is not a criminal offence, unlike the position in respect of requiring a person to make a prohibited payment contrary to section 2 or 3 of the Act.) Again, the court may order repayment of the whole holding deposit, or the outstanding amount of any holding deposit taken from the contract-holder.
104. The court may not require the repayment of an amount if that amount has been applied towards rent, or the security deposit under a standard occupation contract.
105. No claim for recovery of a prohibited payment may be made where criminal proceedings have been brought in respect of the disputed payment, unless the proceedings have been discontinued. This is because the court by whom a person is convicted of an offence under section 2 or 3 in respect of a prohibited payment may order payment of an amount equivalent to the prohibited payment (sections 2(6) and 3(6)).