

## Guidance on Tenant Fees and Letting Agents

## Residential Landlords and

The Tenant Fees Act 2019 ('the Act') applies to England only. The aim of the Act is to reduce the "hidden" costs that a tenant can face at the start of its tenancy.

Landlords and letting agents in England are prohibited from charging certain fees to a tenant and security deposits are also to be capped and must be fully refunded with interest. Landlords and letting agents can be fined for non-compliance and for repeat offences, they could be found guilty of a criminal offence.

Landlords or letting agents on the section 21 eviction procedure to regain possession of property until they have repaid any unlawfully charged fees or returned the holding deposit.

This Act is part of the Government's plan to make the rental market fairer and more affordable, and to improve transparency and affordability in the rental market.

This Guidance summarises the key provisions of the Act which payments can be charged to a tenant and which are prohibited. It also explains which tenancies are affected and the penalties for non-compliance.

The Renting Homes (Fees etc.) (Wales) Act 2019 which apply to landlords and letting agents in Wales. Please see our separate Guidance Note: Renting Homes (Fees etc.) (Wales) 2019 for further information on the regime in Wales.

### 1. Which tenancies are affected?

This Act applies to the following tenancies:

1. Assured shorthold tenancies (ASTs);
2. Licence to occupy (excluding shared accommodation); and
3. Student lettings.

Any new or renewed tenancies or licences granted on or after 01 June 2019 will be affected. If you granted a tenancy or licence before 01 June 2019, you will be able to charge fees which may be prohibited by the Act until 31 May 2020, after which all tenancies and licences (listed above) will be affected by the Act.

For the avoidance of doubt, commercial tenancies and company lets are not caught by the Act.

### 2. What payments are permitted?

A tenant can be charged:

1. Rent;
2. A refundable tenancy deposit (capped at five weeks' rent if the yearly rent is less than £50,000 or capped at one week's rent if the yearly rent is £50,000 or more);
3. A refundable holding deposit (capped at one week's rent);

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weeks' rent if the yearly rent is less than £50,000 or capped at one week's rent if the yearly rent is £50,000 or more);  
more than one week's rent);

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4. The following 'default' fees:
  - a. Payments in the event of a lost key or security device only if such payments are made on behalf of the tenant and properly incurred
  - b. Interest for late payment (at the rate of 3% above the Bank of England base rate)

Letting agents must display their fees on their website and in their offices.

5. Utilities/Communication charges (landlords or letting agents on their behalf must pay the actual costs)
6. £50 fee for the landlord's loss of a key or security device only if such payments are made on behalf of the tenant and properly incurred (invoice or receipt is provided)
7. An early termination fee (where the tenant is exiting the tenancy before the term of the tenancy agreement would have received) of

### 3. What payments are prohibited?

Landlords or letting agents are prohibited from charging tenants any fees which are not permitted payments.

1. Letting fees cannot be charged by the landlord. Letting fees include:
  - Viewing fees;
  - Preparation of condition reports;
  - Inventories;
  - Referencing;
  - Credit checks; and
  - Key collection
2. Landlords cannot charge for professional cleaning services (unless this is included in the tenancy agreement)
3. Landlords cannot charge for pets (unless the total security deposit does not exceed the caps referred to above)
4. The amount of a security deposit which exceeds the caps referred to above will be a prohibited payment
5. Renewal fees for a tenancy agreement
6. Payments in the event of a breach of contract, either by the tenant or the landlord (for example a fixed penalty)
7. Landlords or letting agents cannot charge increased rents for an initial period of the tenancy agreement.

For the avoidance of doubt, the landlord or letting agent has no entitlement to recover damages from the tenancy deposit or court action.

ten into the tenancy agreement:

lost key or security device only if such payments are made on behalf of the tenant and properly incurred

rent is unpaid for more than 14 days). The rate of interest must not exceed the rate of 3% above the Bank of England base rate

fees on their website and in their offices.

Council Tax (landlords or letting agents on their behalf must pay the actual costs)

tion, assignment or novation of a tenancy agreement with a new tenant (excluding renewals or early terminations) may be able to charge more if such payments are made on behalf of the tenant and properly incurred and written evidence is provided

it wishes to terminate early but not before the end of the term of the tenancy agreement. The termination fee must reflect the actual loss suffered (for example, loss of rent the landlord would have received) and any reasonable costs (such as advertising and marketing costs).

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nd must be fronted entirely by the tenant.

g or professional cleaning services (unless this is included in the tenancy agreement)

r pets (unless the total security deposit does not exceed the caps referred to above)

t which exceeds the caps referred to above will be a prohibited payment

ey are permitted payments), for example a fixed penalty for breach of contract; and landlords or letting agents are prohibited from charging increased rents which are prohibited under the tenancy agreement.

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## 4. Security Deposits

Tenancy deposits to secure the first five weeks' rent if the yearly rent is £50,000 or more.

The weekly rent is worked out as follows:

Security deposits for tenancies starting on or after 01 June 2019 will not be affected by the new cap for a fixed term renewal month.

Under a tenancy must be capped at five weeks' rent if the yearly rent is capped at six weeks' rent if the yearly rent is £50,000 or more.

ded by 52.

01 June 2019 will not be affected by the new cap for a fixed term renewal month.

## 5. Holding Deposits

A holding deposit is usually charged before a tenancy agreement. You can charge no more than one week's rent as a holding deposit for one property at any one time. A Holding Deposit Agreement with the prospective tenant must be given to the prospective tenant about when the holding deposit is paid.

There are strict timeframes for holding deposits. A holding deposit must be refunded into (although there is provision for it to be applied to the first instalment of rent or towards a holding deposit subject to the consent of the tenant).

If the landlord and tenant fail to enter into a tenancy agreement within 15 days unless of the 'Deadline for Agreement' (unless otherwise agreed), the landlord must refund the holding deposit to the tenant within 7 days of the Deadline for Agreement.

A holding deposit can be retained if the prospective tenant provides false information or if the tenant withdraws from the tenancy.

Before a property prior to signing the tenancy agreement, but you must not charge more than one holding deposit for one property. To enter into a Holding Deposit Agreement, the following information is given to the prospective tenant: the amount paid or retained.

Under the Act, the holding deposit must be refunded into (although there is provision for it to be applied to the first instalment of rent or towards a holding deposit subject to the consent of the tenant).

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## 6. Prohibited Arrangements

Neither a landlord or a letting agent can require a tenant to make a prohibited payment to a third party or enter into a contract with a third party (other than for the supply of utilities) or require a tenant to make a prohibited payment to a third party (other than for the supply of utilities) or require a tenant to make a prohibited payment to a third party (other than for the supply of utilities).

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## 7. Amendments to the Consumer Protection (Distance Selling) Regulations 2008

The Act amends the Consumer Protection (Distance Selling) Regulations 2008 to require landlords and letting agents to publish their fees on their websites or ensure there is a link to the fee list on their websites.

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## 8. What are the penalties and consequences of non-compliance?

A term in a tenancy agreement requiring a tenant to make a prohibited payment on the tenancy agreement will not be required to pay this sum under the agreement.

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The Act and which seeks to impose a penalty on a landlord or letting agent who fails to comply with the Act will not be required to pay this sum under the agreement.

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If a landlord or letting agent as  
fully refunded to the tenant with

ent in error, the payment must be

The local Trading Standards  
Trading Standard authority) w  
can be subject to a fine of up  
within five years of the first, th  
could be liable for an unlimit  
penalty of up to £30,000 as an

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nce. If a further offence is made  
nce and a landlord or letting agent  
authorities may impose a financial  
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If a landlord or letting agent is  
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authority as to whether a lan  
landlords and property agents.

this will result in a 'banning order'  
will be up to the relevant local  
added to the database of rogue

Landlords or letting agents will  
procedure to regain possessi  
charged fees or returned an un

nant using the section 21 eviction  
they have repaid any unlawfully  
deposit.

## 9. Practical Steps for Landlord

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1. Landlords and letting agen  
have in place all the neces
2. Landlords and letting agen  
holding deposit forms are f
3. Landlords and letting agen  
of any payments that a te  
following:
  - Tenancy agreemen
  - Receipts and invoid
  - Bank statements;
  - Correspondence; a
  - Other paperwork.

y are complying with the Act and  
grant of a new tenancy;

current tenancy agreements and

ep accurate records and evidence  
e which may be referred to in the

4. Letting agents must publis  
their fee list on the third-pa

ty letting sites or provide a link to

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