

The Renting Homes (Fees etc.) (Wales) Act 2019 (the Act) comes into force on 01 September 2019 and applies to Wales. The Act is designed to reduce the “hidden” costs that a tenant can face at the start of a tenancy.

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Landlords and letting agents in Wales are prohibited from charging certain fees to a tenant. Holding deposits are to be held in a designated account and are to be fully refunded within strict time frames except in limited circumstances. Breaches of the Act are prosecutable in the magistrates’ court (subject to a statutory limit). The enforcement of the Act is primarily through the provisions as an alternative but this is entirely dependent on the provisions of the Act.

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Landlords or letting agents on the 21 day notice procedure to regain possession of the property until they have repaid any prohibited payments or returned a holding deposit.

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This Guidance summarises the key provisions of the Act which affect a tenant and which are prohibited for landlords and letting agents. It also affects and the penalties for non-compliance with the Act.

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1. Which tenancies are affected by the Act?

This Act applies to Assured Shorthold Tenancies (ASTs) only. ASTs of social housing (including ASTs of social housing) will be caught by the Act. Any new ASTs entered into on or after 01 September 2019 will be affected. This will include periodic tenancies entered into on or after 01 September 2019. For the avoidance of doubt, ASTs entered into prior to 01 September 2019 will not be affected by the Act.

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This Act does not apply to Contractual (Non-Assured Shorthold) Tenancy Agreements (CNATs) and Contractual (Non-Assured Shorthold) Tenancy Agreements (CNATs) which do not apply to licences.

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Standard occupation contracts (SOCs) and Standard Occupation Contracts (SOCs) and are a new form of letting agreement. The relevant provisions of the Renting Homes (Wales) Act 2016 are being replaced by the provisions of the Renting Homes (Wales) Act 2019. Transitional regulations have been issued to apply the provisions of the Act to SOCAs.

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2. What payments are permitted to be charged to a tenant?

a. Landlords can make payment for management work carried out on behalf of the tenant.

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b. A tenant can be charged:

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- 2. A refundable tenancy deposit (under the Tenant Fees Act 2019, there are no limits on the amount of a deposit. Ministers have the power to introduce limits in the future);
- 3. A refundable holding deposit (more than one week's rent);
- 4. Payments in the event of a breach of the tenancy agreement (in the event of a breach of the tenancy agreement, a landlord must be written into the tenancy agreement):
 - a. Payments in the event of a change of keys (including changing, adding or replacing keys);
 - b. Interest for late payment (if the rent is unpaid for more than 7 days). The rate of interest must not exceed the rate of 3% above the Bank of England base rate);
- 5. Council Tax;
- 6. Utilities (electricity, gas, water or sewerage) if the payments are required under the AST;
- 7. Communication services (broadband, internet/cable or satellite television) if the payments are required under the AST and relate to the property subject to that tenancy; and
- 8. TV Licence if the payments are required under the AST and relate to the property subject to that tenancy.

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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 a landlord. Letting fees include:
 - Viewing fees;
 - Preparation of contracts;
 - Inventories;
 - Referencing;
 - Credit checks; and
 - Key collection.
- 2. Landlords cannot charge a fee for the renewal of a tenancy (this differs from a holding deposit which is a permitted payment subject to certain conditions);
- 3. Landlords cannot charge a fee for the assignment of a tenancy;
- 4. The amount of a holding deposit must not exceed the cap referred to above will be charged as long as the daily rate of rent for each period does not exceed the daily rate of rent for the previous period. An exception may apply if the landlord and tenant have agreed to a rent fluctuation; 2) the tenancy is a periodic tenancy; or 3) as a result of a statutory provision. This does not apply to the Tenant Fees Act 2019 which only prohibits rent increases in the first year of a tenancy);
- 5. Renewal fees for a renewal of a tenancy;
- 6. Rent fluctuations between periods of a tenancy (save where the landlord and tenant have agreed to a rent fluctuation; 2) the tenancy is a periodic tenancy; or 3) as a result of a statutory provision. This does not apply to the Tenant Fees Act 2019 which only prohibits rent increases in the first year of a tenancy).

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Under the Tenant Fees Act 2019, there are no limits on the amount of a deposit. Ministers have the power to introduce limits in the future);

more than one week's rent);

in the event of a breach of the tenancy agreement, a landlord must be written into the tenancy agreement):

including changing, adding or replacing keys);

as evidenced by an invoice or receipt);

if the rent is unpaid for more than 7 days). The rate of interest must not exceed the rate of 3% above the Bank of England base rate);

for sewerage) if the payments are required under the AST;

internet/cable or satellite television) if the payments are required under the AST and relate to the property subject to that tenancy; and

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If the holding deposit is collected, the holding deposit must be repaid

Specified Information is provided, the

There are strict timeframes for the holding deposit must be refunded into (although there is provision for an instalment of rent or towards a deposit if the tenant to consent to the holding deposit unlike the Tenant Fees Act 2019

holding deposit. Under the Act, the holding deposit must be repaid within 14 days of the tenancy being entered into. The holding deposit must be applied to the first instalment of rent or towards a security deposit. There is no requirement for the holding deposit to be applied to the rent or security deposit

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

agreement within 15 days unless of the 'Deadline for Agreement') (unless the parties otherwise agree), the holding deposit to the tenant

A holding deposit can be retained in the following circumstances:

circumstances:

- i) where a prospective tenant provides false or false information; or
- ii) if the tenant fails to take the steps to enter into the tenancy (even though the landlord has taken the steps to enter into a contract before the Deadline for Agreement)
- iii) the tenant notifies the landlord before the Deadline for Agreement that they do not wish to enter into a tenancy agreement (this exception is not available if the tenant has not behaved reasonably).

There are three main exceptions to repayment (for example, where the tenant fails to take the steps to enter into the tenancy and the landlord has taken the steps to enter into a contract before the Deadline for Agreement), the holding deposit must be repaid to the tenant (or letting agent) by the landlord (or letting agent) to the tenant before the holding deposit is repaid.

If a landlord or letting agent requires a holding deposit, Specified Information must be provided to the tenant before the holding deposit is repaid.

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5. 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 for the grant, renewal or continuance of an AST. For example, you cannot require a tenant to pay a third party that provides a service such as reference checks.

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There is an exception for contracts for services which any of the services will be provided by a person with the tenancy. This might include a caretaker or live-in nanny.

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6. Consumer Rights Act 2015

The Act gives ministers the power to amend the Consumer Rights Act 2015 to prohibit landlords from advertising properties on third party sites (such as Zoopla) unless they disclose their fees on these sites.

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

A term in a tenancy agreement which requires a tenant to make a prohibited payment on the tenancy or to enter into a contract with a third party for the grant, renewal or continuance of an AST will not be required to pay this sum under the agreement.

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Compared with the Tenant Fees Act 2019 in England, a different enforcement regime in Wales. In Wales, any breach of the Act is a summary conviction to a fine (not exceeding the statutory limit). The court may also order the offender to repay any profit made by the offender a fixed penalty (£1,000). If a fixed penalty notice is served, it must be paid.

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A fixed penalty is not available for a breach of the Act requiring a person to provide information to assist with an investigation of a potential breach of the Act.

Section 10 of the Act which relates to a person providing information to assist with an investigation of a potential breach of the Act.

Under the Tenant Fees Act 2019, a landlord or letting agent who commits two breaches within a five-year period is liable to a financial penalty (up to £5,000) and a criminal conviction if it commits two breaches within a five-year period.

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Where an offence under the Act is committed by a corporate body, a senior officer of that body may also be guilty of an offence under the Act.

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An enforcement authority in England has powers to require information from landlords and tenants to assist with an investigation of a potential breach of the Act. It is an offence to fail to comply, or to provide false or misleading information which may result in a fine (not subject to any statutory limit).

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Each of the local housing authorities in England constitute the enforcement authority. A licensing authority may not take an enforcement action without the prior written consent of the local housing authority. A local housing authority must notify the licensing authority as soon as it becomes aware of an offence. The licensing authority may determine whether a person is liable for an offence under the Housing Act 2014.

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Landlords or letting agents who use the section 21 eviction procedure to regain possession of a property from a tenant who has not paid charged fees or returned an unlawful deposit are liable to a fine.

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8. Practical Steps for Landlords and Letting Agents

1. Landlords and letting agents should ensure they are complying with the Act and all supplementary regulations prior to the grant of a new tenancy.
2. Landlords and letting agents should ensure their current tenancy agreements and holding deposit forms are fit for purpose.
3. Landlords and letting agents should keep accurate records and evidence of any payments that a tenant has made, including the following:
 - Tenancy agreements;
 - Receipts and invoices;
 - Bank statements;
 - Correspondence; and
 - Other paperwork.

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4. Landlords and/or agents must ensure that they are aware of the Tenant Fees Act 2019 and that they comply with it.

Landlords and/or agents in England and Wales must make sure that they are aware of this Act and the Tenant Fees Act 2019 in their respective countries.

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